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Title 27—Alcohol, Tobacco Products and Firearms

(This book contains parts 1 to 199)

Part

CHAPTER I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury 1

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 section 124 of the Domestic Mail Manual.

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

ABBREVIATIONS: The following abbreviations are used in this chapter:
ATF=*Alcohol, Tobacco and Firearms*. T.D.=*Treasury Decision*.

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

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.

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AUTHORITY: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

SOURCE: T.D. ATF–373, 61 FR 26098, May 24, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1 appear by T.D. ATF–463, 66 FR 42733, Aug. 15, 2001.

Subpart A—Scope

§ 1.1 General.

(a) The regulations in this part relate to requirements governing the issuance, amendment, denial, revocation, suspension, automatic termination, and annulment of basic permits and the duration of permits, except that the provisions of part 71, Rules of Practice in Permit Proceedings, of this chapter are hereby made applicable to administrative proceedings with respect to the application for, and to the suspension, revocation, or annulment of, basic permits under the Federal Alcohol Administration Act.

(b) The regulations in this part also specify what uses of distilled spirits and wine are ''nonindustrial,'' as that term is used in section 117 of the Federal Alcohol Administration Act (27 U.S.C. 211). Finally, this part, in accordance with section 106 of the Federal Alcohol Administration Act (27 U.S.C. 206), contains the substantive requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk. No procedural requirements are prescribed.

§ 1.2 Territorial extent.

The provisions of this part are applicable to the several States of the United States, the District of Columbia and Puerto Rico.

§ 1.3 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

§ 1.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 1 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.6, Delegation Order—Delegation of the Director's Authorities in Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits. ATF delegation orders, such as ATF Order 1130.6, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

Subpart B—Definitions

§ 1.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part.

Act. The Federal Alcohol Administration Act.

Alcohol. Ethyl alcohol distilled at or above 190° proof.

Applicant. Any person who has filed an application for a basic permit under the Federal Alcohol Administration Act with the appropriate ATF officer.

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 1130.6, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.

Basic permit. A document issued under the Act authorizing a person to engage in activities at a particular location.

Brandy. Brandy or wine spirits for addition to wines as permitted by internal revenue law.

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

Distilled spirits. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines ''distilled spirits'' as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use.

In bulk. Distilled spirits in containers having a capacity in excess of one wine gallon.

Other term. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Permittee. Any person holding a basic permit issued under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

Resale at wholesale. A sale to any trade buyer.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines ''wine'' as:

(a) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392), as now in force or hereafter amended, and

(b) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance, only if containing not less than 7 percent and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

[T.D. ATF–373, 61 FR 26098, May 24, 1996. Redesignated and amended by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

Subpart C—Basic Permits

EDITORIAL NOTE: Nomenclature changes appear by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999.

WHEN REQUIRED

§ 1.20 Importers.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(b) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

§ 1.21 Domestic producers, rectifiers, blenders, and warehousemen.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(b) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

§ 1.22 Wholesalers.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of purchasing for resale at wholesale, distilled spirits, wine, or malt beverages; or,

(b) While so engaged, receive, sell, offer or deliver for sale, contract to sell, or ship in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

§ 1.23 State agencies.

This subpart shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee thereof shall be required to obtain a basic permit under this subpart.

PERSONS ENTITLED TO BASIC PERMITS

§ 1.24 Qualifications of applicants.

The application of any person shall be granted and the permit issued by the appropriate ATF officer if the applicant proves to the satisfaction of the appropriate ATF officer that:

(a) Such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has not, within 5 years prior to the date of application, been convicted of a felony under Federal or State law, and has not, within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; and

(b) Such person, by reason of the person's business experience, financial standing or trade connections, is likely to commence operations as a distiller, warehouseman and bottler, rectifier, wine producer, wine blender, importer, or wholesaler, as the case may be, within a reasonable period and to maintain such operations in conformity with Federal law; and

(c) The operations proposed to be conducted by such person are not in violation of the law of the State in which they are to be conducted.

APPLICATIONS FOR PERMITS

§ 1.25 General.

Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 must be made on ATF Form 5100.24, or 5100.18, verified as required by § 1.56, and will be accompanied by such affidavits, documents, and other supporting data, as the appropriate ATF officer may require. The application will include all data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon a hearing.

[T.D. ATF–416, 64 FR 49985, Sept. 15, 1999; T.D. ATF–416a, 64 FR 54776, Oct. 8, 1999]

§ 1.26 Incomplete or incorrectly executed applications.

Incomplete or incorrectly executed applications will not be acted upon, but the applicant shall be entitled to file a new application without prejudice, or to complete the application already filed.

§ 1.27 Change in ownership, management, or control of the applicant.

In the event of any change in the ownership, management, or control of the applicant (in case of a corporation, any change in the officers, directors, or persons holding more than 10 percent of the corporate stock), after the date of filing of any application for a basic permit and prior to final action on such application, the applicant shall notify the appropriate ATF officer immediately of such change.

§ 1.29 Individual plant or premises.

An application for a basic permit must be filed, and permit issued, to cover each individual plant or premises where any of the businesses specified in section 103 of the Act is engaged in.

[T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

§ 1.30 Power of attorney; Form 5000.8 (1534).

If the application and other documents in support of such application are signed by an attorney in fact of an individual, partnership, association, or corporation, or by one of the members of a copartnership or association, or, in the case of a corporation by an officer or other person not authorized by the corporation's bylaws or by its board of directors to sign such applications and supporting documents, the applications must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the documents to execute the

same. Such powers of attorney will be executed on Form 5000.8 (1534).

(Approved by the Office of Management and Budget under control number 1512–0079)

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999].

§ 1.31 Denial of permit applications.

If, upon examination of any application for a basic permit, the appropriate ATF officer has reason to believe that the applicant is not entitled to such a permit, the appropriate ATF officer shall institute proceedings for the denial of the application in accordance with the procedure set forth in part 71 of this chapter.

AUTHORIZATION

§ 1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

The authority and power of issuing, amending, or denying basic permits, or amendments thereof, is conferred upon the appropriate ATF officer except as to agency initiated curtailment. The Director, upon consideration of appeals on petitions for review in part 71 of this chapter, may order the appropriate ATF officer to issue, deny, suspend, revoke, or annul basic permits.

[T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

AMENDMENT AND DURATION OF BASIC PERMITS

§ 1.40 Change of name.

In the event of any change in the name (trade or corporate name) of a permittee, or, in the event a permittee desires to engage in operations under an additional trade name, such permittee must file application Form 5100.18 for an amended basic permit, which application must be approved, and amended permit issued, before operations may be commenced under the new name.

(Approved by the Office of Management and Budget under control number 1512–0090)

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF– 416, 64 FR 49985, Sept. 15, 1999]

§ 1.41 Change of address.

In the event of a change in address the permittee must file application Form 5100.18 for an amended basic permit.

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF– 416, 64 FR 49985, Sept. 15, 1999]

§ 1.42 Change in ownership, management, or control of business.

In the event of any change in the ownership, management, or control of any business operated pursuant to a basic permit (if the permittee is a corporation, if any change occurs in the officers, directors, or persons owning or controlling more than 10 percent of the voting stock of said corporation) the permittee shall immediately notify the appropriate ATF officer of such change, giving the names and addresses of all new persons participating in the ownership, management, or control of such business, or in the case of a corporation, the names and addresses of such new officers, directors, or persons owning or controlling more than 10 percent of the voting stock. Notice to the appropriate ATF officer of any such change shall be accompanied or supplemented by such data in reference to the personal or business history of such persons as the appropriate ATF officer may require.

§ 1.43 Duration of permits.

A basic permit shall continue in effect until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided in the Act and in this part.

§ 1.44 Automatic termination of permits.

No basic permit shall be leased, sold, or otherwise voluntarily transferred, and, in the event of such lease, sale, or other voluntary transfer, such basic permit shall automatically terminate thereupon. If any basic permit is transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly whether by stock ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of 30 days thereafter:

Provided, That if within such 30-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such time as the application is finally acted upon.

REVOCATION, SUSPENSION, OR ANNULMENT OF BASIC PERMITS

§ 1.50 Revocation or suspension.

Whenever the appropriate ATF officer has reason to believe that any permittee has willfully violated any of the conditions of the permittee's basic permit or has not engaged in the operations authorized by the permit for a period of more than two years, the appropriate ATF officer shall institute proceedings for the revocation or suspension of such permit, in accordance with the procedure set forth in part 71 of this chapter, which part is made applicable to such proceedings.

§ 1.51 Annulment.

Whenever the appropriate ATF officer has reason to believe that any basic permit was procured through fraud, or misrepresentation or concealment of material fact, the appropriate ATF officer shall institute proceedings for the annulment of such permit in accordance with the procedure set forth in part 71 of this chapter, which part is made applicable to such proceedings.

§ 1.52 Disposition of stocks of alcoholic beverages upon revocation, annulment, or automatic termination of basic permit.

In the event of the revocation or annulment of a basic permit, pursuant to part 71 of this chapter, or in the event such permit is automatically terminated by operation of law (27 U.S.C. 204(g) and § 1.44 of this part), the appropriate ATF officer may authorize the orderly disposition of stocks of distilled spirits, wines, or malt beverages then held by the permittee or former permittee upon such conditions as may be considered proper.

MISCELLANEOUS

§ 1.55 Recalling permits for correction.

Whenever it shall be discovered that any basic permit has been issued authorizing acts, or combinations of acts, which may not properly, under the law and regulations, as of now or hereafter in force, be authorized, or that any material mistake has occurred in the issuance thereof, the holder of such permit shall forthwith surrender the same for correction or amendment upon demand of the appropriate ATF officer.

§ 1.56 Oaths and affirmations.

A document must be verified by an oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the jurisdiction where the document is executed when required by:

(a) Regulation; or

(b) An appropriate ATF officer.

[T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

§ 1.57 Procedure.

The procedures prescribed by the rules of practice in permit proceedings (part 71 of this chapter) are applicable to administrative proceedings for the issuance, amendment, denial, revocation, suspension, or annulment of basic permits, the issuance of subpoenas and the taking of depositions under the Act.

§ 1.58 Filing of permits.

Every person receiving a basic permit under the provisions of this part must file the same, at the place of business covered by the basic permit, so that it may be examined by appropriate ATF officers.

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

§ 1.59 Public information as to applications acted upon.

The appropriate ATF officer shall cause to be maintained currently in the appropriate ATF officer's office for public inspection, until the expiration of one year following final action on the application, the following information with respect to each application for basic permit filed:

(a) The name, including trade name or names, if any, and the address of the applicant; the kind of permit applied

for and the location of the business; whether the applicant is an individual, a partnership or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each stockholder owning 10 percent or more of the corporate stock.

(b) The time and place set for any hearing on the application.

(c) The final action taken on the application. In the event a hearing is held upon an application for a basic permit, the appropriate ATF officer shall make available for inspection at the appropriate ATF officer's office, upon request therefor: The transcript of the hearing, a copy of the administrative law judge's recommended decision, a copy of the appropriate ATF officer's decision and, in the event of an appeal to the Director, the decision on appeal with the reasons given in support thereof.

[T.D. ATF–373, 61 FR 26098, May 24, 1996, as amended by T.D. ATF–416, 64 FR 49985, Sept. 15, 1999]

Subpart D—Nonindustrial Use of Distilled Spirits and Wine

USES REGARDED AS INDUSTRIAL

§ 1.60 Use of distilled spirits.

The following uses of distilled spirits are regarded as ''industrial'' and will be excluded from any application of the term ''nonindustrial use.'' The use of distilled spirits:

(a) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes; or

(b) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale:

(1) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(2) For any laboratory for use exclusively in scientific research;

(3) For use at any hospital, blood bank, or sanitarium (including use in making analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(4) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof); or

(c) Free of tax, after denaturation of such spirits in the manner prescribed by law for:

(1) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(2) Any other use in the arts and industries (except for uses prohibited by 26 U.S.C. 5273 (b) or (d)) and for fuel, light, and power.

§ 1.61 Use of wine.

The following uses of wine are regarded as ''industrial'' and will be excluded from any application of the term ''nonindustrial''. The use of wine:

(a) Without payment of tax for use in the production of vinegar; or

(b) Free of tax for experimental or research purposes by any scientific university, college of learning, or institution of scientific research; or

(c) Free of tax for use by the United States or any agency thereof, and for use for analysis, testing, research, or experimentation by the governments of the several States and the District of Columbia or of any political subdivision thereof or by any agency of such governments; or

(d) Which has been rendered unfit for beverage use.

§ 1.62 Use of distilled spirits or wine for experimental purposes and in manufacture of nonbeverage products.

The use of distilled spirits or wine for experimental purposes and in the manufacture of (a) medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (b) toilet preparations; (c) flavoring extracts, syrups, or food products; or (d) scientific, chemical, mechanical, or industrial products,

provided such products are unfit for beverage use, is regarded as ''industrial,'' and will be excluded from any application of the term ''nonindustrial use.''

USES CLASSED AS NONINDUSTRIAL

§ 1.70 General.

All uses of distilled spirits and wines, except as provided in §§ 1.60, 1.61, and 1.62 of this part, are regarded as ''nonindustrial.'' Such ''nonindustrial'' use shall include, but not be limited to, distilled spirits or wine used for beverage purposes, or in the manufacture, rectification, or blending of alcoholic beverages; or in the preparation of food or drink by a hotel, restaurant, tavern, or similar establishment; or for sacramental purposes; or as a medicine.

§ 1.71 Distilled spirits in containers of a capacity of one gallon or less.

Distilled spirits in containers of a capacity of one wine gallon or less, except anhydrous alcohol and alcohol which may be withdrawn free of tax under the internal revenue laws, will be deemed to be for nonindustrial use.

Subpart E—Bulk Sales and Bottling of Distilled Spirits

BULK SALES AND BOTTLING

§ 1.80 Sales of distilled spirits in bulk.

It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in §§ 1.82, 1.83, and 1.84.

§ 1.81 Importation of distilled spirits in bulk.

It is unlawful for any person to import distilled spirits in bulk, for nonindustrial use, except for sale to or for use by the classes of persons enumerated in §§ 1.82, 1.83 and 1.84.

§ 1.82 Acquiring or receiving distilled spirits in bulk for redistillation, processing, rectification, warehousing, or warehousing and bottling.

(a) *Proprietors of distilled spirits plants.* Persons holding basic permits (issued under subpart B of this part) authorizing the distilling, processing, rectifying, or warehousing and bottling of distilled spirits, or operating permits (issued under § 19.157 and succeeding sections of this chapter) may acquire or receive in bulk and redistill, warehouse, or process distilled spirits, so far as permitted by law.

(b) *Proprietors of class 8 customs bonded warehouses.* If the permittee operates a class 8 customs bonded warehouse, the permittee may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

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

§ 1.83 Acquiring or receiving distilled spirits in bulk for addition to wine.

Persons holding permits as producers and blenders of wine, may, pursuant to such permit, acquire or receive in bulk alcohol or brandy for addition to wines.

§ 1.84 Acquisition of distilled spirits in bulk by Government agencies.

Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal revenue laws.

WAREHOUSE RECEIPTS

§ 1.90 Distilled spirits in bulk.

By the terms of the Act (27 U.S.C. 206), all warehouse receipts for distilled spirits in bulk must require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

§ 1.91 Bottled distilled spirits.

The provisions of the Act, which forbid any person to sell, offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

CROSS REFERENCE: For labeling of distilled spirits, see part 5 of this chapter.

SALES OF DISTILLED SPIRITS FOR INDUSTRIAL USE

§ 1.95 General.

Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are shipped or delivered directly to the industrial user thereof.

PART 4—LABELING AND ADVERTISING OF WINE

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AUTHORITY: 27 U.S.C. 205, unless otherwise noted.

SOURCE: T.D. 6521, 25 FR 13835, Dec. 29, 1960, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 4 appear by T.D. ATF–425, 65 FR 11890, Mar. 7, 2000.

CROSS REFERENCES: Other regulations relating to this part are as follows:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 5—Labeling and Advertising of Distilled Spirits.
27 CFR Part 7—Labeling and Advertising of Malt Beverages.
27 CFR Part 9—American Viticultural Areas.
27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines.
27 CFR Part 16—Alcoholic Beverage Health Warning Statement.
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 71—Rules of Practice in Permit Proceedings.
27 CFR Part 240—Wine.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
27 CFR Part 252—Exportation of Liquors.

Subpart A—Scope

§ 4.1 General.

The regulations in this part relate to the labeling and advertising of wine.

§ 4.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 4.3 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–92, 46 FR 46911, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5955, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF–425, 65 FR 11890, Mar. 7, 2000]

§ 4.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 4 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–425, 65 FR 11890, Mar. 7, 2000]

Subpart B—Definitions

§ 4.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part.

Act. The Federal Alcohol Administration Act.

Added brandy. Brandy or wine spirits for use in fortification of wine as permitted by internal revenue law.

Advertisement. See § 4.61 for meaning of term as used in subpart G of this part.

Alcohol. Ethyl alcohol distilled at or above 190° proof.

American. The several States, the District of Columbia, and Puerto Rico; ''State'' includes the District of Columbia and Puerto Rico.

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 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

Bottler. Any person who places wine in containers of four liters or less. (See meaning for ''containers'' and ''packer''.)

Brand label. The label carrying, in the usual distinctive design, the brand name of the wine.

Container. Any bottle, barrel, cask, or other closed receptacle irrespective of size or of the material from which made for use for the sale of wine at retail. (See meaning for ''bottler'' and ''packer''.)

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

Gallon. A U.S. gallon of 231 cubic inches of alcoholic beverages at 60 °F.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liter or litre. (a) A metric unit of capacity equal to 1,000 cubic centimeters

and equivalent to 33.814 U.S. fluid ounces. For purposes of this part, a liter is subdivided into 1,000 milliliters (ml).

(b) For purposes of regulation, one liter of wine is defined as that quantity (mass) of wine occupying a one-liter volume at 20 °Celsius (68 °F).

Packer. Any person who places wine in containers in excess of four liters. (See meaning for ''container'' and ''bottler''.)

Percent or percentage. Percent by volume.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

Pure condensed must. The dehydrated juice or must of sound, ripe grapes, or other fruit or agricultual products, concentrated to not more than 80° (Balling), the composition thereof remaining unaltered except for removal of water.

Restored pure condensed must. Pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process.

Sugar. Pure cane, beet, or dextrose sugar in dry for containing, respectively, not less than 95 percent of actual sugar calculated on a dry basis.

Total solids. The degrees Brix of the dealcoholized wine restored to its original volume.

Trade buyer. Any person who is a wholesaler or retailer.

United States. The several States, the District of Columbia, and Puerto Rico; the term ''State'' includes the District of Columbia and Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. (a) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and (b) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, initation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

[T.D. ATF–48, 43 FR 13532, Mar. 31, 1978, as amended by T.D. ATF–49, 43 FR 19848, May 9, 1978; T.D. ATF–53, 43 FR 37675, Aug. 23, 1978; 44 FR 55838, Sept. 29, 1979; T.D. ATF–66, 45 FR 40544, June 13, 1980; T.D. ATF–94, 46 FR 55095, Nov. 6, 1981; T.D. ATF–299, 55 FR 24988, June 19, 1990; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

Subpart C—Standards of Identity for Wine

§4.20 Application of standards.

The standards of identity for the several classes and types of wine set forth herein shall be applicable to all regulations and permits issued under the act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

§4.21 The standards of identity.

Standards of identity for the several classes and types of wine set forth in this part shall be as follows:

(a) *Class 1; grape wine*—(1) *Grape wine* is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during or after fermentation by either of the following methods:

(i) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent; but in no

event shall any product so ameliorated have an alcoholic content derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) By adding, separately or in combination, not more than 20 percent by weight of dry sugar, or not more than 10 percent by weight of water.

(iii) In the case of domestic wine, in accordance with 26 U.S.C. 5383.

(iv) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 °C) for natural red wine and 0.12 gram per 100 mL (20 °C) for other grape wine: *Provided*, That the maximum volatile acidity for wine produced from unameliorated juice of 28 or more degrees Brix is 0.17 gram per 100 milliliters for red wine and 0.15 gram per 100 milliliters for white wine. Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as ''red wine,'' ''pink (or rose) wine,'' ''amber wine,'' or ''white wine'' as the case may be. Any grape wine containing no added grape brandy or alcohol may be further designated as ''natural.''

(2) *Table wine* is grape wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as ''light wine,'' ''red table wine,'' ''light white wine,'' ''sweet table wine,'' etc., as the case may be.

(3) *Dessert wine* is grape wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume. Dessert wine having the taste, aroma and characteristics generally attributed to sherry and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 17 percent by volume, may be designated as ''sherry''. Dessert wines having the taste, aroma and characteristics generally attributed to angelica, madeira, muscatel and port and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 18 percent by volume, may be designated as ''angelica,'' ''madeira,'' ''muscatel,'' or ''port'' respectively. Dessert wines having the taste, aroma, and characteristics generally attributed to any of the above products and an alcoholic content, derived in part from added grape brandy or alcohol, in excess of 14 percent by volume but, in the case of sherry, less than 17 percent, or, in other cases, less than 18 percent by volume, may be designated as ''light sherry,'' ''light angelica,'' ''light madeira,'' ''light muscatel'' or ''light port,'' respectively.

(b) *Class 2; sparkling grape wine.* (1) *Sparkling grape wine* (including ''sparkling wine,'' ''sparkling red wine'' and ''sparkling white wine'') is grape wine made effervescent with carbon dioxide resulting solely from the fermentation of the wine within a closed container, tank or bottle.

(2) *Champagne* is a type of sparkling light wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France.

(3)(i) A sparkling light wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for ''champagne'' may, in addition to but not in lieu of the class designation ''sparkling wine,'' be further designated as:

(A) ''Champagne style;'' or

(B) ''Champagne type;'' or

(C) ''American (or New York State, Napa Valley, etc.) champagne,'' along with one of the following terms: ''Bulk process,'' ''fermented outside the bottle,'' ''secondary fermentation outside the bottle,'' ''secondary fermentation before bottling,'' ''not fermented in the bottle,'' or ''not bottle fermented.'' The term ''charmat method'' or ''charmat process'' may be used as additional information.

(ii) Labels shall be so designed that all the words in such further designation are readily legible under ordinary conditions and are on a contrasting background. In the case of paragraph (b)(3)(i)(C) of this section, ATF will consider whether the label as a whole provides the consumer with adequate

information about the method of production and origin of the wine. ATF will evaluate each label for legibility and clarity, based on such factors as type size and style for all components of the further designation and the optional term ''charmat method'' or ''charmat process,'' as well as the contrast between the lettering and its background, and the placement of information on the label.

(iii) Notwithstanding the provisions of paragraphs (b)(3)(i)(A), (B) and (C) of this section, the appropriate ATF officer may authorize the use of a term on sparkling wine labels, as an alternative to those terms authorized in paragraph (b)(3)(i) of this section, but not in lieu of the required class designation ''sparkling wine,'' upon a finding that such term adequately informs the consumer about the method of production of the sparkling wine.

(4) *Crackling wine, petillant wine, frizzante wine* (including cremant, perlant, reciotto, and other similar wine) is sparkling light wine normally less effervescent than champagne or other similar sparkling wine, but containing sufficient carbon dioxide in solution to produce, upon pouring under normal conditions, after the disappearance of air bubbles, a slow and steady effervescence evidenced by the formation of gas bubbles flowing through the wine. Crackling wine which derives its effervescence from secondary fermentation in containers greater than 1-gallon capacity shall be designated ''crackling wine—bulk process,'' and the words ''bulk process'' shall appear in lettering of substantially the same size as the words ''crackling wine.''

(c) *Class 3; carbonated grape wine.* ''*Carbonated grape wine*'' (including ''*carbonated wine,*'' ''*carbonated red wine,*'' and ''*carbonated white wine*'') is grape wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(d) *Class 4; citrus wine.* (1)(i) *Citrus wine* or *citrus fruit wine* is wine produced by the normal alcoholic fermentation of the juice of sound, ripe citrus fruit (including restored or unrestored pure condensed citrus must), with or without the addition, after fermentation, of pure condensed citrus must, and with or without added citrus brandy or alcohol, but without any other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, or in the case of products produced from citrus fruit having a normal acidity of 20 parts or more per thousand, not more than 60 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content or more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 milliliters (20 °C.).

(iii) Any citrus wine containing no added brandy or alcohol may be further designated as ''natural.''

(2) *Citrus table wine* or *citrus fruit table wine* is citrus wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated ''light citrus wine,'' ''light citrus fruit wine,'' ''light sweet citrus fruit wine,'' etc., as the case may be.

(3) *Citrus dessert wine* or *citrus fruit dessert wine* is citrus wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) Citrus wine derived wholly (except for sugar, water, or added alcohol) from one kind of citrus fruit, shall be designated by the word ''wine'' qualified by the name of such citrus fruit, e.g., ''orange wine,'' ''grapefruit wine.'' Citrus wine not derived wholly from one kind of citrus fruit shall be designated as ''citrus wine'' or ''citrus fruit wine'' qualified by a truthful and adequate statement of composition appearing in

direct conjunction therewith. Citrus wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as ''sparkling''; and citrus wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as ''carbonated.''

(e) *Class 5; fruit wine.* (1)(i) *Fruit wine* is wine (other than grape wine or citrus wine) produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must), with or without the addition, after fermentation, of pure condensed fruit must, and with or without added fruit brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of dry sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from any fruit or berry other than grapes, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, and in the case of other fruit wines, not more than 35%, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 milliliters (20 °C.).

(iii) Any fruit wine containing no added brandy or alcohol may be further designated as ''natural.''

(2) *Berry wine* is fruit wine produced from berries.

(3) *Fruit table wine* or *berry table wine* is fruit or berry wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated ''light fruit wine,'' or ''light berry wine.''

(4) *Fruit dessert wine* or *berry dessert wine* is fruit or berry wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(5) Fruit wine derived wholly (except for sugar, water, or added alcohol) from one kind of fruit shall be designated by the word ''wine'' qualified by the name of such fruit, e.g., ''peach wine,'' ''blackberry wine.'' Fruit wine not derived wholly from one kind of fruit shall be designated as ''fruit wine'' or ''berry wine,'' as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines which are derived wholly (except for sugar, water, or added alcohol) from apples or pears may be designated ''cider'' and ''perry,'' respectively, and shall be so designated if lacking in vinous taste, aroma, and characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as ''sparkling''; and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as ''carbonated.''

(f) *Class 6; wine from other agricultural products.* (1)(i) Wine of this class is wine (other than grape wine, citrus wine, or fruit wine) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition before or during fermentation of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other spirits as will not alter the character of the product, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with part 24, of this chapter, and any product other

than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 milliliters (20 °C.).

(iii) Wine of this class containing no added alcohol or other spirits may be further designated as ''natural''.

(2) *Table wine* of this class is wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as ''light''.

(3) *Dessert wine* of this class is wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) *Raisin wine* is wine of this class made from dried grapes.

(5) *Sake* is wine of this class produced from rice in accordance with the commonly accepted method of manufacture of such product.

(6) Wine of this class derived wholly (except for sugar, water, or added alcohol) from one kind of agricultural product shall except in the case of ''sake,'' be designated by the word ''wine'' qualified by the name of such agricultural product, e.g., ''honey wine,'' ''raisin wine,'' ''dried blackberry wine.'' Wine of this class not derived wholly from one kind of agricultural product shall be designated as ''wine'' qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Wine of this class rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of wine within a closed container, tank, or bottle shall be further designated as ''sparkling''; and wine of this class rendered effervescent by carbon dioxide otherwise derived shall be further designated as ''carbonated.''

(g) *Class 7; aperitif wine.* (1) *Aperitif wine* is wine having an alcoholic content of not less than 15 percent by volume, compounded from grape wine containing added brandy or alcohol, flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes, and possessing the taste, aroma, and characteristics generally attributed to aperitif wine and shall be so designated unless designated as ''vermouth'' under paragraph (g)(2) of this section.

(2) *Vermouth* is a type of aperitif wine compounded from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth, and shall be so designated.

(h) *Class 8; imitation and substandard or other than standard wine.* (1) ''Imitation wine'' shall bear as a part of its designation the word ''imitation,'' and shall include:

(i) Any wine containing synthetic materials.

(ii) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(iii) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired in whole or in part, by treatment with methods or materials of any kind (except as permitted in §4.22(c)(6)), if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(iv) Any wine made from must concentrated at any time to more than 80° (Balling).

(2) ''Substandard wine'' or ''other than standard wine'' shall bear as a part of its designation the word ''substandard,'' and shall include:

(i) Any wine having a volatile acidity in excess of the maximum prescribed therefor in §§4.20 to 4.25.

(ii) Any wine for which no maximum volatile acidity is prescribed in §§4.20 to 4.25, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.14 gram per 100 milliliters (20 °C.).

(iii) Any wine for which a standard of identity is prescribed in this §§ 4.20 to 4.25, inclusive, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

(iv) Any ''grape wine'' ''citrus wine,'' ''fruit wine,'' or ''wine from other agricultural products'' to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of ''citrus wine,'' ''fruit wine'' and ''wine from other agricultural products'' the normal acidity of the material from which such wine is produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 percent by such addition.

(i) *Class 9; retsina wine.* ''Retsina wine'' is grape table wine fermented or flavored with resin.

CROSS REFERENCE: For regulations relating to the use of spirits in wine, see part 24 of this chapter.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. 6776, 29 FR 16985, Dec. 11, 1964; T.D. 7185, 37 FR 7975, Apr. 22, 1972; T.D. ATF–48, 44 FR 55839, Sept. 28, 1979; T.D. ATF–299, 55 FR 24988, June 19, 1990; T.D. ATF–312, 56 FR 31076, July 9, 1991; T.D. ATF–335, 58 FR 5615, Jan. 22, 1993; T.D. ATF–355, 59 FR 14553, Mar. 29, 1994; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF–398, 63 FR 44782, Aug. 21, 1998; T.D. ATF–403, 64 FR 50252, Sept. 16, 1999; T.D. ATF–458, 66 FR 37578, July 19, 2001; T.D. ATF–470, 66 FR 58944, Nov. 26, 2001]

§ 4.22 Blends, cellar treatment, alteration of class or type.

(a) If the class or type of any wine shall be altered, and if the product as so altered does not fall within any other class or type either specified in §§ 4.20 through 4.25 or known to the trade, then such wine shall, unless otherwise specified in this section, be designated with a truthful and adequate statement of composition in accordance with § 4.34.

(b) Alteration of class or type shall be deemed to result from any of the following occurring before, during, or after production.

(1) Treatment of any class or type of wine with substances foreign to such wine which remain therein: *Provided,* That the presence in finished wine of not more than 350 parts per million of total sulfur dioxide, or sulphites expressed as sulfur dioxide, shall not be precluded under this paragraph.

(2) Treatment of any class or type of wine with substances not foreign to such wine but which remain therein in larger quantities than are naturally and normally present in other wines of the same class or type not so treated.

(3) Treatment of any class or type of wine with methods or materials of any kind to such an extent or in such manner as to affect the basic composition of the wine so treated by altering any of its characteristic elements.

(4) Blending of wine of one class with wine of another class or the blending of wines of different types within the same class.

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this article with sugar or water in excess of the quantities specifically authorized by such standard: *Provided,* That the class or type thereof shall not be deemed to be altered where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters, and the content of natural acid is not less than 7.5 parts per thousand and where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) there is stated as part of the class and type designation the phrase ''Made with over 35 percent sugar solution.''

(c) Nothing in this section shall preclude the treatment of wine of any class or type in the manner hereinafter specified, provided such treatment does not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section.

(1) Treatment with filtering equipment, and with fining or sterilizing agents.

(2) Treatment with pasteurization as necessary to perfect the wines to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(3) Treatment with refrigeration as necessary to perfect the wine to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(4) Treatment with methods and materials to the minimum extent necessary to correct cloudiness, precipitation, or abnormal color, odor, or flavor developing in wine.

(5) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated.

(6) Treatment of any class or type of wine involving the use of volatile fruit-flavor concentrates in the manner provided in section 5382 of the Internal Revenue Code.

(7) Notwithstanding the provisions of §4.21(b) (1), (2) and (4), (c), (d)(4), (e)(5), and (f)(6) carbon dioxide may be used to maintain counterpressure during the transfer of finished sparkling wines from (i) bulk processing tanks to bottles, or (ii) bottle to bottle: *Provided*, That the carbon dioxide content of the wine shall not be increased by more than 0.009 gm. per 100 ml. during the transfer operation.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. 6776, 29 FR 16985, Dec. 11, 1964; T.D. 7185, 37 FR 7976, Apr. 22, 1972; T.D. ATF–403, 64 FR 50253, Sept. 16, 1999; T.D. ATF–458, 66 FR 37578, July 19, 2001]

§4.23 Varietal (grape type) labeling.

(a) *General*. The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in §4.25a.

(b) *One variety*. Except as provided in paragraph (c) of this section, the name of a single grape variety may be used as the type designation if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area.

(c) *Exceptions*. (1) Wine made from any *Vitis labrusca* variety (exclusive of hybrids with *Vitis labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of the named variety;

(ii) The statement ''contains not less than 51 percent (name of variety)'' is shown on the brand label, back label, or a separate strip label, (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the appropriate ATF officer upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement ''contains not less than 51 percent (name of variety)'' is shown on the brand label, back label, or a separate strip label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(d) *Two or more varieties*. The names of two or more grape varieties may be used as the type designation if:

(1) All of the grapes used to make the wine are of the labeled varieties;

(2) The percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent); and

(3)(i) If labeled with a multicounty appellation of origin, the percentage of

the wine derived from each variety from each county is shown on the label; or

(ii) If labeled with a multistate appellation of origin, the percentage of the wine derived from each variety from each state is shown on the label.

(e) *List of approved variety names.* Effective February 7, 1996, the name of a grape variety may be used as a type designation for an American wine only if that name has been approved by the Director. A list of approved grape variety names appears in subpart J of this part.

[T.D. ATF–370, 61 FR 538, Jan. 8, 1996]

§ 4.24 Generic, semi-generic, and nongeneric designations of geographic significance.

(a)(1) A name of geographic significance which is also the designation of a class or type of wine, shall be deemed to have become generic only if so found by the appropriate ATF officer.

(2) Examples of generic names, originally having geographic significance, which are designations for a class or type of wine are: Vermouth, Sake.

(b)(1) A name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the appropriate ATF officer. Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations in this part or, if there be no such standard, to the trade understanding of such class or type. See § 24.257(c) of this chapter for exceptions to the appropriate ATF officer's authority to remove names from paragraph (b)(2) of this section.

(2) Examples of semi-generic names which are also type designations for grape wines are Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, Tokay.

(c)(1) A name of geographic significance, which has not been found by the appropriate ATF officer to be generic or semi-generic may be used only to designate wines of the origin indicated by such name, but such name shall not be deemed to be the distinctive designation of a wine unless the Director finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

(2) Examples of nongeneric names which are not distinctive designations of specific grape wines are: American, California, Lake Erie, Napa Valley, New York State, French, Spanish. Additional examples of foreign nongeneric names are listed in subpart C of part 12 of this chapter.

(3) Examples of nongeneric names which are also distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, Saint–Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster, Deidesheimer, Schloss Johannisberger, Lagrima, and Lacryma Christi. A list of foreign distinctive designations, as determined by the Director, appears in subpart D of part 12 of this chapter.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. ATF–296, 55 FR 17967, Apr. 30, 1990; T.D. ATF–398, 63 FR 44783, Aug. 21, 1998; T.D. ATF–425, 65 FR 11890, 11891, Mar. 7, 2000]

§ 4.25 Appellations of origin.

(a) A wine shall be entitled to an appellation of origin if (1) at least 75 percent of its volume is derived from fruit or agricultural products grown in the place or region indicated by such appellation, (2) it has been fully manufactured and finished within the State in which such place or region is located, and (3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of manufacture, and designation of wines for home consumption.

(b) Wines subjected to cellar treatment outside the place or region of origin under the provisions of § 4.22(c), and blends of wines of the same origin blended together outside the place or region of origin (if all the wines in the

blend have a common class, type or other designation which is employed as the designation of the blend) shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment or blending took place within the place or region of origin.

(c) This section does not apply after December 31, 1982.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. 7185, 37 FR 7976, Apr. 22, 1972; T.D. ATF–201, 50 FR 12533, Mar. 29, 1985]

§4.25a Appellations of origin.

(a) *Definition*—(1) *American wine*. An American appellation of origin is: (i) The United States; (ii) a State; (iii) two or no more than three States which are all contiguous; (iv) a county (which must be identified with the word ''county'', in the same size of type, and in letters as conspicuous as the name of the county); (v) two or no more than three counties in the same States; or (vi) a viticultural area (as defined in paragraph (e) of this section).

(2) *Imported wine*. An appellation of origin for imported wine is: (i) A country, (ii) a state, province, territory, or similar political subdivision of a country equivalent to a state or county; or (iii) a viticultural area.

(b) *Qualification*—(1) *American wine*. An American wine is entitled to an appellation of origin other than a multicounty or multistate appellation, or a viticultural area, if:

(i) At least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated; (ii) it has been fully finished (except for cellar treatment pursuant to §4.22(c), and blending which does not result in an alteration of class or type under §4.22(b)) in the United States, if labeled ''American''; or, if labeled with a State appellation, within the labeled State or an adjacent State; or if labeled with a county appellation, within the State in which the labeled county is located; and (iii) it conforms to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such place.

(2) *Imported wine*. An imported wine is entitled to an appellation of origin other than a viticultural area if:

(i) At least 75 percent of the wine is derived from fruit or agricultural products grown in the area indicated by the appellation of origin; and (ii) The wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

(c) *Multicounty appellations*. An appellation of origin comprising two or no more than three counties in the same State may be used if all of the fruit or other agricultural products were grown in the counties indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each county is shown on the label with a tolerance of plus or minus two percent.

(d) *Multistate appellation*. An appelation of origin comprising two or no more than three States which are all contiguous may be used, if:

(1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus two percent;

(2) it has been fully finished (except for cellar treatment pursuant to §4.22(c), and blending which does not result in an alteration of class or type under §4.22(b)) in one of the labeled appellation States; (3) it conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

(e) *Viticultural area*—(1) *Definition*—(i) *American wine*. A delimited grape growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of this chapter.

(ii) *Imported wine*. A delimited place or region (other than an appellation defined in paragraph (a)(2)(i) or (a)(2)(ii)) the boundaries of which have been recognized and defined by the country of origin for use on labels of wine available for consumption within the country of origin.

(2) *Establishment of American viticultural areas.* Petitions for establishment of American viticultural areas may be made to the Director by any interested party, pursuant to the provisions of § 70.701(c) of this title. The petition may be in the form of a letter, and should contain the following information referred to in § 9.3(b) of this title.

(3) *Requirements for use.* A wine may be labeled with a viticultural area appellation if:

(i) The appellation has been approved under part 9 of this title or by the appropriate foreign government;

(ii) Not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticultural area;

(iii) In the case of foreign wine, it conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin; and

(iv) In the case of American wine, it has been fully finished within the State, or one of the States, within which the labeled viticultural area is located (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class and type under § 4.22(b)).

(4) *Overlap viticultural area appellations.* An appellation of origin comprised of more than one viticultural area may be used in the case of overlapping viticultural areas if not less than 85 percent of the volume of the wine is derived from grapes grown in the overlapping area.

[T.D. ATF–53, 43 FR 37675, Aug. 23, 1978, as amended by T.D. ATF–84, 46 FR 29261, June 1, 1981; T.D. ATF–92, 46 FR 46912, Sept. 23, 1981; T.D. ATF–195, 50 FR 763, Jan. 7, 1985; T.D. ATF–201, 50 FR 12533, Mar. 29, 1985; T.D. ATF–222, 51 FR 3774, Jan. 30 1986; T.D. ATF–312, 56 FR 31076, July 9, 1991; T.D. ATF–355, 59 FR 14553, Mar. 29, 1994; T.D. ATF–432, 65 FR 69253, Nov. 16, 2000]

§ 4.26 Estate bottled.

(a) *Conditions for use.* The term *Estate bottled* may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

(1) Is located in the labeled viticultural area; (2) grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; (3) crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

(b) *Special rule for cooperatives.* Grapes grown by members of a cooperative bottling winery are considered grown by the bottling winery.

(c) *Definition of* ''*Controlled*''. For purposes of this section, *Controlled by* refers to property on which the bottling winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least 3 years duration.

(d) *Use of other terms.* No term other than *Estate bottled* may be used on a label to indicate combined growing and bottling conditions.

[T.D. ATF–53, 43 FR 37676, Aug. 23, 1978, as amended by T.D. ATF–201, 50 FR 12533, Mar. 29, 1985]

§ 4.27 Vintage wine.

(a) *General.* Vintage wine is wine labeled with the year of harvest of the grapes and made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. At least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year, and the wine must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling). The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in lettering substantially as conspicuous as that designation. In no event may the quantity of wine removed from the producing winery, under labels bearing a vintage date, exceed the volume of vintage wine produced in that winery during the year indicated by the vintage date.

(b) *American wine.* A permittee who produced and bottled or packed the wine, or a person other than the producer who repackaged the wine in containers of 5 liters (or 1-gallon before January 1, 1979) or less may show the

year of vintage upon the label if the person possesses appropriate records from the producer substantiating the year of vintage and the appellation of origin; and if the wine is made in compliance with the provisions of paragraph (a) of this section.

(c) *Imported wine*. Imported wine may bear a vintage date if: (1) It is made in compliance with the provisions of paragraph (a) of this section; (2) it is bottled in containers of 5 liters (or 1-gallon before January 1, 1979) or less prior to importation, or bottled in the United States from the original container of the product (showing a vintage date); (3) if the invoice is accompanied by, or the American bottler possesses, a certificate issued by a duly authorized official of the country of origin (if the country of origin authorizes the issuance of such certificates) certifying that the wine is of the vintage shown, that the laws of the country regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the vintage date if it had been sold within the country of origin.

[T.D. ATF–53, 43 FR 37676, Aug. 23, 1978, as amended by T.D. ATF–195, 50 FR 763, Jan. 7, 1985]

§4.28 Type designations of varietal significance.

The following are type designations of varietal significance for American wine. These names may be used as type designations for American wines only if the wine is labeled with an appellation of origin as defined in §4.25a.

(a) *Muscadine*. An American wine which derives at least 75 percent of its volume from *Muscadinia rotundifolia* grapes.

(b) *Muscatel*. An American wine which derives its predominant taste, aroma, characteristics and at least 75 percent of its volume from any Muscat grape source, and which meets the requirements of §4.21(a)(3).

(c) *Muscat or Moscato*. An American wine which derives at least 75 percent of its volume from any Muscat grape source.

(d) *Scuppernong*. An American wine which derives at least 75 percent of its volume from bronze *Muscadinia rotundifolia* grapes.

(e)(1) *Gamay Beaujolais*. An American wine which derives at least 75 percent of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both.

(2) For wines bottled on or after January 1, 1999, and prior to April 9, 2007, the name ''Gamay Beaujolais'' may be used as a type designation only if there appears in direct conjunction therewith, but on a separate line and separated by the required appellation of origin, the name(s) of the grape variety or varieties used to satisfy the requirements of paragraph (e)(1) of this section. Where two varietal names are listed, they shall appear on the same line, in order of predominance. The appellation of origin shall appear either on a separate line between the name ''Gamay Beaujolais'' and the grape variety name(s) or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). The following statement shall also appear on the brand or back label: ''Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes.''

(3) The designation ''Gamay Beaujolais'' may not be used on labels of American wines bottled on or after April 9, 2007.

[T.D. ATF–370, 61 FR 539, Jan. 8, 1996, as amended by T.D. ATF–388, 62 FR 16490, Apr. 7, 1997; T.D. ATF–388a, 62 FR 33747, June 23, 1997]

Subpart D—Labeling Requirements for Wine

§4.30 General.

(a) *Application*. No person engaged in business as a producer, rectifier, blender, importer, or wholesaler, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine in containers unless such wine is packaged, and such packages are marked, branded, and labeled in conformity with this article. Wine domestically bottled or packed prior to

Dec. 15, 1936, and imported wine entered in customs bond in containers prior to that date shall be regarded as being packaged, marked, branded and labeled in accordance with this article, if the labels on such wine (1) bear all the mandatory label information required by § 4.32, even though such information is not set forth in the manner and form as required by § 4.32 and other sections of this title referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label upon wine held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law, or except as provided in paragraph (b)(2) of this section: *Provided,* That the appropriate ATF officer may, upon written application, permit additional labeling or relabeling of wine for purposes of compliance with the requirements of this part or of State law.

(2) No application for permission to relabel wine need be made in any case where there is added to the container, after removal from customs custody or from the premises where bottled or packed, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

CROSS REFERENCE: For customs warehouses and control of merchandise therein, see 19 CFR part 19.

§ 4.32 Mandatory label information.

(a) There shall be stated on the brand label:

(1) Brand name, in accordance with § 4.33.

(2) Class, type, or other designation, in accordance with § 4.34.

(3) Alcohol content, in accordance with § 4.36.

(4) On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

(b) There shall be stated on any label affixed to the container:

(1) Name and address, in accordance with § 4.35.

(2) Net contents, in accordance with § 4.37. If the net contents is a standard of fill other than an authorized metric standard of fill as prescribed in § 4.73, the net contents statement shall appear on a label affixed to the front of the bottle.

(c) There shall be stated on the brand label or on a back label a statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(d) There shall be stated on a front or back label, separate and apart from all other information, the following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

(e) *Declaration of sulfites.* There shall be stated on a front label, back label, strip label or neck label, the statement ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The provisions of this paragraph shall apply to:

(1) Any certificate of label approval issued on or after January 9, 1987;

(2) Any wine bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(3) Any wine removed on or after January 9, 1988.

(Paragraph (e) approved by the Office of Management and Budget under Control No. 1512–0469)

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. ATF–150, 48 FR 45556, Oct. 6, 1983; T.D. ATF–195, 50 FR 763, Jan. 7, 1985; T.D. ATF–220, 50 FR 51852, Dec. 20, 1985; T.D. ATF–236, 51 FR 34710, Sept. 30, 1986; T.D. ATF–282, 54 FR 7162, Feb. 16, 1989; T.D. ATF–312, 56 FR 31076, 31077, July 9, 1991]

§ 4.33 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the

brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate ATF officer finds that such brand name, either when qualified by the word ''brand'' or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided,* That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualifications shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 4.34 Class and type.

(a) The class of the wine shall be stated in conformity with subpart C of this part if the wine is defined therein, except that ''table'' (''light'') and ''dessert'' wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation, type designation of varietal significance, semigeneric geographic type designation, or geographic distinctive designation, to which the wine may be entitled. In the case of champagne, or crackling wines, the type designation ''champagne'' or ''crackling wine'' (''petillant wine'', ''frizzante wine'') may appear in lieu of the class designation ''sparkling wine''. In the case of wine which has a total solids content of more than 17 grams per 100 cubic centimeters the words ''extra sweet'', ''specially sweetened'', ''specially sweet'' or ''sweetened with excess sugar'' shall be stated as a part of the class and type designation. The last of these quoted phrases shall appear where required by part 24 of this chapter, on wines sweetened with sugar in excess of the maximum quantities specified in such regulations. If the class of the wine is not defined in subpart C, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. The statement of composition will not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An appellation of origin such as ''American,'' ''New York,'' ''Napa Valley,'' or ''Chilean,'' disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation if:

(1) A varietal (grape type) designation is used under the provisions of § 4.23;

(2) A type designation of varietal significance is used under the provisions of § 4.28;

(3) A semi-generic type designation is employed as the class and type designation of the wine pursuant to § 4.24(b);

(4) A product name is qualified with the word ''Brand'' under the requirements of § 4.39 (j); or

(5) The wine is labeled with the year of harvest of the grapes, and otherwise conforms with the provisions of § 4.27. The appellation of origin for vintage wine shall be other than a country.

[T.D. ATF–53, 43 FR 37677, Aug. 23, 1978; T.D. ATF–48, 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF–195, 50 FR 763, Jan. 7, 1985; T.D. ATF–229, 51 FR 20482, June 5, 1986; T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–370, 61 FR 539, Jan. 8, 1996; T.D. ATF–431, 65 FR 59724, Oct. 6, 2000]

§ 4.35 Name and address.

(a) *American wine.* On labels of containers of American wine, there shall be stated the name of the bottler or packer and the place where bottled or packed (or until January 1, 1985, in lieu of such place, the principal place of business of the bottler or packer if in the same State where the wine was bottled or packed, and, if bottled or packed on bonded premises, the AFT registry number of the premises) immediately preceded by the words ''bottled by'' or ''packed by'' except that:

(1) If the bottler or packer is also the person who made not less than 75 percent of such wine by fermenting the must and clarifying the resulting wine, or if such person treated the wine in such manner as to change the class thereof, there may be stated, in lieu of the words ''bottled by'' or ''packed by,'' the words ''produced and bottled by,'' or ''produced and packed by.''

(2) If the bottler or packer has also either made or treated the wine, otherwise than as described in paragraph (a)(1) of this section, there may be stated, in lieu of the words ''Bottled by'' or ''Packed by'' the phrases ''Blended and bottled (packed) by,'' ''Rectified and bottled (packed) by.'' ''Prepared and bottled (packed) by,'' ''Made and bottled (packed) by,'' as the case may be, or, in the case of imitation wine only, ''Manufactured and bottled (packed) by.''

(3) In addition to the name of the bottler or packer and the place where bottled or packed (but not in lieu thereof) there may be stated the name and address of any other person for whom such wine is bottled or packed, immediately preceded by the words ''Bottled for'' or ''Packed for'' or ''Distributed by'' or other similar statement; or the name and principal place of business of the rectifier, blender, or maker, immediately preceded by the words ''Rectified by,'' ''Blended by'' or ''Made by,'' respectively, or, in the case of imitation wine only, ''Manufactured by.''

(b) *Imported wine.* On labels of containers of imported wine, there shall be stated the words ''Imported by'' or a similar appropriate phrase, and immediately thereafter the name of the permittee who is the importer, agent, sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition, but not in lieu thereof, there may be stated the name and principal place of business of the foreign producer, blender, rectifier, maker, bottler, packer, or shipper, preceded by the phrases ''Produced by,'' ''Blended by,'' ''Rectified by,'' ''Made by,'' ''Bottled by,'' ''Packed by,'' ''Shipped by,'' respectively, or, in the case of imitation wine only, ''Manufactured by.''

(1) If the wine is bottled or packed in the United States, there shall be stated, in addition, the name of the bottler or packer and the place where bottled or packed immediately preceded by the words ''bottled by'' or ''packed by'' except that if the wine is bottled or packed in the United States for the person responsible for the importation there may be stated, in lieu of the above-required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase ''imported by and bottled (packed) in the United States for'' (or a similar appropriate phrase). If, however, the wine is bottled or packed in the United States by the person responsible for the importation there may be stated, in lieu of the above-required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase ''Imported and bottled (packed) by'' or a similar appropriate phrase.

(2) If the wine is blended, bottled, or packed in a foreign country other than the country of origin and the country of origin is stated or otherwise indicated on the label, there shall also be stated the name of the bottler, packer, or blender, and the place where bottled, packed, or blended, immediately preceded by the words ''Bottled by'', ''Packed by'', ''Blended by'', or other appropriate statement.

(c) *Form of address.* The ''place'' stated shall be the post office address (after December 31, 1984, the post office address shall be the address shown on the basic permit or other qualifying document of the premises at which the operations took place; and there shall

be shown the address for each operation which is designated on the label. An example of such use would be ''Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery''), except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless (1) such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or notice.

(e) This section does not apply after July 27, 1994.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. 7185, 37 FR 7976, Apr. 22, 1972; T.D. ATF–53, 43 FR 37677, Aug. 23, 1978; T.D. ATF–126, 48 FR 2764, Jan. 21, 1983; T.D. ATF–194, 50 FR 759, Jan. 7, 1985; T.D. ATF–209, 50 FR 27821, July 8, 1985T.D. ATF–328, 57 FR 33114, July 27, 1992]

§4.35a Name and address.

(a) *American wine*—(1) *Mandatory statement.* A label on each container of American wine shall state either ''bottled by'' or ''packed by'' followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed. Other words may also be stated in addition to the required words ''bottled by'' or ''packed by'' and the required name and address if the use of such words is in accordance with paragraph (a)(2) of this section.

(2) *Optional statements.* (i) In addition to the statement required by paragraph (a)(1), the label may also state the name and address of any other person for whom the wine was bottled or packed, immediately preceded by the words ''bottled for'' or ''packed for'' or ''distributed by.''

(ii) The words defined in paragraphs (a)(2)(iii)–(a)(2)(vi) may be used, in accordance with the definitions given, in addition to the name and address statement required by paragraph (a)(1). Use of these words may be conjoined, using the word ''and'', and with the words ''bottled by'' or ''packed by'' only if the same person performed the defined operation at the same address. More than one name is necessary if the defined operation was performed by a person other than the bottler or packer and more than one address statement is necessary if the defined operation was performed at a different address.

(iii) *Produced* or *Made* means that the named winery:

(A) Fermented not less than 75% of such wine at the stated address, or

(B) Changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, or artificial carbonation at the stated address, or

(C) Produced sparkling wine by secondary fermentation at the stated address.

(iv) *Blended* means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(v) *Cellared, Vinted* or *Prepared* means that the named winery, at the stated address, subjected the wine to cellar treatment in accordance with §4.22(c).

(b) *Imported wine*—(1) *Mandatory statements.* (i) A label on each container of imported wine shall state ''imported by'' or a similar appropriate phrase, followed immediately by the name of the importer, agent, sole distributor, or other person responsible for the importation, followed immediately by the address of the principal place of business in the United States of the named person.

(ii) If the wine was bottled or packed in the United States, the label shall also state one of the following:

(A) ''Bottled by'' or ''packed by'' followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed; or

(B) If the wine was bottled or packed for the person responsible for the importation, the words ''imported by and bottled (packed) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the

United States of the person responsible for the importation; or

(C) If the wine was bottled or packed by the person responsible for the importation, the words ''imported and bottled (packed) by'' followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(iii) If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label shall state ''blended by,'' ''bottled by,'' or ''packed by,'' or other appropriate statement, followed by the name of the blender, bottler or packer and the place where the wine was blended, bottled or packed.

(2) *Optional statements.* In addition to the statements required by paragraph (b) (1), the label may also state the name and address of the principal place of business of the foreign producer. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin.

(c) *Form of address.* The ''place'' stated shall be the post office address shown on the basic permit or other qualifying document of the premises at which the operations took place; and there shall be shown the address for each operation which is designated on the label. An example of such use would be ''Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery,'' except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless:

(1) Such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and

(2) The label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or other qualifying document.

(e) The provisions of this section are optional until they become mandatory July 27, 1994.

[T.D. ATF–328, 57 FR 33114, July 27, 1992; 57 FR 37591, Aug. 19, 1992]

§ 4.36 Alcoholic content.

(a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume, and, in the case of wine containing 14 percent or less of alcohol by volume, either the type designation ''table'' wine (''light'' wine) or the alcoholic content shall be stated. Any statement of alcoholic content shall be made as prescribed in paragraph (b) of this section.

(b) Alcoholic content shall be stated in terms of percentage of alcohol by volume, and not otherwise, as provided in either paragraph (b)(1) or (2) of this section:

(1) ''Alcohol ___ % by volume,'' or similar appropriate phrase; *Provided,* that if the word ''alcohol'' and/or ''volume'' are abbreviated, they shall be shown as ''alc.'' (alc) and/or ''vol.'' (vol), respectively. Except as provided in paragraph (c) of this section, a tolerance of 1 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted either above or below the stated percentage.

(2) ''Alcohol ___ % to ___ % by volume,'' or similar appropriate phrase; *Provided,* that if the word ''alcohol'' and/or ''volume'' are abbreviated, they shall be shown as ''alc.'' (alc) and/or ''vol.'' (vol), respectively. Except as provided in paragraph (c) of this section, a range of not more than 2 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of not more than 3 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted between the minimum and maximum percentages stated, and no tolerances will be permitted either below such minimum or above such maximum.

(c) Regardless of the type of statement used and regardless of tolerances

normally permitted in direct statements and ranges normally permitted in maximum and minimum statements, alcoholic content statements, whether required or optional, shall definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcoholic content statement in terms of maximum and minimum percentages which overlaps a prescribed limitation on the alcoholic content of any class, type, or taxable grade of wine, or a direct statement of alcoholic content which indicates that the alcoholic content of the wine is within such a limitation when in fact it is not.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. ATF–275, 53 FR 27046, July 18, 1988]

§4.37 Net contents.

(a) *Statement of net contents.* The net contents of wine for which a standard of fill is prescribed in §4.73 shall be stated in the same manner and form as set forth in the standard of fill. The net content of wine for which no standard of fill is prescribed in §4.73 shall be stated in the metric system of measure as follows:

(1) If more than one liter, net contents shall be stated in liters and in decimal portions of a liter accurate to the nearest one-hundredth of a liter.

(2) If less than one liter, net contents shall be stated in milliliters (ml).

(b) *Statement of U.S. equivalent net contents.* When net contents of wine are stated in metric measure, the equivalent volume in U.S. measure may also be shown. If shown, the U.S. equivalent volume will be shown as follows:

(1) For the metric standards of fill: 3 liters (101 fl. oz.); 1.5 liters (50.7 fl. oz.); 1 liter (33.8 fl. oz.); 750 ml (25.4 fl. oz.); 500 ml (16.9 fl. oz.); 375 ml (12.7 fl. oz.); 187 ml (6.3 fl. oz.); 100 ml (3.4 fl. oz.); and 50 ml (1.7 fl. oz.).

(2) Equivalent volumes of less than 100 fluid ounces will be stated in fluid ounces only, accurate to the nearest one-tenth of a fluid ounce; for example, 700 ml (23.7 fl. oz.).

(3) Equivalent volumes of 100 fluid ounces or more will be stated in fluid ounces only, accurate to the nearest whole fluid ounce; for example, 6 liters (203 fl. oz.).

(c) *Net contents marked in bottle.* The net contents need not be stated on any label if the net contents are displayed by having the same blown, etched, sand-blasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the appropriate ATF officer, in the sides, front, or back of the bottle, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part.

(d) *Tolerances.* Statement of net contents shall indicate exactly the volume of wine within the container, except that the following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing such containers so as to be of uniform capacity: *Provided,* That no greater tolerance shall be allowed in case of containers which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of containers which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in containers to evaporation. The reasonableness to discrepancies under this paragraph shall be determined on the facts in each case.

(e) *Unreasonable shortages.* Unreasonable shortages in certain of the containers in any shipment shall not be compensated by overages in other containers in the same shipment.

[T.D. ATF–12, 39 FR 45222, Dec. 31, 1974, as amended by T.D. ATF–49, 43 FR 19848, May 9, 1978; T.D. ATF–76, 46 FR 1727, Jan. 7, 1981; T.D. ATF–303, 55 FR 42713, Oct. 23, 1990]

§ 4.38 General requirements.

(a) *Legibility*. All labels shall be so designed that all the statements thereon required by §§ 4.30 through 4.39 are readily legible under ordinary conditions, and all such statement shall be on a contrasting background.

(b) *Size of type*. (1) Containers of more than 187 milliliters. All mandatory information required on labels by this part, except the alcoholic content statement, shall be in script, type, or printing not smaller than 2 millimeters; except that if contained among other descriptive or explanatory information, the script, type, or printing of the mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(2) Containers of 187 milliliters or less. All mandatory information required on labels by this part, except the alcoholic content statement, shall not be smaller than 1 millimeter, except that if contained among other descriptive or explanatory information, the script, type, or printing of the mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(3) Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

(c) *English language*. All mandatory label information shall be stated on labels in the English language, except that the brand name, the place of production, and the name of the manufacturer, producer, blender, bottler, packer, or shipper appearing on the label need not be in the English language if the words ''product of'' immediately precede the name of the country of origin stated in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if they do not in any way conflict with, or contradict the requirements of §§ 4.30 through 4.39.

(d) *Location of label*. Labels shall not obscure Government stamps nor be obscured thereby.

(e) *Labels firmly affixed*. All labels shall be affixed to containers of wine in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels*. Labels may contain information other than the mandatory label information required by §§ 4.30 through 4.39, if such information complies with the requirements of such sections and does not conflict with, nor in any manner qualify statements required by this part. In addition, information which is truthful, accurate, and specific, and which is neither disparaging nor misleading may appear on wine labels.

(g) *Representations as to materials*. If any representation (other than representations or information required by §§ 4.30 through 4.39 or percentage statements required or permitted by this part) is made as to the presence, excellence, or other characteristic of any ingredient in any wine, or used in its production, the label containing such representation shall state, in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient.

(h) *Statement of contents of containers*. Upon request of the appropriate ATF officer, there shall be submitted a full and accurate statement of the contents of the containers to which labels are to be or have been affixed.

[T.D. ATF–53, 43 FR 37677, Aug. 23, 1978, as amended by T.D. ATF–66, 45 FR 40544, June 13, 1980; T.D. ATF–94, 46 FR 55095, Nov. 6, 1981; T.D. ATF–249, 52 FR 5955, Feb. 27, 1987; T.D. ATF–275, 53 FR 27046, July 18, 1988; T.D. ATF–312, 56 FR 31077, July 9, 1991]

§ 4.38a Bottle cartons, booklets and leaflets.

(a) *General*. An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 4.30 through 4.39 on labels.

(b) *Sealed cartons*. If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale

at retail (other than a shipping container), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by ''Brand'' or ''Product of U.S.A.'', must also display such modification.

(3) Wines for which a truthful and adequate statement of composition is required must display such statement.

[T.D. ATF–36, 41 FR 47425, Oct. 29, 1976]

§4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided,* That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with §4.36), which tends to create the impression that a wine:

(i) Contains distilled spirits;

(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or created the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits

base. Examples of such words are: ''Manhattan,'' ''Martini,'' and ''Daquiri'' in a class and type designation or brand name of a wine cocktail; ''Cuba Libre,'' ''Zombie,'' and ''Collins'' in a class and type designation or brand name of a wine specialty or wine highball; ''creme,'' ''cream,'' ''de,'' or ''of'' when used in conjunction with ''menthe,'' ''mint,'' or ''cacao'' in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of § 4.27; (2) references relating to methods of wine production involving storage or aging in accordance with § 4.38(f); or (3) use of the word ''old'' as part of a brand name.

(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-point Gothic caps and in the following form: ''Bottled in ____'' (inserting the year in which the wine was bottled).

(d) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith in the same size and kind of printing, there shall be stated an explanation of the significance thereof such as ''established'' or ''founded in''. If any such date refers to the date of establishment of any business or brand name, it shall not be stated, in the case of containers of a capacity of 5 liters or less, in any script, type, or printing larger than 2 millimeters, and shall be stated in direct conjunction with the name of the person, company, or brand name to which it refers if the appropriate ATF officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable.

(e) *Simulation of Government stamps.* (1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) Bonded wine cellar and bonded winery numbers may be stated but only in direct conjunction with the name and address of the person operating such wine cellar or winery. Statement of bonded wine cellar or winery numbers may be made in the following form: ''Bonded Wine Cellar No. ____'', ''Bonded Winery No. ____'', ''B. W. C. No. ____'', ''B. W. No. ____''. No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(3) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statements relating thereto. The reference to such certificate or certification shall be substantially in the following form:

This product accompanied at the time of the importation by a certificate issued by the

_____

(Name of government)

government indicating that the product is

(Class and type as stated on the label)

and (if label bears a statement of vintage date) that the wine is of the vintage of

(Year of vintage stated on the label)

(f) *Use of the word ''Importer'', or similar words.* The word *Importer*, or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words ''Product of the United States'', or similar words to negative any impression that the product is imported, and such negative statement shall appear in the same size and kind of printing as such name.

(g) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Curative and therapeutic claims.* Labels shall not contain any statement, design, representation, pictorial representation, or device representing that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(i) *Geographic brand names.* (1) Except as provided in subparagraph 2, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.

(2) For brand names used in existing certificates of label approval issued prior to July 7, 1986:

(i) The wine shall meet the appellation of origin requirements for the geographic area named; or

(ii) The wine shall be labeled with an appellation of origin in accordance with §4.34(b) as to location and size of type of either:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a state, or;

(B) A state, county or a viticultural area, if the brand name bears a state name; or

(iii) The wine shall be labeled with some other statement which the appropriate ATF officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the appropriate ATF officer.

(j) *Product names of geographical significance (not mandatory before January 1, 1983).* The use of product names with specific geographical significance is prohibited unless the appropriate ATF officer finds that because of their long usage, such names are recognized by consumers as fanciful product names and not representations as to origin. In such cases the product names shall be qualified with the word ''brand'' immediately following the product name, in the same size of type, and as conspicuous as the product name itself. In addition, the label shall bear an appellation of origin under the provisions of §4.34(b), and, if required by the appropriate ATF officer, a statement disclaiming the geographical reference as a representation as to the origin of the wine.

(k) *Other indications of origin.* Other statements, designs, devices or representations which indicate or infer an

origin other than the true place of origin of the wine are prohibited.

(l) *Foreign terms.* Foreign terms which: (1) Describe a particular condition of the grapes at the time of harvest (such as ''Auslese,'' ''Eiswein,'' and ''Trockenbeerenauslese''); or (2) denote quality under foreign law (such as ''Qualitatswein'' and ''Kabinett'') may not be used on the labels of American wine.

(m) *Use of a vineyard, orchard, farm or ranch name.* When used in a brand name, a vineyard, orchard, farm or ranch name having geographical or viticultural significance is subject to the requirements of §§ 4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

[T.D. 6521, 25 FR 13841, Dec. 29, 1960, as amended by T.D. ATF–53, 43 FR 37678, Aug. 23, 1978; T.D. ATF–94, 46 FR 55095, Nov. 6, 1981; T.D. ATF–126, 48 FR 2764, Jan. 21, 1983; T.D. ATF–180, 49 FR 31671, Aug. 8, 1984; T.D. ATF–229, 51 FR 20482, June 5, 1986; 51 FR 21547, June 13, 1986; T.D. ATF–355, 59 FR 14553, Mar. 29, 1994; T.D. ATF–431, 65 FR 59724, Oct. 6, 2000]

Subpart E—Requirements for Withdrawal of Wine From Customs Custody

§ 4.40 Label approval and release.

(a) *Certificate of label approval.* No imported beverage wine in containers shall be released from U.S. Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, ATF Form 5100.31.

(b) If the original or photostatic copy of ATF Form 5100.31 has been approved, the brand or lot of imported wine bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.* Imported wine in U.S. Customs custody which is not labeled in conformity with certificates of label approval issued by the appropriate ATF officer must be relabeled prior to release under the supervision and direction of Customs officers of the port at which the wine is located.

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–66, 45 FR 40546, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55095, Nov. 6, 1981; T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–359, 59 FR 42160, Aug. 17, 1994; T.D. ATF–406, 64 FR 2128, Jan. 13, 1999]

§ 4.45 Certificates of origin and identity.

Imported wine shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such wine has been authorized by the foreign government concerned, certifying as to the identity of the wine and that the wine has been produced in compliance with the laws of the respective foreign government regulating the production of such wine for home consumption.

§ 4.46 Certificate of nonstandard fill.

A person may import wine in containers not conforming to the metric standards of fill prescribed at § 4.73 if the wine is:

(a) Accompanied by a statement signed by a duly authorized official of the appropriate foreign country, stating that the wine was bottled or packed before January 1, 1979;

(b) Being withdrawn from a Customs bonded warehouse into which it was entered before January 1, 1979; or

(c) Exempt from the standard of fill requirements as provided by §4.70(b)(1) or (2).

[T.D. ATF–76, 46 FR 1727, Jan. 7, 1981]

Subpart F—Requirements for Approval of Labels of Wine Domestically Bottled or Packed

§4.50 Certificates of label approval.

(a) No person shall bottle or pack wine, other than wine bottled or packed in U.S. Customs custody, or remove such wine from the plant where bottled or packed, unless an approved certificate of label approval, ATF Form 5100.31, is issued by the appropriate ATF officer.

(b) Any bottler or packer of wine shall be exempt from the requirements of this section if upon application the bottler or packer shows to the satisfaction of the appropriate ATF officer that the wine to be bottled or packed is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. Application for exemption shall be made on ATF Form 5100.31 in accordance with instructions on the form. If the application is approved, a certificate of exemption will be issued on the same form.

(c) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–66, 45 FR 40546, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55095, Nov. 6, 1981; T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. ATF–406, 64 FR 2128, Jan. 13, 1999; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§4.51 Exhibiting certificates to Government officials.

Any bottler or packer holding an original or duplicate original of a certificate of label approval or a certificate of exemption shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

§4.52 Photoprints.

Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of §§4.50 through 4.52, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The appropriate ATF officer will, upon the request of the bottler or packer, issue duplicate originals of certificates of label approval or of certificates of exemption if wine under the same brand is bottled or packed at more than one plant by the same person, and if the necessity for the duplicate originals is shown and there is listed with the appropriate ATF officer the name and address of the additional bottling or packing plant where the particular label is to be used.

Subpart G—Advertising of Wine

§4.60 Application.

No person engaged in the business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of wine, if such advertising is in, or is calculated to induce sale in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§4.60–4.65 of this part. Provided, that such sections shall not apply to outdoor advertising in place on September 7, 1984, but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such retailer or publisher or radio or television broadcaster is engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate.

[T.D. ATF–180, 49 FR 31672, Aug. 8, 1984]

§ 4.61 Definitions.

As used in §§ 4.60 through 4.65 of this part, the term *advertisement* includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or othe outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of wine, or any individual covering, carton, or other wrapper of such container which constitute a part of the labeling under provisions of §§ 4.30–4.39 of this part.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

[T.D. ATF–180, 49 FR 31672, Aug. 8, 1984]

§ 4.62 Mandatory statements.

(a) *Responsible advertiser*. The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class, type, and distinctive designation*. The advertisement shall contain a conspicuous statement of the class, type, or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required to appear on the label of the product.

(c) *Exception*. (1) If an advertisement refers to a general wine line or all of the wine products of one company, whether by the company name or by the brand name common to all the wine in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of wine is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the company name or brand name of the product.

[T.D. 6521, 25 FR 13835, Dec. 29, 1960, as amended by T.D. ATF–180, 49 FR 31672, Aug. 8, 1984]

§ 4.63 Legibility of mandatory information.

(a) Statements required under §§ 4.60 through 4.65 of this part to appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information shall be so stated in both the print and audiovisual media that it will be readily apparent to the persons viewing the advertisement.

[T.D. ATF–180, 49 FR 31672, Aug. 8, 1984]

§ 4.64 Prohibited practices.

(a) *Restrictions*. The advertisement of wine shall not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) Any statement that the wine is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State, or Federal Government authorization, law, or regulations; and if a municipal, State, or Federal permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) Any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form: ''Bonded Winecellar No. ____,'' ''Bonded Winery No. ____,'' ''B. W. C. No. ____,'' ''B. W. No. ____.'' No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(8) Any statement, design, device, or representation which relates to alcohol content or which tends to create the impression that a wine:

(i) Contains distilled spirits; or

(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein. Further, an approved wine label, which bears the statement of alcohol content may be depicted in any advertising media, or an actual wine bottle showing the approved label bearing the statement of alcoholic content may be displayed in any advertising media.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or creates the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits base.

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of §4.27; (2) references in accordance with §4.38(f); or (3) use of the word ''old'' as part of a brand name.

(d) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears without undue emphasis in the following form: ''Bottled in ____'' (inserting the year in which the wine was bottled).

(e) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (c) and (d) of this section, with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date: *Provided,* That if any date refers to the date of establishment of any business, such date shall be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(f) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or

relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crests, or insignia is associated.

(g) *Statements indicative of origin.* No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.

(h) *Use of the word ''importer'' or similar words.* The word *importer* or similar words shall not appear in advertisements of domestic wine except as part of the bona fide name of the permittee by or for whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided,* That in all cases where such words are used as part of such name, there shall be stated the words ''Product of the United States'' or similar words to negate any impression that the product is imported, and such negating statements shall appear in the same size and kind of printing as such name.

(i) *Curative and thereapeutic claims.* Advertisements shall not contain any statement, design, representation, pictorial representation, or device representing that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(j) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 4.60 through 4.64 or are in any respect untrue.

(k) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 6521, 25 FR 13843, Dec. 29, 1960, as amended by T.D. 6976, 33 FR 15025, Oct. 8, 1968; T.D. ATF–53, 43 FR 37678, Aug. 23, 1978; T.D. ATF–180, 49 FR 31672, Aug. 8, 1984]

§ 4.65 Comparative advertising.

(a) *General.* Comparative adverstising shall not be disparaging of a competitor's product.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods,* ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF–180, 49 FR 31673, Aug. 8, 1984]

Subpart H—Standards of Fill for Wine

§ 4.70 Application.

(a) Except as provided in paragraph (b) of this section, no person engaged in

business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine unless such wine is bottled or packed in the standard wine containers herein prescribed.

(b) Sections 4.70 through 4.73 do not apply to:

(1) Sake;

(2) Wine packed in containers of 18 liters or more;

(3) Imported wine in the original containers in which entered customs custody if the wine was bottled or packed before January 1, 1979; or

(4) Wine domestically bottled or packed, either in or out of customs custody, before October 24, 1943, if the container, or the label on the container, bears a conspicuous statement of the net contents, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use.

(c) Section 4.73 does not apply to wine domestically bottled or packed, either in or out of customs custody, before January 1, 1979, if the wine was bottled or packed according to the standards of fill prescribed by §4.72.

[T.D. ATF–12, 39 FR 45222, Dec. 31, 1974, as amended by T.D. ATF–49, 43 FR 19848, May 9, 1978; T.D. ATF–76, 46 FR 1727, Jan. 7, 1981]

§4.71 Standard wine containers.

(a) A standard wine container shall be made, formed and filled to meet the following specifications:

(1) *Design*. It shall be so made and formed as not to mislead the purchaser. Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

(2) *Fill*. It shall be so filled as to contain the quantity of wine specified in one of the standards of fill prescribed in §4.72 or §4.73; and

(3) *Headspace*. It shall be made and filled as to have a headspace not in excess of 6 percent of its total capacity after closure if the net content of the container is 187 milliliters or more, and a headspace not in excess of 10 percent of such capacity in the case of all other containers.

[T.D. ATF–12, 39 FR 45222, Dec. 31, 1974]

§4.72 Standards of fill.

(a) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed:

(1) For all wines:

4.9 gallons.	1 pint.
3 gallons.	4/5 pint.
1 gallon.	1/2 pint.
4/5 gallon.	2/5 pint.
1/2 gallon.	4 ounces.
2/5 gallon.	3 ounces.
1 quart.	2 ounces.
4/5 quart.	

(2) In addition, for aperitif wines only: 15/16 quart:

(b) The tolerances in fill shall be the same as are allowed by §4.37 in respect to statement of net contents upon labels.

(c) This section does not apply after December 31, 1978.

[T.D. ATF–12, 39 FR 45223, Dec. 31, 1974, as amended by T.D. ATF–76, 46 FR 1727, Jan. 7, 1981]

§4.73 Metric standards of fill.

(a) *Authorized standards of fill*. The standards of fill for wine are the following:

3 liters.	375 milliliters.
1.5 liters.	187 milliliters.
1 liter.	100 milliliters.
750 milliliters.	50 milliliters.
500 milliliters.	

(b) *Sizes larger than 3 liters*. Wine may be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

(c) *Tolerances*. The tolerances in fill are the same as are allowed by §4.37 in respect to statement of net contents on labels.

[T.D. ATF–12, 39 FR 45223, Dec. 31, 1974, as amended by T.D. ATF–49, 43 FR 19848, May 9, 1978; T.D. ATF–76, 46 FR 1727, Jan. 7, 1981; T.D. ATF–303, 55 FR 42713, Oct. 23, 1990]

Subpart I—General Provisions

§ 4.80 Exports.

The regulations in this part shall not apply to wine exported in bond.

Subpart J—American Grape Variety Names

SOURCE: T.D. ATF–370, 61 FR 539, Jan. 8, 1996, unless otherwise noted.

§ 4.91 List of approved prime names.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the prime grape names. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

Aglianico
Agwam
Albemarle
Aleatico
Alicante Bouschet
Aligoté
Alvarelhão
Arneis
Aurore
Bacchus
Baco blanc
Baco noir
Barbera
Beacon
Beclan
Bellandais
Beta
Black Pearl
Blanc Du Bois
Blue Eye
Bonarda
Bountiful
Burdin 4672
Burdin 5201
Burdin 11042
Burgaw
Burger
Cabernet franc
Cabernet Pfeffer
Cabernet Sauvignon
Calzin
Campbell Early (*Island Belle*)
Canada Muscat
Captivator
Carignane
Carlos
Carmenère
Carmine
Carnelian
Cascade
Castel 19–637
Catawba
Cayuga White
Centurion
Chambourcin
Chancellor
Charbono
Chardonel
Chardonnay
Chasselas doré
Chelois
Chenin blanc
Chief
Chowan
Cinsaut (*Black Malvoisie*)
Clairette blanche
Clinton
Colombard (*French Colombard*)
Colobel
Cortese
Corvina
Concord
Conquistador
Couderc noir
Counoise
Cowart
Creek
Cynthiana (*Norton*)
Dearing
De Chaunac
Delaware
Diamond
Dixie
Dolcetto
Doreen
Dornfelder
Dulcet
Durif
Dutchess
Early Burgundy
Early Muscat
Edelweiss
Eden
Ehrenfelser
Ellen Scott
Elvira
Emerald Riesling
Feher Szagos
Fernão Pires
Fern Munson
Flame Tokay
Flora
Florental
Folle blanche
Fredonia
Freisa
Fry
Furmint
Gamay noir
Garronet
Gewürztraminer
Gladwin 113
Glennel
Gold

Golden Isles
Golden Muscat
Grand Noir
Green Hungarian
Grenache
Grignolino
Grillo
Gros Verdot
Helena
Herbemont
Higgins
Horizon
Hunt
Iona
Isabella
Ives
James
Jewell
Joannes Seyve 12–428
Joannes Seyve 23–416
Kerner
Kay Gray
Kleinberger
LaCrosse
Lake Emerald
Lambrusco
Landal
Landot noir
Lenoir
Léon Millot
Limberger (Lemberger)
Madeline Angevine
Magnolia
Magoon
Malbec
Malvasia bianca
Maréchal Foch
Marsanne
Melody
Melon de Bourgogne (Melon)
Merlot
Meunier (Pinot Meunier)
Mish
Mission
Missouri Riesling
Mondeuse (Refosco)
Montefiore
Moore Early
Morio-Muskat
Mourvèdre (Mataro)
Müller-Thurgau
Münch
Muscadelle
Muscat blanc (Muscat Canelli)
Muscat du Moulin
Muscat Hamburg (Black Muscat)
Muscat of Alexandria
Muscat Ottonel
Naples
Nebbiolo
Négrette
New York Muscat
Niagara
Noah
Noble
Norton (Cynthiana)
Ontario
Orange Muscat
Palomino
Pamlico
Pedro Ximenes
Petit Verdot
Petite Sirah
Peverella
Pinotage
Pinot blanc
Pinot gris (Pinot Grigio)
Pinot noir
Precoce de Malingre
Pride
Primitivo
Rayon d'Or
Ravat 34
Ravat 51 (Vignoles)
Ravat noir
Redgate
Regale
Riesling (White Riesling)
Rkatziteli (Rkatsiteli)
Roanoke
Rosette
Roucaneuf
Rougeon
Roussanne
Royalty
Rubired
Ruby Cabernet
St. Croix
St. Laurent
Saint Macaire
Salem
Salvador
Sangiovese
Sauvignon blanc (Fumé blanc)
Scarlet
Scheurebe
Sémillon
Sereksiya
Seyval (Seyval blanc)
Siegerrebe
Siegfried
Southland
Souzão
Steuben
Stover
Sugargate
Sultanina (Thomspon Seedless)
Summit
Suwannee
Sylvaner
Symphony
Syrah (Shiraz)
Swenson Red
Tarheel
Taylor
Tempranillo (Valdepeñas)
Teroldego
Thomas
Thompson Seedless (Sultanina)
Tinta Madeira
Tinto cão
Tocai Friulano
Topsail
Touriga

Traminer
Traminette
Trousseau
Trousseau gris
Ugni blanc (*Trebbiano*)
Valdiguié
Valerien
Van Buren
Veeblanc
Veltliner
Ventura
Verdelet
Verdelho
Vidal blanc
Villard blanc
Villard noir
Vincent
Viognier
Vivant
Welsch Rizling
Watergate
Welder
Yuga
Zinfandel

[T.D. ATF–370, 61 FR 539, Jan. 8, 1996, as amended by T.D. ATF–417, 64 FR 49388, Sept. 13, 1999; T.D. ATF–433, 65 FR 78096, Dec. 14, 2000; T.D. ATF–466, 66 FR 49280, Sept. 27, 2001]

EFFECTIVE DATE NOTE: By T.D. ATF–475, 67 FR 11918, Mar. 18, 2002, § 4.91 was amended by adding the names ''Albariño'', ''Alvarinho'', ''Black Corinth'', and ''Fiano'' in alphabetical order, to the list of prime grape names, effective May 17, 2002. For the convenience of the user, the additions are set forth as follows:

§ 4.91 List of approved prime names.

* * * * *

Albariño (Alvarinho)

* * * * *

Alvarinho (Albariño)

* * * * *

Black Corinth

* * * * *

Fiano

* * * * *

§ 4.92 Alternative names permitted for temporary use.

The following alternative names shown in the left column may be used as the type designation for American wine in lieu of the prime name of the grape variety shown in the right column. Alternative names listed in the left column may only be used for wine bottled prior to the date indicated.

(a) *Wines bottled prior to January 1, 1997.*

Alternative Name/Prime Name

Baco 1—Baco noir
Baco 22A—Baco blanc
Bastardo—Trousseau
Black Spanish—Lenoir
Burdin 7705—Florental
Cayuga—Cayuga White
Chancellor noir—Chancellor
Chasselas—Chasselas doré
Chevrier—Sémillon
Chelois noir—Chelois
Couderc 71–20—Couderc noir
Couderc 299–35—Muscat du Moulin
Foch—Maréchal Foch
Franken Riesling—Sylvaner
Gutedel—Chasselas doré
Ives Seedling—Ives
Jacquez—Lenoir
Joannes Seyve 26–205—Chambourcin
Landot 244—Landal
Landot 4511—Landot noir
Millot—Leon Millot
Moore's Diamond—Diamond
Norton Seedling—Norton
Pfeffer Cabernet—Cabernet Pfeffer
Pineau de la Loire—Chenin blanc
Pinot Chardonnay—Chardonnay
Ravat 262—Ravat noir
Ruländer—Pinot gris
Seibel 128—Salvador
Seibel 1000—Rosette
Seibel 4986—Rayon d'Or
Seibel 5279—Aurore
Seibel 5898—Rougeon
Seibel 7053—Chancellor
Seibel 8357—Colobel
Seibel 9110—Verdelet
Seibel 9549—De Chaunac
Seibel 10878—Chelois
Seibel 13053—Cascade
Seibel 14596—Bellandais
Seyve-Villard 5–276—Seyval
Seyve-Villard 12–309—Roucaneuf
Seyve-Villard 12–375—Villard blanc
Seyve-Villard 18–283—Garronet
Seyve-Villard 18–315—Villard noir
Seyve-Villard 23–410—Valerien
Sweetwater—Chasselas doré
Verdelet blanc—Verdelet
Vidal 256—Vidal blanc
Virginia Seedling—Norton
Wälschriesling—Welsch Rizling
Welschriesling—Welsch Rizling

(b) *Wines bottled prior to January 1, 1999.*

Alternative Name/Prime Name

Cabernet—Cabernet Sauvignon
Grey Riesling—Trousseau gris
Muscat Frontignan—Muscat blanc
Muscat Pantelleria—Muscat of Alexandria
Napa Gamay—Valdiquié

Pinot Saint George—Négrette
Sauvignon vert—Muscadelle

(c) *Wines bottled prior to January 1, 2006.*

Alternative Name/Prime Name

Johannisberg Riesling—Riesling

[T.D. ATF–370, 61 FR 539, Jan. 8, 1996, as amended by T.D. ATF–417, 64 FR 49388, Sept. 13, 1999]

§ 4.93 Approval of grape variety names.

(a) Any interested person may petition the Director for the approval of a grape variety name. The petition may be in the form of a letter and should provide evidence of the following—

(1) Acceptance of the new grape variety,

(2) The validity of the name for identifying the grape variety,

(3) That the variety is used or will be used in winemaking, and

(4) That the variety is grown and used in the United States.

(b) For the approval of names of new grape varieties, documentation submitted with the petition to establish the items in paragraph (a) of this section may include—

(1) reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization,

(2) reference to a plant patent, if so patented, and

(3) information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

(c) The Director will not approve a grape variety name if:

(1) The name has previously been used for a different grape variety;

(2) The name contains a term or name found to be misleading under § 4.39; or

(3) The name of a new grape variety contains the term ''Riesling.''

(d) For new grape varieties developed in the United States, the Director may determine if the use of names which contain words of geographical significance, place names, or foreign words are misleading under § 4.39. The Director will not approve the use of a grape variety name found to be misleading.

(e) The Director shall publish the list of approved grape variety names at least annually in the FEDERAL REGISTER.

(Approved by the Office of Management and Budget under Control Number 1512–0513)

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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5.3 Forms prescribed.
5.4 Delegations of the Director.

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AUTHORITY: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

SOURCE: T.D. 7020, 34 FR 20337, Dec. 30, 1969, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 5 appear by T.D. ATF–425, 65 FR 11891, Mar. 7, 2000.

Subpart A—Scope

§ 5.1 General.

The regulations in this part relate to the labeling and advertising of distilled spirits. This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, but does not apply to distilled spirits for export.

§ 5.2 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 7—Labeling and Advertising of Malt Beverages.
27 CFR Part 16—Alcoholic Beverage Health Warning Statement.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 71—Rules of Practice in Permit Proceedings.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
27 CFR Part 252—Exportation of Liquors.

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

[T.D. 720, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–62, 44 FR 71620, Dec. 11, 1979; T.D. ATF–114, 47 FR 43947, Oct. 5, 1982; 55 FR 5421, Feb. 14, 1990; T.D. ATF–459, 66 FR 38549, July 25, 2001; T.D. ATF–463, 66 FR 42733, Aug. 15, 2001]

§ 5.3 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–92, 46 FR 46912, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 5.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 5 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

Subpart B—Definitions

§ 5.11 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. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such Act.

Act. The Federal Alcohol Administration Act.

Advertisement. See §5.62 for meaning of term as used in subpart H of this part.

Age. The period during which, after distillation and before bottling, distilled spirits have been stored in oak containers. ''Age'' for bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, means the period the whisky has been stored in charred new oak containers.

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 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

Bottle. Any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel. The principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

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

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term ''distilled spirits'' shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Gallon. U.S. gallon of 231 cubic inches of alcoholic beverage at 60 °F.

In bulk. In containers having a capacity in excess of 1 wine gallon (3.785 liters).

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of distilled spirits at 15.56 °C (60 °F.), and equivalent to 33.814 U.S. fluid ounces. A liter is subdivided into 1,000 milliliters. milliliter or milliliters may be abbreviated as ''ml''.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term ''trade buyer'' means any person who is a wholesaler or retailer.

Produced at. As used in §§5.22 and 5.52 in conjunction with specific degrees of proof to describe the standards of identity, means the composite proof of the spirits after completion of distillation and before reduction in proof.

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

Season. The period from January 1 through June 30, is the spring season and the period from July 1 through December 31 is the fall season.

United States. The several States and Territories and the District of Columbia; the term ''State'' includes a Territory and the District of Columbia; and

the term ''Territory'' means the Commonwealth of Puerto Rico.

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

[T.D. ATF–48, 43 FR 13533, Mar. 31, 1978; 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF–62, 44 FR 71620, Dec. 11, 1979; T.D. ATF–66, 45 FR 40547, June 13, 1980; T.D. ATF–94, 46 FR 55096, Nov. 6, 1981; T.D. ATF–198, 50 FR 8463, Mar. 1, 1985; T.D. ATF–230, 51 FR 21748, June 16, 1986; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

Subpart C—Standards of Identity for Distilled Spirits

§ 5.21 Application of standards.

The standards of identity for the several classes and types of distilled spirits set forth in this part shall be applicable only to distilled spirits for beverage or other nonindustrial purposes.

§ 5.22 The standards of identity.

Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows (see also § 5.35, class and type):

(a) *Class 1; neutral spirits or alcohol.* ''Neutral spirits'' or ''alcohol'' are distilled spirits produced from any material at or above 190° proof, and, if bottled, bottled at not less than 80° proof.

(1) ''Vodka'' is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color.

(2) ''Grain spirits'' are neutral spirits distilled from a fermented mash of grain and stored in oak containers.

(b) *Class 2; whisky.* ''Whisky'' is an alcoholic distillate from a fermented mash of grain produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, stored in oak containers (except that corn whisky need not be so stored), and bottled at not less than 80° proof, and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(1)(i) ''Bourbon whisky'', ''rye whisky'', ''wheat whisky'', ''malt whisky'', or ''rye malt whisky'' is whisky produced at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125° proof in charred new oak containers; and also includes mixtures of such whiskies of the same type.

(ii) ''Corn whisky'' is whisky produced at not exceeding 160° proof from a fermented mash of not less than 80 percent corn grain, and if stored in oak containers stored at not more than 125° proof in used or uncharred new oak containers and not subjected in any manner to treatment with charred wood; and also includes mixtures of such whisky.

(iii) Whiskies conforming to the standards prescribed in paragraphs (b)(1)(i) and (ii) of this section, which have been stored in the type of oak containers prescribed, for a period of 2 years or more shall be further designated as ''straight''; for example, ''straight bourbon whisky'', ''straight corn whisky'', and whisky conforming to the standards prescribed in paragraph (b)(1)(i) of this section, except that it was produced from a fermented mash of less than 51 percent of any one type of grain, and stored for a period of 2 years or more in charred new oak containers shall be designated merely as ''straight whisky''. No other whiskies may be designated ''straight''. ''Straight whisky'' includes mixtures of straight whiskies of the same type produced in the same State.

(2) ''Whisky distilled from bourbon (rye, wheat, malt, or rye malt) mash'' is whisky produced in the United States at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored in used oak containers; and also includes mixtures of such whiskies of the same type. Whisky conforming to the standard of identity for corn whisky must be designated corn whisky.

(3) ''Light whisky'' is whisky produced in the United States at more than 160° proof, on or after January 26, 1968, and stored in used or uncharred new oak containers; and also includes mixtures of such whiskies. If ''light

whisky'' is mixed with less than 20 percent of straight whisky on a proof gallon basis, the mixture shall be designated ''blended light whisky'' (light whisky—a blend).

(4) ''Blended whisky'' (whisky—a blend) is a mixture which contains straight whisky or a blend of straight whiskies at not less than 20 percent on a proof gallon basis, excluding alcohol derived from added harmless coloring, flavoring or blending materials, and, separately, or in combination, whisky or neutral spirits. A blended whisky containing not less than 51 percent on a proof gallon basis of one of the types of straight whisky shall be further designated by that specific type of straight whisky; for example, ''blended rye whisky'' (rye whisky—a blend).

(5)(i) ''A blend of straight whiskies'' (blended straight whiskies) is a mixture of straight whiskies which does not conform to the standard of identify for ''straight whisky.'' Products so designated may contain harmless coloring, flavoring, or blending materials as set forth in 27 CFR 5.23(a).

(ii) ''A blend of straight whiskies'' (blended straight whiskies) consisting entirely of one of the types of straight whisky, and not conforming to the standard for straight whisky, shall be further designated by that specific type of straight whisky; for example, ''a blend of straight rye whiskies'' (blended straight rye whiskies). ''A blend of straight whiskies'' consisting entirely of one of the types of straight whisky shall include straight whisky of the same type which was produced in the same State or by the same proprietor within the same State, provided that such whisky contains harmless coloring, flavoring, or blending materials as stated in 27 CFR 5.23(a).

(iii) The harmless coloring, flavoring, or blending materials allowed under this section shall not include neutral spirits or alcohol in their original state. Neutral spirits or alcohol may only appear in a ''blend of straight whiskies'' or in a ''blend of straight whiskies consisting entirely of one of the types of straight whisky'' as a vehicle for recognized flavoring of blending material.

(6) ''Spirit whisky'' is a mixture of neutral spirits and not less than 5 percent on a proof gallon basis of whisky, or straight whisky, or straight whisky and whisky, if the straight whisky component is less than 20 percent on a proof gallon basis.

(7) ''Scotch whisky'' is whisky which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whisky for consumption in the United Kingdom: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Scotch whisky'' (Scotch whisky—a blend).

(8) ''Irish whisky'' is whisky which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Irish whisky'' (Irish whisky—a blend).

(9) ''Canadian whisky'' is whisky which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whisky for consumption in Canada: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Canadian whisky'' (Canadian whisky—a blend).

(c) *Class 3; gin.* ''Gin'' is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80° proof. Gin produced exclusively by original distillation or by redistillation may be further designated as ''distilled''. ''Dry gin'' (London dry gin), ''Geneva gin'' (Hollands gin), and ''Old Tom gin'' (Tom gin) are types of gin known under such designations.

(d) *Class 4; brandy.* ''Brandy'' is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the

distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof. Brandy, or mixtures thereof, not conforming to any of the standards in paragraphs (d) (1) through (8) of this section shall be designated as ''brandy'', and such designation shall be immediately followed by a truthful and adequate statement of composition.

(1) ''Fruit brandy'' is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy shall include mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy, derived from grapes, shall be designated as ''grape brandy'' or ''brandy'', except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers for less than 2 years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word ''immature''. Fruit brandy, other than grape brandy, derived from one variety of fruit, shall be designated by the word ''brandy'' qualified by the name of such fruit (for example, ''peach brandy''), except that ''apple brandy'' may be designated ''applejack''. Fruit brandy derived from more than one variety of fruit shall be designated as ''fruit brandy'' qualified by a truthful and adequate statement of composition.

(2) ''Cognac'', or ''Cognac (grape) brandy'', is grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French Government.

(3) ''Dried fruit brandy'' is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, shall be designated as ''raisin brandy''. Other brandies shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word ''dried''.

(4) ''Lees brandy'' is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as ''lees brandy'', qualified by the name of the fruit from which such lees are derived.

(5) ''Pomace brandy'', or ''marc brandy'', is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as ''pomace brandy'', or ''marc brandy'', qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as ''grappa'' or ''grappa brandy''.

(6) ''Residue brandy'' is brandy distilled wholly or in part from the fermented residue of fruit or wine, and shall be designated as ''residue brandy'' qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (d) (1), (3), (4), and (5) of this section may, regardless of such fact, be designated ''residue brandy'', but the use of such designation shall be conclusive, precluding any later change of designation.

(7) ''Neutral brandy'' is brandy produced at more than 170° proof and shall be designated in accordance with the standards in this paragraph, except that the designation shall be qualified by the word ''neutral''; for example, ''neutral citrus residue brandy''.

(8) ''Substandard brandy'' shall bear as a part of its designation the word ''substandard'', and shall include:

(i) Any brandy distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 °C.); measurements of volatile acidity shall be calculated exclusive of water added to facilitate distillation.

(ii) Any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.

(e) *Class 5; blended applejack.* ''Blended applejack'' (applejack—a blend) is a mixture which contains at least 20 percent of apple brandy (applejack) on a proof gallon basis, stored in oak containers for not less than 2 years, and not more than 80 percent of neutral spirits on a proof gallon basis if such mixture at the time of bottling is not less than 80° proof.

(f) *Class 6; rum.* ''Rum'' is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80° proof; and also includes mixtures solely of such distillates.

(g) *Class 7; Tequila.* ''Tequila'' is an alcoholic distillate from a fermented mash derived principally from the Agave Tequilana Weber (''blue'' variety), with or without additional fermentable substances, distilled in such a manner that the distillate possesses the taste, aroma, and characteristics generally attributed to Tequila and bottled at not less than 80° proof, and also includes mixtures solely of such distillates. Tequila is a distinctive product of Mexico, manufactured in Mexico in compliance with the laws of Mexico regulating the manufacture of Tequila for consumption in that country.

(h) *Class 8; cordials and liqueurs.* Cordials and liqueurs are products obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing sugar, dextrose, or levulose, or a combination thereof, in an amount not less than 2½ percent by weight of the finished product.

(1) ''Sloe gin'' is a cordial or liqueur with the main characteristic flavor derived from sloe berries.

(2) ''Rye liqueur'', ''bourbon liqueur'' (rye, bourbon cordial) are liqueurs, bottled at not less than 60° proof, in which not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic rye or bourbon flavor derived from such whisky. Wine, if used, must be within the 2½ percent limitation provided in §5.23 for coloring, flavoring, and blending materials.

(3) ''Rock and rye'', ''rock and bourbon'', ''rock and brandy'', ''rock and rum'' are liqueurs, bottled at not less than 48° proof, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2½ percent limitation provided in §5.23 for harmless coloring, flavoring, and blending materials.

(4) ''Rum liqueur,'' ''gin liqueur,'' ''brandy liqueur,'' are liqueurs, bottled at not less than 60 proof, in which the distilled spirits used are entirely rum, gin, or brandy, respectively, and which possess, respectively, a predominant characteristic rum, gin, or brandy flavor derived from the distilled spirits used. In the case of brandy liqueur, the type of brandy must be stated in accordance with §5.22(d), except that liqueurs made entirely with grape brandy may be designated simply as ''brandy liqueur.'' Wine, if used, must be within the 2½ percent limitation provided for in §5.23 for harmless coloring, flavoring, and blending materials.

(5) The designation of a cordial or liqueur may include the word ''dry'' if the sugar, dextrose, or levulose, or a combination thereof, are less than 10 percent by weight of the finished product.

(6) Cordials and liqueurs shall not be designated as ''distilled'' or ''compound''.

(i) *Class 9; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.* ''Flavored brandy, ''flavored gin,'' ''flavored rum,'' ''flavored vodka,'' and ''flavored whisky,'' are brandy, gin, rum vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60° proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and precentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(j) *Class 10; imitations.* Imitations shall bear, as a part of the designation thereof, the word ''imitation'' and shall include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits required under § 5.35 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added flavors considered to be artificial or imitation. In determining whether a flavor is artificial or imitation, recognition will be given to what is considered to be ''good commercial practice'' in the flavor manufacturing industry;

(3) Any class of type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply, that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essense, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(4) Any type of whisky to which beading oil has been added;

(5) Any rum to which neutral spirits or distilled spirits other than rum have been added;

(6) Any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine; and

(7) Any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(k) *Class 11; geographical designations.* (1) Geographical names for distinctive types of distilled spirits (other than names found by the appropriate ATF officer under paragraph (k)(2) of this section to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (i) in direct conjunction with the name there appears the word ''type'' or the word ''American'' or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(2) Only such geographical names for distilled spirits as the appropriate ATF officer finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic shall be deemed to have become generic. Examples at London dry gin, Geneva (Hollands) gin.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Puerto Rico rum, Demerara rum.

(4) The words ''Scotch'', ''Scots'' ''Highland'', or ''Highlands'' and similar words connoting, indicating, or commonly associated with Scotland, shall not be used to designate any product not wholly produced in Scotland.

(l) *Class 12; products without geographical designations but distinctive of a particular place.* (1) The whiskies of the types specified in paragraphs (b) (1), (4), (5), and (6) of this section are distinctive products of the United States and if produced in a foreign country shall be designated by the applicable designation prescribed in such paragraphs, together with the words ''American type'' or the words ''produced (distilled, blended) in ____'', the blank to be filled in with the name of the foreign country: *Provided,* That the word ''bourbon'' shall not be used to describe any whisky or whisky-based distilled spirits not produced in the United States. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whisky and the country of origin thereof.

(2) The name for other distilled spirits which are distinctive products of a particular place or country, an example is Habanero, shall not be given to the product of any other place or country unless the designation for such product includes the word ''type'' or an adjective such as ''American'', or the like, clearly indicating the true place of production. The provision for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the appropriate ATF officer finds they have become generic. Examples are Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–7, 38 FR 33471, Dec. 5, 1973; T.D. ATF–36, 41 FR 47426, Oct. 29, 1976; T.D. ATF–37, 41 FR 48121, Nov. 2, 1976; T.D. ATF–48, 44 FR 55839, Sept. 28, 1979; T.D. ATF–62, 44 FR 71620, Dec. 11, 1979; T.D. ATF–66, 45 FR 40547, June 13, 1980; T.D. ATF–94, 46 FR 55096, Nov. 6, 1981; T.D. ATF–259, 52 FR 41422, Oct. 28, 1987; T.D. ATF–324, 57 FR 29020, June 30, 1992]

§ 5.23 Alteration of class and type.

(a) *Additions.* (1) The addition of any coloring, flavoring, or blending materials to any class and type of distilled spirits, except as otherwise provided in this section, alters the class and type thereof and the product shall be appropriately redesignated.

(2) There may be added to any class or type of distilled spirits, without changing the class or type thereof, (i) such harmless coloring, flavoring, or blending materials as are an essential component part of the particular class or type of distilled spirits to which added, and (ii) harmless coloring, flavoring, or blending materials such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Director, or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2½ percent by volume of the finished product.

(3) ''Harmless coloring, flavoring, and blending materials'' shall not include (i) any material which would render the product to which it is added an imitation, or (ii) any material, other than caramel, infusion of oak chips, and sugar, in the case of Cognac brandy; or (iii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed

2 grams per liter and a trace amount of citric acid.

(b) *Extractions*. The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits alters the class and type thereof, and the product shall be appropriately redesignated. In addition, in the case of straight whisky the removal of more than 15 percent of the fixed acids, or volatile acids, or esters, or soluble solids, or higher alcohols, or more than 25 percent of the soluble color, shall be deemed to alter the class or type thereof.

(c) *Exceptions*. (1) This section shall not be construed as in any manner modifying the standards of identity for cordials and liqueurs, flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky or as authorizing any product which is defined in § 5.22(j), Class 10, as an imitation to be otherwise designated.

(2) [Reserved]

[T.D. 7020, 34 FR 20337, Dec. 30. 1969, as amended by T.D. ATF–360, 59 FR 67222, 67223, Dec. 29, 1994; T.D. ATF–369, 61 FR 67327, Dec. 29, 1995]

Subpart Ca—Formulas

SOURCE: T.D. ATF–62, 44 FR 71620, Dec. 11, 1979, unless otherwise noted.

§ 5.25 Application.

The requirements of this subpart shall apply to:

(a) Proprietors of distilled spirits plants qualified as processors under 27 CFR part 19;

(b) Persons in Puerto Rico who manufacture distilled spirits products for shipment to the United States. Formulas need only be filed for those products which will be shipped to the United States; and

(c) Persons who ship into the United States, Virgin Islands distilled spirits products.

§ 5.26 Formula requirements.

(a) *General*. An approved formula is required to blend, mix, purify, refine, compound, or treat spirits in a manner which results in a change of character, composition, class or type of the spirits. Form 5110.38 (27–B Supplemental) shall be filed in accordance with the instructions on the form and shall designate all ingredients and, if required, the process used. Any approved formula on Form 27–B Supplemental or Form 5110.38 shall remain in effect until revoked, superseded, or voluntarily surrendered. Any existing qualifying statements as to the rate of tax or the limited use of drawback flavors appearing on a Form 27–B Supplemental are obsolete.

(b) *Change in formula*. Any change in an approved formula shall require the filing of a new Form 5110.38. After a change in a formula is approved, the original formula shall be surrendered to the appropriate ATF officer.

[T.D. ATF–62, 44 FR 71620, as amended by T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 5.27 Formulas.

Formulas are required for distilled spirits operations which change the character, composition, class or type of spirits as follows:

(a) The compounding of spirits through the mixing of any coloring, flavoring, wine, or other material with distilled spirits;

(b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;

(c) Any filtering or stabilizing process which results in a product which does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits; and, in the case of straight whisky, results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(d) The mingling of spirits (including merchandise returned to bond) which differ in class or type of materials from which produced;

(e) The mingling of spirits stored in charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been treated with wood chips with spirits not so treated, or the mixing of spirits that have been subjected to any treatment which changes their character with

spirits not so treated, unless it is determined that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) The use (except as authorized for production or storage operations as provided by 27 CFR part 19) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;

(g) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in spirits or wines;

(h) The artificial carbonating of spirits;

(i) The blending in Puerto Rico of spirits with any liquors manufactured outside of Puerto Rico;

(j) The production of gin by—

(1) Redistillation over juniper berries and other natural aromatics, or the extracted oils of such, of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits; and

(2) Mixing gin with other spirits;

(k) The treatment of gin by—

(1) Addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; and

(2) Addition of any substance or material other than juniper berries or other natural aromatics, or the extracted oils of such, or pure water to the spirits, before or during redistillation, in a manner that would change its class and type designation;

(l) The production of vodka by—

(1) Treatment of neutral spirits with not less than one ounce of activated carbon per 100 wine gallons of spirits;

(2) Redistillation of pure spirits so as to be without distinctive character, aroma, taste, or color;

(3) Mixing with other spirits or with any other substance or material except pure water, after production; and

(m) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits which have previously been entered for deposit. However, no formula shall be required for spirits redistilled into any type of neutral spirits other than vodka or spirits redistilled at less than 190 degrees of proof which lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin, and are designated as ''Spirits,'' preceded or followed by a word or phrase descriptive of the material from which produced. Such spirits redistilled on or after July 1, 1972, may not be designated ''Spirits Grain'' or ''Grain Spirits.''

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

[T.D. ATF–198, 50 FR 8463, Mar. 1, 1985, as amended by T.D. ATF–259, 52 FR 41423, Oct. 28, 1987]

§5.28 Adoption of predecessor's formulas.

The adoption by a successor of approved Forms 5110.38 (27–B Supplemental) shall be in the form of an application filed with the appropriate ATF officer. The application shall list the formulas for adoption by:

(a) Formula number,

(b) Name of product, and

(c) Date of approval.

The application shall clearly show that the predecessor has authorized the use of his previously approved formulas by the successor.

Subpart D—Labeling Requirements for Distilled Spirits

§5.31 General.

(a) *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such bottles are marked, branded, labeled, or packaged, in conformity with §§5.31 through 5.42.

(b) *Alteration of labels.* It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except:

(1) As authorized by Federal law;

(2) When an additional labeling or relabeling of bottled distilled spirits is accomplished with labels covered by certificates of label approval which comply with the requirements of this part and with State law;

(3) That there may be added to the bottle, after removal from customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof or identifying the purchaser or consumer, and containing no references whatever to the characteristics of the product.

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

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–62, 44 FR 71621, Dec. 11, 1979; T.D. ATF–198, 50 FR 8464, Mar. 1, 1985]

§ 5.32 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name.

(2) Class and type, in accordance with § 5.35.

(3) Alcoholic content, in accordance with § 5.37.

(4) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in § 5.47, net contents in accordance with § 5.38(b) or § 5.38a(b)(2).

(b) On the brand label or on a back label:

(1) Name and address, in accordance with § 5.36.

(2) In the case of imported spirits, the country of origin, in accordance with § 5.36.

(3) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in § 5.47 or § 5.47a, net contents in accordance with § 5.38(a), § 5.38a(a), or § 5.38a(b)(1).

(4) Coloring or flavoring, in accordance with § 5.39.

(5) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(6) The following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

(7) *Declaration of sulfites.* There shall be stated, the statement ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any distilled spirits removed on or after January 9, 1988.

(8) Percentage of neutral spirits and name of commodity from which distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with § 5.39.

(9) A statement of age or age and percentage, when required, in accordance with § 5.40.

(10) State of distillation of domestic types of whisky and straight whisky, except light whisky and blends, in accordance with § 5.36.

(c) In the case of a container which has been excepted under the provisions of § 5.46(d), the information required to appear on the ''brand label,'' as defined, may appear elsewhere on such container if it can be demonstrated that the container cannot reasonably be so designed that the required brand label can be properly affixed.

(Paragraph (b)(7) approved by the Office of Management and Budget under Control No. 1512–0469)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–25, 41 FR 10220, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF–94, 46 FR 55096, Nov. 6, 1981; T.D. ATF–150, 48 FR 45556, Oct. 6, 1983; 48 FR 46518, Oct. 13, 1983; T.D. ATF–220, 50 FR 51852, Dec. 20, 1985; T.D. ATF–236, 51 FR 34710, Sept. 30, 1986; T.D. ATF–282, 54 FR 7162, Feb. 16, 1989; T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 5.33 Additional requirements.

(a) *Contrasting background.* Labels shall be so designed that the statements required by this subpart are readily legible under ordinary conditions, and such statements shall be on a contrasting background.

(b) *Location of statements and size of type.* (1) Statements required by this subpart, except brand names, shall appear generally parallel to the base on which the bottle rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) Statements required by this subpart, except brand names and the declaration of sulfites in § 5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter printed on the label, the statement declaring the presence of sulfites shall be of a size substantially more conspicuous than surrounding nonmandatory labeling information.

(4) Statements of the type of distilled spirits shall be as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(5) Statements required by this subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity, such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(6) When net contents are stated either in metric measures or in both metric and U.S. fluid measures, statements required by the subpart, except brand names, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliters or less capacity such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(c) *English language.* The requirements of this subpart shall be stated in the English language, except that the brand name need not be in English, and for products bottled for consumption within Puerto Rico the required information may be stated in the Spanish language if the net contents and, if the product is an imitation, the word ''imitation'' are also stated in the English language.

(d) *Location of label.* Labels shall not obscure government stamps or be obscured thereby. Labels shall not obscure any markings or information required to be permanently marked in the bottle by other U.S. Treasury Department regulations.

(e) *Labels firmly affixed.* Labels which are not an integral part of the bottle shall be affixed to bottles in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by this subpart if the information does not conflict with, or in any manner qualify, statements required by this part.

(g) *Contents of bottles.* A complete and accurate statement of the contents of the bottles to which labels are to be or have been affixed shall be submitted, on request, to the appropriate ATF officer.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–66, 45 FR 40548, June 13, 1980; T.D. ATF–94, 46 FR 55096, Nov. 6, 1981; T.D. ATF–236, 51 FR 34710, Sept. 30, 1986; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 5.34 Brand names.

(a) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate ATF officer finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) *Trade name of foreign origin.* Paragraph (a) of this section does not prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the U.S. Patent Office on August 29, 1935, which has been used by such person or his

predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 5.35 Class and type.

(a) *Designation of product.* The class and type of distilled spirits shall be stated in conformity with § 5.22 if defined therein. In all other instances the product shall be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (except as provided in paragraph (b)(2) of this section) followed by a truthful and adequate statement of composition. The word ''cordial'' or ''liqueur'' need not be stated in the case of cordials and liqueurs unless the appropriate ATF officer finds such word is necessary to clearly indicate that the product is a cordial or liqueur.

(b) *Products designed in accordance with trade and consumer understanding.* In the case of products designated in accordance with trade and consumer understanding:

(1) A statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

(2) No statement of composition is required if the designation through general and established usage adequately indicates to the consumer the composition of the product.

A product shall not bear a designation which indicates it contains a class or type of distilled spirits unless the distilled spirits therein conform to such class and type.

(c) *Origin of whiskies in mixtures.* In the case of any of the types of whisky defined in § 5.22(b), Class 2, which contains any whisky or whiskies produced in a country other than that indicated by the type designation, there shall be stated on the brand label the percentage of such whisky and the country or origin thereof. In the case of mixtures of whisky, not conforming to any type designation in § 5.22(b), Class 2, the components of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation ''whisky'' a truthful and adequate statement of the composition of the product.

(d) *Whisky manufactured in Scotland, Ireland, or Canada.* All whisky manufactured in Scotland, Ireland, or Canada, shall be deemed to be Scotch, Irish, or Canadian whisky, and shall be so designated, in conformity with § 5.22(b) (7), (8), and (9), unless the application of such designation to the particular product will result in consumer deception, or unless such a product is not entitled to such designation under the laws of the country in which manufactured.

(e) *Cordials and liqueurs.* The alcoholic components of cordails and liqueurs may, but need not, be stated on labels.

§ 5.36 Name and address.

(a) ''*Bottled by*''. (1) On labels of domestic distilled spirits there shall be stated the phrase ''bottled by'', ''packed by'', or ''filled by'', immediately followed by the name (or trade name) of the bottler and the place where such distilled spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants.

(2) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase ''bottled by'', ''packed by'', or ''filled by'', followed by the bottler's name (or trade name) and address, the phrase ''distilled by'', followed by the name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits labeled as bottled in bond) any trade name shown on the distiller's permit (covering the premises where the particular

spirits were distilled), and the address (or addresses) of the distiller.

(3) Where ''straight whiskies'' of the same type which have been produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as ''straight whisky,'' such ''straight whisky'' shall be labeled in accordance with the requirements of paragraph (a)(1) of this section. Where such ''straight whisky'' is bottled by or for the distillers thereof, there may be stated on the label, in lieu of the requirements of paragraph (a)(1) of this section, the phraise ''distilled by,'' followed by the names (or trade names) of the different distillers who distilled a portion of the ''straight whisky,'' the addresses of the distilleries where the ''straight whisky'' was distilled, and the percentage of ''straight whisky'' distilled by each distiller (with a tolerance of plus or minus 2 percent). In the case where ''straight whisky'' is made up of a mixture of ''straight whiskies'' of the same type from two or more different distilleries of the same proprietor located within the same State, and where the ''straight whisky'' is bottled by or for the proprietor thereof, such ''straight whisky'' may be labeled, in lieu of the requirements of paragraph (a)(1) of the this section, with the phrase ''distilled by'' followed by the name (or trade name) of the proprietor and the addresses of the different distilleries which distilled a portion of the ''straight whisky.''

(4) Where distilled spirits are bottled by or for the rectifier thereof, there may be stated, in lieu of the phrase ''bottled by'', ''packed by'', or ''filled by'', followed by the bottler's name (or trade name) and address, the phrases ''blended by'', ''made by'', ''prepared by'', ''manufactured by'', or ''produced by'' (whichever may be appropriate to the act of rectification involved) followed by the name (or trade name), and the address (or addresses) of the rectifier.

(5) In addition to the requirements of paragraphs (a)(1) and (a)(2) of this paragraph, the labels of bottled in bond spirits shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, the number of the plant in which produced and the number of the plant in which bottled.

(6) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or rectification operation occurred, if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle.

(b) ''*Imported by*''. (1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words ''imported by'', ''imported exclusively by'', or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation there shall be stated:

(i) The name of the bottler and place where bottled, immediately preceded by the words ''bottled by'', ''packed by'', or ''filled by''; or

(ii) The name of the bottler and place where bottled, immediately preceded by the words ''bottled by'', ''packed by'', or ''filled by'' and in conjunction therewith the name and address of the person responsible for the importation, in the manner prescribed in paragraph (b)(1) of this section; or

(iii) The name and principal place of business in the United States of the person responsible for the importation, if the spirits are bottled for such person, immediately preceded by the phrase ''imported by and bottled (packed), (filled) in the United States for'' (or a similar appropriate phrase); or,

(iv) In the case of imported distilled spirits bottled after importation by the person responsible for the importation, the words ''imported and bottled (packed), (filled) by'', ''imported and bottled (packed), (filled) exclusively by'', or a similar appropriate phrase, and immediately thereafter the name of such person and the address of the place where bottled or the address of

such person's principal place of business.

(c) *Post office address.* The ''place'' stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address.

(d) *State of distillation.* Except in the case of ''light whisky'', ''blended light whisky'', ''blended whisky'', ''a blend of straight whiskies'', or ''spirit whisky'', the State of distillation shall be shown on the label of any whisky produced in the United States if the whisky is not distilled in the State given in the address on the brand label. The appropriate ATF officer may, however, require the State of distillation to be shown on the label or he may permit such other labeling as may be necessary to negate any misleading or deceptive impression which might be created as to the actual State of distillation. In the case of ''light whisky'', as defined in § 5.22(b)(3), the State of distillation shall not appear in any manner on any label, when the appropriate ATF officer finds such State is associated by consumers with an American type whisky, except as a part of a name and address as set forth in paragraph (a) of this section.

(e) *Country of origin.* On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form ''Product of _____'', the blank to be filled in with the name of the country of origin.

(f) *Trade names.* The trade name of any permittee appearing on any label must be identical to the trade name listed on the permittee's basic permit.

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

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–62, 44 FR 71621, Dec. 11, 1979; T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; T.D. ATF–259, 52 FR 41423, Oct. 28, 1987; T.D. ATF–260, 52 FR 42101, Nov. 3, 1987; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 5.37 Alcohol content.

(a) *Statements*—(1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as ''Rock and Rye. or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: ''Bottled at _____ percent-alcohol-by-volume.''

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent alcohol by volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.25 percent alcohol by volume for any spirits product bottled in 50 or 100 ml size bottles; or

(3) Not to exceed 0.15 percent alcohol by volume for all other spirits.

(Approved by the Office of Management and Budget under Control Number 1512–0482)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e))

[T.D. ATF–237, 51 FR 36394, Oct. 10, 1986, as amended by T.D. ATF–288, 54 FR 47769, Nov. 17, 1989]

§5.38 Net contents.

(a) *Bottles conforming to metric standards of fill*. The net contents of distilled spirits shall be stated in the same manner and form as set forth in the standards of fill in §5.47a.

(b) *Bottles not conforming to the metric standards of fill*. The net contents for distilled spirits bottled before January 1, 1980, in bottles not conforming to the metric standards of fill, shall be stated in the same manner and form as set forth in §5.47(a), except for cordials and liqueurs, cocktails, highballs, bitters and specialties, as specified by the Director. The net contents for these specialty products shall be stated in U.S. measure (i.e., gallons, quarts, pints, fluid ounces).

(c) *Net contents marked in bottles*. The net contents need not be marked on any lable if they are legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the appropriate ATF officer on the side, front, or back of the container in an unobscured location. containers of 200 ml or greater capacity shall bear letters and figures of not less than one-quarter inch height.

(d) *Qualifying statements*. Words or phrases qualifying statements of net contents are prohibited.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF–146, 48 FR 43321, Sept. 23, 1983, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§5.39 Presence of neutral spirits and coloring, flavoring, and blending materials.

(a) *Neutral spirits and name of commodity*. (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: ''_____% neutral spirits distilled from _____ (insert grain, cane products, or fruit as appropriate)''; or ''_____% neutral spirits (vodka) distilled from _____ (insert grain, cane products, or fruit, as appropriate)''; or ''_____% grain (cane products), (fruit) neutral spirits'', or ''_____% grain spirits.''

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin have been distilled. The statement of the name of the commodity shall be made in substantially the following form: ''Distilled from grain'', or ''Distilled from cane products'', or ''Distilled from fruit''.

(b) *Coloring materials*. The words ''artifically colored'' shall be stated on the label of any distilled spirits containing synthetic or natural materials which primarily contribute color, or when the label conveys the impression that the color is derived from a source other than the actual source, except that:

(1) If no coloring material other than natural flavoring material has been added, there may be stated in lieu of the words ''artificially colored'' a truthful and adequate statement of the source of the color;

(2) If no coloring material other than those certified as suitable for use in foods by the Food and Drug Administration has been added, there may be stated in lieu of the words ''artificially colored,'' the words ''certified color added''; and

(3) If no coloring material other than caramel has been added, there may be stated in lieu of the words ''artificially colored,'' the words ''colored with caramel,'' or a substantially similar statement, but no such statement is required for the use of caramel in brandy,

rum, or tequila, or in any type of whisky other than straight whisky.

(c) *Treatment with wood.* The words ''colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)'' shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container. *Provided,* that the above statement shall not apply to brandy treated with an infusion of oak chip in accordance with § 5.23(a).

[T.D. 720, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–292, 55 FR 1065, Jan. 11, 1990]

§ 5.40 Statements of age and percentage.

(a) *Statements of age and percentage for whisky.* In the case of straight whisky bottled in conformity with the bottled in bond labeling requirements and of domestic or foreign whisky, whether or not mixed or blended, all of which is 4 years old or more, statements of age and percentage are optional. As to all other whiskies there shall be stated the following:

(1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky. The age statement shall read substantially as follows: ''_____ years old.''

(2) In the case of whisky, containing neutral spirits, if any of the straight whisky and/or other whisky is less than 4 years old, the percentage by volume of straight whisky and/or other whisky, and the age of the straight whisky (the youngest if two or more) and the age of such other whisky (the youngest if two or more). If all the straight whisky and/or other whisky is 4 years or more old, the age and percentage statement for such whiskies is optional. The age and percentage statement for straight whiskies and/or other whisky, whether required or optional, shall be stated in immediate conjunction with the neutral spirits statement required by § 5.39, and shall read substantially as follows:

(i) If only one straight whisky and no other whisky is contained in the blend: ''____ percent straight whisky ____ years old.''

(ii) If more than one straight whisky and no other whisky is contained in the blend: ''____ percent straight whiskies ____ years or more old.'' The age blank shall be filled in with the age of the youngest straight whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies contained in the blend: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, and ____ percent straight whisky ____ years old.''

(iii) If only one straight whisky and one other whisky is contained in the blend: ''____ percent straight whisky ____ years old, ____ percent whisky ____ years old.''

(iv) If more than one straight whisky and more than one other whisky is contained in the blend: ''____ percent straight whiskies ____ years or more old, ____ percent whiskies ____ years or more old.'' The age blanks shall be filled in with the ages of the youngest straight whisky and the youngest other whisky. In lieu of the foregoing, a statement may be made of the ages and percentages of each of the straight whiskies and other whiskies contained in the blend: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, ____ percent whisky ____ years old, and ____ percent whisky ____ years old.''

(3) In the case of imported whiskies described in § 5.22(l), Class 12, the labels shall state the ages and percentages in the same manner and form as is required for the same type of whisky produced in the United States.

(4) Notwithstanding the foregoing provisions of this paragraph, in the case of whisky produced in the United States and stored in reused oak containers, except for corn whisky, and for light whisky produced on or after January 26, 1968, there shall be stated in lieu of the words ''____ years old'' the period of storage in reused oak containers as follows: ''____ stored ____ years in reused cooperage.''

(5) Optional age statements shall appear in the same form as required age statements.

(b) *Statements of age for rum, brandy, and Tequila.* Age may, but need not, be stated on labels of rums, brandies, and Tequila, except that an appropriate statement with respect to age shall appear on the brand label in case of brandy (other than immature brandies and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. If age is stated, it shall be substantially as follows: ''____ years old''; the blank to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statement of storage for grain spirits.* In case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; for example, ''____% grain spirits stored ____ years in oak containers.''

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar representation is made relative to any distilled spirits (such representations for products enumerated in paragraph (d) of this section are prohibited), the age shall also be stated on all labels where such representation appears, and in a manner substantially as conspicuous as such representation: *Provided.* That the use of the word ''old'' or other word denoting age, as part of the brand name, shall not be deemed to be an age representation: *And provided further,* That the labels of whiskies and brandies (except immature brandies) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label bearing an age statement.

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

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–62, 44 FR 71621, Dec. 11, 1979; T.D. ATF–198, 50 FR 8464, Mar. 1, 1985]

§ 5.41 Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.31 through 5.42 on labels.

(b) *Sealed opaque cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by ''Brand'' or ''Product of U.S.A.'', must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–36, 41 FR 47426, Oct. 29, 1976]

§ 5.42 Prohibited practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of

such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Miscellaneous*. (1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are ''Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.) Government supervision'', or in the case of distilled spirits labeled as bottled in bond, ''Bottled in bond under United States (U.S.) Government supervision''. If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: ''This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France''; and in the case of other distilled spirits, substantially in the following form: ''This product accompanied at time of importation by a certificate issued by the ____ government (name of government) indicating that the product is ____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label.''

(3) The words ''bond'', ''bonded'', ''bottled in bond'', ''aged in bond'', or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are:

(i) Composed of the same kind of spirits produced from the same class of materials;

(ii) Produced in the same distilling season by the same distiller at the same distillery;

(iii) Stored for at least four years in wooden containers wherein the spirits have been in contact with the wood surface except for gin and vodka which must be stored for at least four years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(iv) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product or result in a change in class or type);

(v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottles at 100 degrees of proof.

In addition to the requirements of §5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words ''bond'', ''bonded'', ''bottled in bond'', ''aged in bond'', or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as ''bonded'', ''bottled in bond'', or ''aged in bond'' pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word ''pure'' shall not be stated upon labels unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(6) Distilled spirits shall not be labeled as ''double distilled'' or ''triple distilled'' or any similar term unless it is a truthful statement of fact; except that ''double distilled'' or ''triple distilled'' shall not be permitted on labels of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(8) Curative and therapeutic claims. Labels shall not contain any statement, design, representation, pictorial

representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

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

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF–62, 44 FR 71621, Dec. 11, 1979; T.D. ATF–180, 49 FR 31673, Aug. 8, 1984; 49 FR 35768. Sept. 12, 1984; T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

Subpart E—Standards of Fill for Bottled Distilled Spirits

§ 5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF–25, 41 FR 10221, Mar. 10, 1976; T.D. ATF–146, 48 FR 43321, Sept. 23, 1983]

§ 5.46 Standard liquor bottles.

(a) *General.* A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) *Headspace.* A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(c) *Design.* A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exceptions*—(1) *Distinctive liquor bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the appropriate ATF oficer, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–25, 41 FR 10221, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF–62, 44 FR 71622, Dec. 11, 1979; T.D. ATF–146, 48 FR 43321, Sept. 23, 1983; T.D. ATF–406, 64 FR 2129, Jan. 13, 1999]

§ 5.47 Standards of fill (distilled spirits bottled before January 1, 1980).

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits, whether domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows:

1 gallon.	4/5 pint.
1/2 gallon.	1/2 pint.
1 quart.	1/8 pint.
4/5 quart.	1/10 pint.
1 pint.	1/16 pint (brandy only).

(b) *Tolerances.* The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided,* That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages

in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(d) *Limitations.* This section does not apply after December 31, 1979.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–25, 41 FR 10221, Mar. 10, 1976; T.D. ATF–146, 48 FR 43321, Sept. 23, 1983]

§5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).

(a) *Authorized standards of fill.* The standards of fill for distilled spirits are the following:

(1) For containers other than cans described in paragraph (a)(2), of this section—

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening—

355 milliliters
200 milliliters
100 milliliters
50 milliliters

(b) *Tolerances.* The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided,* That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(d) *Distilled spirits bottled before January 1, 1980.* Distilled spirits bottled domestically before January 1, 1980, may be marketed after December 31, 1979, if such distilled spirits were bottled in accordance with §5.47. (See §5.53 for similar provisions relating to distilled spirits imported in original containers.)

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 203); 26 U.S.C. 5301)

[T.D. ATF–25, 41 FR 10221, Mar. 10, 1976, as amended at 41 FR 11022, Mar. 16, 1976; 41 FR 11497, Mar. 19, 1976; T.D. ATF–35, 41 FR 46859, Oct. 26, 1976; T.D. ATF–62, 44 FR 71622, Dec. 11, 1979; T.D. ATF–146, 48 FR 43321, Sept. 23, 1983; T.D. ATF–228, 51 FR 16170, May 1, 1986; T.D. ATF–326, 57 FR 31128, July 14, 1992]

Subpart F—Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits

§5.51 Label approval and release.

(a) *Certificate of label approval.* Bottled distilled spirits shall not be released from Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, ATF Form 5100.31.

(b) *Release.* If the original or photostatic copy of ATF Form 5100.31 has been approved, the brand or lot of distilled spirits bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.* Imported distilled spirits in U.S. Customs custody which are not labeled in conformity with certificates of label approval issued by the appropriate ATF officer must be relabeled prior to release under the supervision of the Customs officers of the port at which the spirits are located.

(d) *Statements of process.* ATF Forms 5100.31 covering labels for gin bearing the word ''distilled'' as a part of the designation shall be accompanied by a statement prepared by the manufacturer, setting forth a step-by-step description of the manufacturing process.

(e) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–66, 45 FR 40549, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–359, 59 FR 42160, Aug. 17, 1994; T.D. ATF–406, 64 FR 2129, Jan. 13, 1999]

§ 5.52 Certificates of age and origin.

(a) *Scotch, Irish, and Canadian whiskies.* Scotch, Irish, and Canadian whiskies, imported in bottles, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Government, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended for home consumption. In addition, a duly authorized official of the appropriate foreign government must certify to the age of the youngest distilled spirits in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy, Cognac, and rum.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the bottle is not less than 2 years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. If the label of any rum, imported in bottles, contains any statement of age, the rum shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign country, certifying to the age of the youngest rum in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in other type containers, the brandy must be accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying to such storage. Cognac, imported in bottles, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate issued by a duly authorized official of the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as ''Cognac'' by the laws and regulations of the French Government.

(c) *Tequila.* (1) Tequila, imported in bottles, shall not be released from customs custody for consumption unless a certificate of a duly authorized official of the Mexican Government that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government is filed with the application for release.

(2) If the label of any Tequila imported in bottles, contains any statement of age, the Tequila shall not be released from customs custody for consumption unless a certificate of a duly authorized official of the Mexican Government as to the age of the youngest Tequila in the bottle is filed with the application for release. The age certified shall be the period during which

the Tequila has been stored in oak containers after distillation and before bottling.

(d) *Other whiskies.* Whisky, as defined in §5.22(b) (1), (4), (5), and (6), imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying:

(1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, (i) the class and type thereof, (ii) the American proof at which produced, (iii) that no neutral spirits (or other whisky in the case of straight whisky) has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, (iv) the age of the whisky, and (v) the type of oak container in which such age was acquired (whether new or reused; also whether charred or uncharred);

(2) In the case of whisky containing neutral spirits, (i) the class and type thereof, (ii) the percentage of straight whisky, if any, used in the blend, (iii) the American proof at which the straight whisky was produced, (iv) the percentage of other whisky, if any, in the blend, (v) the percentage of neutral spirits in the blend, and the name of the commodity from which distilled, (vi) the age of the straight whisky and the age of the other whisky in the blend, and (vii) the type of oak containers in which such age or ages were acquired (whether new or reused; also whether charred or uncharred).

(e) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) in bottles shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits has been authorized by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–7, 38 FR 33471, Dec. 5, 1973]

§5.53 Certificate of nonstandard fill.

(a) Distilled spirits imported in original containers not conforming to the metric standards of fill prescribed in §5.47a shall not be released from Customs custody after December 31, 1979:

(1) Unless the distilled spirits are accompanied by a statement signed by a duly authorized official of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to January 1, 1980; or

(2) Unless the distilled spirits are being withdrawn from a Customs bonded warehouse or foreign trade zone into which entered on or before December 31, 1979.

(b) Distilled spirits imported in 500 ml containers shall not be released from Customs custody after June 30, 1989:

(1) Unless the distilled spirits are accompanied by a certificate issued by the government of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to July 1, 1989; or

(2) Unless the distilled spirits are being withdrawn from a Customs bonded warehouse or foreign trade zone into which entered on or before June 30, 1989.

[T.D. ATF–25, 41 FR 10222, Mar. 10, 1976, as amended by T.D. ATF–228, 51 FR 16170, May 1, 1986]

Subpart G—Requirements for Approval of Labels of Domestically Bottled Distilled Spirits

§5.55 Certificates of label approval.

(a) *Requirement.* Distilled spirits shall not be bottled or removed from a plant, except as provided in paragraph (b) of this section, unless the proprietor possesses a certificate of label approval, ATF Form 5100.31, covering the labels on the bottle, issued by the appropriate ATF officer pursuant to application on such form. Application for certificates of label approval covering labels for

imported gin bearing the word ''distilled'' as a part of the designation shall be accompanied by a statement prepared by the manufacturer setting forth a step-by-step description of the manufacturing process.

(b) *Exemption.* Any bottler of distilled spirits shall be exempt from the requirements in paragraph (a) of this section and § 5.56 if the bottler possesses a certificate of exemption from label approval, ATF Form 5100.31, issued by the appropriate ATF officer pursuant to application on that Form showing that the distilled spirits to be bottled are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced into interstate or foreign commerce.

(c) *Miscellaneous.* Photoprints or other reproductions of certificates of label approval, or certificates of exemption are not acceptable as substitutes for an original or duplicate original (issued, on request, by the appropriate ATF officer) of a certificate. The original or duplicate original of such certificates shall, on demand, be exhibited to an authorized officer of the U.S. Government.

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–66, 45 FR 40550, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–406, 64 FR 2129, Jan. 13, 1999]

§ 5.56 Certificates of age and origin.

Distilled spirits imported in bulk for bottling in the United States shall not be removed from the plant where bottled unless the bottler possesses certificates of age and certificates of origin applicable to such spirits which are similar to the certificates required by § 5.52 for like distilled spirits imported in bottles.

Subpart H—Advertising of Distilled Spirits

§ 5.61 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 5.61 through 5.66 of this part. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of this treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such retailer or publisher or radio or television broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

[T.D. ATF–180, 49 FR 31673, Aug. 8, 1984]

§ 5.62 Definition.

As used in §§ 5.61 through 5.66 of this part, the term ''advertisement'' includes any written or verbal statement, illlustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the bottle, representations made on cases or in any billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle which constitute a part of the labeling under §§ 5.31 through 5.42 of this part.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

[T.D. ATF–180, 49 FR 31673, Aug. 8, 1984]

§ 5.63 Mandatory statements.

(a) *Responsible advertiser*. The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class and type*. The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcohol content*—(1) *Mandatory statement*. The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as ''Rock and Rye'' or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: ''Bottled at _____ percent-alcohol-by-volume.''

(2) *Optional statement*. In addition, the advertisement may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(d) *Percentage of neutral spirits and name of commodity*. (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: ''____% neutral spirits distilled from _____ (insert grain, cane products, or fruit, as appropriate)''; or ____% neutral spirits (vodka) distilled from _____ (insert grain, cane product, or fruit, as appropriate)''; or ''____% grain (cane products), (fruit) neutral spirits''; or ''____% grain spirits''.

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: ''Distilled from grain'', or ''Distilled from cane products'', or ''Distilled from fruit.''

(e) *Exception*. (1) If an advertisement refers to a general distilled spirits line or all of the distilled spirits products of one company, whether by the company name or by the brand name common to all the distilled spirits in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of distilled spirits is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the company name or brand name of the product.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–180, 49 FR 31674, Aug. 8, 1984; T.D. ATF–237, 51 FR 36394, Oct. 10, 1986]

§ 5.64 Legibility of mandatory information.

(a) Statements required under §§ 5.61 through 5.66 of this part to appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon

closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Manadatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information shall be so stated in both the print and audio-visual media that it will be readily apparent to the persons viewing the advertisement.

[T.D. ATF–180, 49 FR 31674, Aug. 8, 1984]

§ 5.65 Prohibited practices.

(a) *Restrictions*. An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State, Federal, or foreign authorization, law, or regulation, unless such statement appears in the manner authorized by § 5.42 for labels of distilled spirits. If a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The words ''bond'', ''bonded'', ''bottled in bond'', ''aged in bond'', or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to § 5.42, on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label.

(8) The word ''pure'' unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer from whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(9) The words ''double distilled'' or ''triple distilled'' or any similar terms unless it is a truthful statement of fact; except that ''double distilled'' or ''triple distilled'' shall not be permitted in advertisements of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(b) *Statements inconsistent with labeling*. (1) Advertisements shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Statement of age*. The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§ 5.31 through 5.42. An advertisement for any whisky or brandy (except immature brandies) which is not required to bear a statement of age on the label or an

advertisement for any rum or Tequila, which has been aged for not less than 4 years may, however, contain inconspicuous, general representation as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Curative and therapeutic claims.* Advertisements shall not contain any statement, design, representation, pictorial representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this subpart or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* An advertisement shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF–180, 49 FR 31674, Aug. 8, 1984]

§ 5.66 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods*, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF–180, 49 FR 31674, Aug. 8, 1984]

PART 6—''TIED-HOUSE''

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AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 6.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices that are means to induce under section 105(b) of the Act, criteria for determining whether a practice is a violation of section 105(b) of the Act, and exceptions to section 105(b) of the Act. This part does not attempt to enumerate all of the practices that may result in a violation of section 105(b) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§ 6.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 6.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members (for example, between a producer and a wholesaler), or to transactions between an industry member and a retailer wholly owned by that industry member.

(b) *Transaction involving State agencies.* The regulations in this part apply

only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 6.4 Jurisdictional limits.

(a) *General*. The regulations in this part apply where:

(1) The industry member induces a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) If: (i) The inducement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages*. In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 105(b) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler or malt beverage in such State, as the case may be.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§ 6.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 6 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 6, 8, 10 and 11. ATF delegation orders, such as ATF Order 1130.7, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–428, 65 FR 52019, Aug. 28, 2000]

§ 6.6 Administrative provisions.

(a) *General*. The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena*. Any appropriate ATF officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate ATF officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate ATF officer*—(1) *General*. The appropriate ATF officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation*. The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the

information specified by the appropriate ATF officer. The period covered by the report will not exceed three years.

(3) *Filing*. The report will be filed in accordance with the instructions of the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52019, Aug. 28, 2000]

Subpart B—Definitions

§ 6.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

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 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 6, 8, 10 and 11.

Brand. For purposes of administering this part, the term ''brand'' refers to differences in the brand name of a product or in the nature of a product. Examples of different brands are products having a different brand name or class, type, or kind designation; appellation of origin (wine); vintage date (wine); age (distilled spirits); or percentage of alcohol. Differences in packaging such as difference in label design or color, or a different style, type or size of container are not considered different brands.

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

Equipment. All functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer's business.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehousemen and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retail establishment. Any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20421, Apr. 26, 1995; T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart C—Unlawful Inducements

GENERAL

§ 6.21 Application.

Except as provided in subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

(a) By acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;

(b) By acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;

(c) By furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D;

(d) By paying or crediting the retailer for any advertising, display, or distribution service;

(e) By guaranteeing any loan or the repayment of any financial obligation of the retailer;

(f) By extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in §6.65; or

(g) By requiring the retailer to take and dispose of a certain quota of any such products.

INTEREST IN RETAIL LICENSE

§6.25 General.

The act by an industry member of acquiring or holding any interest in any license (State, county or municipal) with respect to the premises of a retailer constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§6.26 Indirect interest.

Industry member interest in retail licenses includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in a retail license acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in a retail license.

§6.27 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest which may result in a violation of section 105(b)(1) of the Act.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of the Act.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

INTEREST IN RETAIL PROPERTY

§6.31 General.

The act by an industry member of acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of business constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§6.32 Indirect interest.

Industry member interest in retail property includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in retail property acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in retail property.

§6.33 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not an interest that may result in a violation of section 105(b)(2) of the Act.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in retail property within the meaning of the Act.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§6.34 Mortgages.

The acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property within the meaning of the Act.

§6.35 Renting display space.

The renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property within the meaning of the Act.

FURNISHING THINGS OF VALUE

§6.41 General.

Subject to the exceptions listed in subpart D, the act by an industry member of furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§ 6.42 Indirect inducement through third party arrangements.

(a) *General.* The furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by an industry member to a third party, where the benefits resulting from such things of value flow to individual retailers, is the indirect furnishing of a thing of value within the meaning of the Act. Indirect furnishing of a thing of value includes, but is not limited to, making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers.

(b) *Exceptions.* An indirect inducement will not arise where the thing of value was furnished to a retailer by the third party without the knowledge or intent of the industry member, or the industry member did not reasonably foresee that the thing of value would have been furnished to a retailer. Things which may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under subpart D may also be furnished directly by a third party to a retailer.

[T.D. ATF–364, 60 FR 20421, Apr. 26, 1995]

§ 6.43 Sale of equipment.

A transaction in which equipment is sold to a retailer by an industry member, except as provided in § 6.88, is the selling of equipment in within the meaning of the Act regardless of how sold. Further, the negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of the Act.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§ 6.44 Free warehousing.

The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or malt beverages beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.45 Assistance in acquiring license.

Any assistance (financial, legal, administrative or influential) given the retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.46–6.47 [Reserved]

PAYING FOR ADVERTISING, DISPLAY OR DISTRIBUTION SERVICE

§ 6.51 General.

The act by an industry member of paying or crediting a retailer for any advertising, display, or distribution service constitutes a means to induce within the meaning of the Act, whether or not the advertising, display, or distribution service received by the industry member in these instances is commensurate with the amount paid therefor. This includes payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§ 6.52 Cooperative advertising.

An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.

The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.

The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying

the retailer for advertising within the meaning of the Act.

§6.55 Display service.

Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§6.56 Renting display space.

A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

GUARANTEEING LOANS

§6.61 Guaranteeing loans.

The act by an industry member of guaranteeing any loan or the repayment of any financial obligation of a retailer constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

EXTENSION OF CREDIT

§6.65 General.

Extension of credit by an industry member to a retailer for a period of time in excess of 30 days from the date of delivery constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§6.66 Calculation of period.

For the purpose of this part, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

§6.67 Sales to retailer whose account is in arrears.

An extension of credit (for product purchases) by an industry member to a retailer whose account is in arrears does not constitute a means to induce within the meaning of the Act so long as such retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

QUOTA SALES

§6.71 Quota sales.

The act by an industry member of requiring a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages constitutes a means to induce within the meaning of the Act.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§6.72 "Tie-in" sales.

The act by an industry member of requiring that a retailer purchase one product (as defined in §6.11) in order to obtain another constitutes a means to induce within the meaning of the Act. This includes the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package, i.e., a distinctive decanter, or wooden or tin box. This also includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not precluded from selling two or more kinds or brands of products to a retailer at a special combination price, provided the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product it does not want. See §6.93 for combination packaging of products plus non-alcoholic items.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

Subpart D—Exceptions

§6.81 General.

(a) *Application*. Section 105(b)(3) of the Act enumerates means to induce that may be unlawful under the subsection, subject to such exceptions as are prescribed in regulations, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest, and the purposes of that section. This subpart implements section 105(b)(3) of the Act and

identifies the practices that are exceptions to section 105(b)(3) of the Act. An industry member may furnish a retailer equipment, inside signs, supplies, services, or other things of value, under the conditions and within the limitations prescribed in this subpart.

(b) *Recordkeeping Requirements.* (1) Industry members shall keep and maintain records on the permit or brewery premises, for a three year period, of all items furnished to retailers under §§ 6.83, 6.88, 6.91, 6.96(a), and 6.100 and the commercial records required under § 6.101. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:

(i) The name and address of the retailer receiving the item;

(ii) The date furnished;

(iii) The item furnished;

(iv) The industry member's cost of the item furnished (determined by the manufacturer's invoice price); and

(v) Charges to the retailer for any item.

(2) Although no separate recordkeeping violation results, an industry member who fails to keep such records is not eligible for the exception claimed.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§ 6.82 [Reserved]

§ 6.83 Product displays.

(a) *General.* The act by an industry member of giving or selling product displays to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) *Definition.* ''Product display'' means any wine racks, bins, barrels, casks, shelving, or similar items the primary function of which is to hold and display consumer products.

(c) *Conditions and limitations.* (1) The total value of all product displays given or sold by an industry member under paragraph (a) of this section may not exceed $300 per brand at any one time in any one retail establishment. Industry members may not pool or combine dollar limitations in order to provide a retailer a product display valued in excess of $300 per brand. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

[T.D. ATF–364, 60 FR 20422, Apr. 26, 1995]

§ 6.84 Point of sale advertising materials and consumer advertising specialties.

(a) *General.* The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) *Definitions*—(1) *Point of sale advertising materials* are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(2) *Consumer advertising specialties* are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches,

printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(c) *Conditions and limitations.* (1) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

(2) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.85 Temporary retailers.

(a) *General.* The furnishing of things of value to a temporary retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

(b) *Definition.* For purposes of administering this part, a temporary retailer is a dealer who is not engaged in business as a retailer for more than four consecutive days per event, and for not more than five events in a calendar year.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§§ 6.86–6.87 [Reserved]

§ 6.88 Equipment and supplies.

(a) *General.* The act by an industry member of selling equipment or supplies to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act if the equipment or supplies are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of the sale. The act by an industry member of installing dispensing accessories at the retailer's establishment does not constitute a means to induce within the meaning of the Act as long as the retailer bears the cost of initial installation. The act by an industry member of furnishing, giving, or selling coil cleaning service to a retailer of distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

(b) *Definition.* ''Equipment and supplies'' means glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. ''Dispensing accessories'' include items such as standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§§ 6.89–6.90 [Reserved]

§ 6.91 Samples.

The act by an industry member of furnishing or giving a sample of distilled spirits, wine, or malt beverages to a retailer who has not purchased the brand from that industry member within the last 12 months does not constitute a means to induce within the meaning of section 105(b)(3) of the Act. For each retail establishment the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next larger size.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.92 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be given or sold by an industry member to a retailer selling the industry member's products.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.93 Combination packaging.

The act by an industry member of packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.94 Educational seminars.

An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar (such as travel and lodging). This does not preclude providing nominal hospitality during the event.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.95 Consumer tasting or sampling at retail establishments.

An industry member may conduct tasting or sampling activities at a retail establishment. The industry member may purchase the products to be used from the retailer, but may not purchase them from the retailer for more than the ordinary retail price.

§ 6.96 Consumer promotions.

(a) *Coupons.* The act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided the following conditions are met:

(1) All retailers within the market where the coupon offer is made may redeem such coupons; and

(2) An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

(b) *Direct offerings.* Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from participiption.

[T.D. ATF–74, 45 FR 63251, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.97 [Reserved]

§ 6.98 Advertising service.

The listing of the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(a) The advertisement does not also contain the retail price of the product (except where the exclusive retailer in the jurisdiction is a State or a political subdivision of a State), and

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and

(c) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer, except where the retailer is an agency of a State or a political subdivision of a State.

[T.D. ATF–364, 60 FR 20423, Apr. 26, 1995]

§ 6.99 Stocking, rotation, and pricing service.

(a) *General.* Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

(b) *Shelf plan and shelf schematics.* The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

§ 6.100 Participation in retailer association activities.

The following acts by an industry member participating in retailer association activities do not constitute a means to induce within the meaning of section 105(b)(3) of the Act:

(a) Displaying its products at a convention or trade show;

(b) Renting display booth space if the rental fee is the same as paid by all exhibitors at the event;

(c) Providing its own hospitality which is independent from association sponsored activities;

(d) Purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants or exhibitors at the event; and

(e) Making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show if the total payments made by an industry member for all such advertisements do not exceed $300 per year for any retailer association.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

§6.101 Merchandise.

(a) *General*. The act by an industry member, who is also in business as a bona fide producer or vendor of other merchandise (for example, groceries or pharmaceuticals), of selling that merchandise to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(1) The merchandise is sold at its fair market value;

(2) The merchandise is not sold in combination with distilled spirits, wines, or malt beverages (except as provided in §6.93);

(3) The industry member's acquisition or production costs of the merchandise appears on the industry member's purchase invoices or other records; and

(4) The individual selling prices of merchandise and distilled spirits, wines, or malt beverages sold in a single transaction can be determined from commercial documents covering the sales transaction.

(b) *Things of value covered in other sections of this part*. The act by an industry member of providing equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to retailers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act only as provided in other sections within this part.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

§6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:

(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(c) The cost of the signs may not exceed $400.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

Subpart E—Exclusion

SOURCE: T.D. ATF–364, 60 FR 20424, Apr. 26, 1995, unless otherwise noted.

§6.151 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer; and

(2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 6.152 lists practices that create a tie or link that places retailer independence at risk. Section 6.153 lists the criteria used for determining whether other practices can put retailer independence at risk.

§6.152 Practices which put retailer independence at risk.

The practices specified in this section put retailer independence at risk. The practices specified here are examples and do not constitute a complete list of those practices that put retailer independence at risk.

(a) The act by an industry member of resetting stock on a retailer's premises (other than stock offered for sale by the industry member).

(b) The act by an industry member of purchasing or renting display, shelf, storage or warehouse space (*i.e.* slotting allowance).

(c) Ownership by an industry member of less than a 100 percent interest in a retailer, where such ownership is used to influence the purchases of the retailer.

(d) The act by an industry member of requiring a retailer to purchase one alcoholic beverage product in order to be allowed to purchase another alcoholic beverage product at the same time.

§ 6.153 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in § 6.152, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. 6521, 25 FR 13859, Dec. 29, 1960, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 7 appear by T.D. ATF–425, 65 FR 11891, Mar. 7, 2000.

Subpart A—Scope

§ 7.1 General.

The regulations in this part relate to the labeling and advertising of malt beverages.

§ 7.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

§ 7.3 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–92, 46 FR 46912, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

§ 7.4 Related regulations.

Regulations relating to this part are listed below:

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 5—Labeling and Advertising of Distilled Spirits.

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

27 CFR Part 25—Beer.

27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 71—Rules of Practice in Permit Proceedings.

27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–294, 55 FR 5421, Feb. 14, 1990; T.D. ATF–459, 66 FR 38549, July 25, 2001; T.D. ATF–463, 66 FR 42733, Aug. 15, 2001]

§ 7.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 7 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages. ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–425, 65 FR 11891, Mar. 7, 2000]

Subpart B—Definitions

§ 7.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this subpart.

Act. The Federal Alcohol Administration Act.

Advertisement. See § 7.51 for meaning of term as used in subpart F of this part.

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 1130.2A, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

Brand label. The label carrying, in the usual distinctive design, the brand name of the malt beverage.

Bottler. Any person who places malt beverages in containers of a capacity of one gallon or less.

Container. Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from

which made, for use for the sale of malt beverages at retail.

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

Gallon. A U.S. gallon of 231 cubic inches of malt beverages at 39.1 °F (4 °C). All other liquid measures used are subdivisions of the gallon as defined.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Packer. Any person who places malt beverages in containers of a capacity in excess of one gallon.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

United States. The several States, the District of Columbia, and Puerto Rico; the term ''State'' includes the District of Columbia and Puerto Rico.

[T.D. ATF–48, 43 FR 13534, Mar. 31, 1978; 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF–66, 45 FR 40550, June 13, 1980; T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

Subpart C—Labeling Requirements for Malt Beverages

§ 7.20 General.

(a) *Application*. This subpart shall apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(b) *Marking, branding, and labeling*. No person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, shall sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from Customs custody any malt beverages in containers unless the malt beverages are packaged, and the packages are marked, branded, and labeled in conformity with this subpart.

(c) *Alteration of labels*. (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law. The appropriate ATF officer may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that the additional labeling or relabeling is for the purpose of compliance with the requirements of this subpart or of State law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–66, 45 FR 40551, June 13, 1980; T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

§ 7.21 Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20 through 7.29 and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20 through 7.29.

(c) If the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§ 7.22 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 7.23.

(2) Class, in accordance with § 7.24.

(3) Name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in paragraph (b) of this section.

(4) Net contents (except when blown, branded, or burned, in the container) in accordance with § 7.27.

(b) On the brand label or on a separate label (back or front):

(1) In the case of imported malt beverages, name and address of importer in accordance with § 7.25.

(2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with § 7.25.

(3) Alcoholic content, when required by State law, in accordance with § 7.71.

(4) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(5) The following statement, separate and apart from all other information, when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

(6) *Declaration of sulfites.* The statement ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any malt beverage bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and,

(iii) Any malt beverage removed on or after January 9, 1988.

(7) Declaration of aspartame. The following statement, in capital letters, separate and apart from all other information, when the product contains aspartame in accordance with Food and Drug Administration (FDA) regulations:

''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

(Paragraph (b)(6) approved by the Office of Management and Budget under Control No. 1512–0469)

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–150, 48 FR 45557, Oct. 6, 1983; T.D. ATF–220, 50 FR 51852, Dec. 20, 1985; T.D. ATF–236, 51 FR 34710, Sept. 30, 1986; T.D. ATF–282, 54 FR 7162, Feb. 16, 1989; T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–339, 58 FR 21231, Apr. 19, 1993; T.D. ATF–347, 58 FR 44132, Aug. 19, 1993]

§ 7.23 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which,

standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate ATF officer finds that such brand name, either when qualified by the word ''brand'' or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided,* That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 7.24 Class and type.

(a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.

(b) Malt beverages which have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide shall for the purpose of this part be labeled in the same manner as malt beverages which have not been concentrated and reconstituted, except that there shall appear in direct conjunction with, and as a part of, the class designation the statement ''PRODUCED FROM——CONCENTRATE'' (the blank to be filled in with the appropriate class designation). All parts of the class designation shall appear in lettering of substantially the same size and kind.

(c) No product shall be designated as ''half and half'' unless it is in fact composed of equal parts of two classes of malt beverages the names of which are conspicuously stated in conjunction with the designation ''half and half''.

(d) Products containing less than one-half of 1 percent (.5%) of alcohol by volume shall bear the class designation ''malt beverage,'' or ''cereal beverage,'' or ''near beer.'' If the designation ''near beer'' is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background. No product containing less than one-half of 1 percent of alcohol by volume shall bear the class designations ''beer'', ''lager beer'', ''lager'', ''ale'', ''porter'', or ''stout'', or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

(e) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall bear any of these class designations.

(f) Geographical names for distinctive types of malt beverages (other than names found under paragraph (g) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word ''type'' or the word ''American'', or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic; Dortmund, Dortmunder, Vienna, Wein, Weiner, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, Pilsen (Pilsener and Pilsner): *Provided,* That

notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as ''Pilsen,'' ''Pilsener,'' or ''Pilsner'' without further modification, if it conforms to such type.

(g) Only such geographical names for distinctive types of malt beverages as the appropriate ATF officer finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic, e.g., India Pale Ale.

(h) Except as provided in § 7.23(b), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

[T.D. 6672, 28 FR 9637, Aug. 31, 1963, as amended at 29 FR 3572, Mar. 20, 1964; T.D. ATF–249, 52 FR 5956, Feb. 27, 1987; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

§ 7.25 Name and address.

(a) *Domestic malt beverages.* (1) On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. The bottler's or packer's principal place of business may be shown in lieu of the actual place where bottled or packed if the address shown is a location where bottling or packing operation takes place. The appropriate ATF officer may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the beer.

(2) If malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu of), the name and address of such other person immediately preceded by the words ''bottled for,'' ''distributed by,'' or other similar appropriate phrase.

(b) *Imported malt beverages.* On labels of containers of imported malt beverages, there shall be stated the words ''imported by,'' or a singular appropriate phrase, and immediately thereafter the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition there may, but need not, be stated unless required by State or foreign law or regulation the name and principal place of business of the foreign manufacturer, bottler, packer, or shipper.

(c) *Post-office address.* The ''place'' stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless (1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

(Approved by the Office of Management and Budget under control number 1512–0474)

[T.D. 6551, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–225, 51 FR 8492, Mar. 12, 1986]

§ 7.26 Alcoholic content [suspended as of April 19, 1993; see § 7.71].

(a) The alcoholic content and the percentage and quantity of the original extract shall not be stated unless required by State law. When alcoholic content is required to be stated, but the manner of statement is not specified in the State law, it shall be stated in percentage of alcohol by weight or by volume, and not by proof or by maximums or minimums. Otherwise the manner of statement shall be as specified in the State law.

(b) The terms ''low alcohol'' or ''reduced alcohol'' may be used only on malt beverage products containing less than 2.5 percent alcohol by volume.

(c) The term ''non-alcoholic'' may be used on malt beverage products, provided the statement ''contains less than 0.5 percent (or .5%) alcohol by volume'' appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(d) The term ''alcohol-free'' may be used only on malt beverage products containing no alcohol.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF–339, 58 FR 21231, Apr. 19, 1993]

EFFECTIVE DATE NOTE: At 58 FR 21231, Apr. 19, 1993, § 7.26 was suspended indefinitely.

§ 7.27 Net contents.

(a) Net contents shall be stated as follows:

(1) If less than 1 pint, in fluid ounces, or fractions of a pint.

(2) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(3) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof.

(b) All fractions shall be expressed in their lowest denominations.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

§ 7.28 General requirements.

(a) *Contrasting background.* All labels shall be so designed that all statements required by this subpart are readily legible under ordinary conditions, and all the statements are on a contrasting background.

(b) *Size of type*— (1) *Containers of more than one-half pint.* Except for statements of alcoholic content, all mandatory information required on labels by this part shall be in script, type, or printing not smaller than 2 millimeters. If contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(2) *Containers of one-half pint or less.* Except for statements of alcoholic content, all mandatory information required on labels by this part shall be in script, type, or printing not smaller than 1 millimeter. If contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(3) *Alcoholic content statement.* All portions of the alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color. Unless otherwise required by State law, the statement of alcoholic content shall be in script, type, or printing:

(i) Not smaller than 1 millimeter for containers of one-half pint or less, or smaller than 2 millimeters for containers larger than one-half pint; or

(ii) Not larger than 3 millimeters for containers of 40 fl. oz. or less, or larger than 4 millimeters for containers larger than 40 fl. oz.

(c) *English language.* All information, other than the brand name, required by this subpart to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if the statements do not conflict with, or are contradictory to, the requirements of this subpart. Labels on containers of malt beverages bottled or packed for consumption within Puerto Rico may, if desired, state the information required by this subpart solely in the Spanish language, in lieu of the English language, except that the net contents shall also be stated in the English language.

(d) *Labels firmly affixed.* All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) *Additional information.* Labels may contain information other than the mandatory label information required by this subpart if the information complies with the requirements of this subpart and does not conflict with, or in

any manner qualify, statements required by this part.

[T.D. ATF–66, 45 FR 40552, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–339, 58 FR 21231, Apr. 19, 1993]

§ 7.29 Prohibited practices.

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail or any written, printed, graphic, or other matter accompanying such containers to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps.* No label shall be of such design as to resemble or simulate a stamp of the United States Government or of any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, Federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State, or municipal, law or regulation, or is required or specifically authorized by the laws or regulations of the foreign country in which such malt beverages were produced. If the municipal or State government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by State law.

(c) *Use of word ''bonded'', etc.* The words ''bonded'', ''bottled in bond'', ''aged in bond'', ''bonded age'', ''bottled under customs supervision'', or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing, shall not be used on any label for malt beverages.

(d) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other

insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(e) *Curative and therapeutic claims.* Labels shall not contain any statement, design, representation, pictorial representation, or device representing that the use of malt beverage has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(f) *Use of words ''strong,'' ''full strength,'' and similar words.* Labels shall not contain the words ''strong,'' ''full strength,'' ''extra strength,'' ''high test,'' ''high proof,'' ''pre-war strength,'' ''full oldtime alcoholic strength,'' or similar words or statements, likely to be considered as statements of alcoholic content, unless required by State law. This does not preclude use of the terms ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol-free,'' in accordance with § 7.71 (d), (e), and (f), nor does it preclude labeling with the alcohol content in accordance with § 7.71.

(g) *Use of numerals.* Labels shall not contain any statements, designs, or devices, whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcoholic content, unless required by State law, or as permitted by § 7.71.

(h) *Coverings, cartons, or cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement or any graphic pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverages.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–66, 45 FR 40552, June 13, 1980; T.D. ATF–180, 49 FR 31674, Aug. 8, 1984; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF–339, 58 FR 21232, Apr. 19, 1993]

Subpart D—Requirements for Withdrawal of Imported Malt Beverages From Customs Custody

§ 7.30 Application.

Sections 7.30 and 7.31 shall apply to withdrawals of malt beverages from customs custody only in the event that the laws or regulations of the State in which such malt beverages are withdrawn for consumption require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20 through 7.29.

§ 7.31 Label approval and release.

(a) *Certificate of label approval.* No imported malt beverages in containers shall be released from Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, ATF Form 5100.31.

(b) *Release.* If the original or photostatic copy of ATF Form 5100.31 has been approved, the brand or lot of imported malt beverages bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.* Imported malt beverages in U.S. Customs custody which are not labeled in conformity with certificates of label approval issued by the appropriate ATF officer must be relabeled, prior to release, under the supervision and direction of the U.S. Customs officers of the port at which the malt beverages are located.

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–66, 45 FR 40552, June 13, 1980, as amended by T.D. ATF–94, 46 FR 55097, Nov. 6, 1981; T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–359, 59 FR 42160, Aug. 17, 1994; T.D. ATF–406, 64 FR 2129, Jan. 13, 1999]

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

§ 7.40 Application.

Sections 7.40 through 7.42 shall apply only to persons bottling or packing malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State, the laws or regulations of which require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20 through 7.29.

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person may bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless an approved certificate of label approval, ATF Form 5100.31, is issued.

(b) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

§ 7.42 Exhibiting certificates to Government officials.

Any bottler or packer holding an original or duplicate original of a certificate of label approval shall, upon demand exhibit such certificate to a duly authorized representative of the United States Government or any duly authorized representative of a State or political subdivision thereof.

Subpart F—Advertising of Malt Beverages

§ 7.50 Application.

No person engaged in business as a brewer, wholesaler, or importer, of malt beverages directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or in any other printed or graphic matter, any advertisement of malt beverages, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 7.50–7.55 of this part. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of this Treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that §§ 7.50–7.55 of this part shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State. And provided further that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such retailer or publisher or radio or television broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages, directly or indirectly, or through an affiliate.

[T.D. ATF–180, 49 FR 31675, Aug. 8, 1984]

§ 7.51 Definitions.

As used in §§ 7.50 through 7.55 of this part, the term ''advertisement'' includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade

booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the container, representations made on cases, or in any billboard, sign, or other outdoor advertisement, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail which constitute a part of the labeling under §§ 7.20 through 7.29 of this part.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any brewer, and which is not written by or at the direction of the brewer.

[T.D. ATF–180, 49 FR 31675, Aug. 8, 1984]

§ 7.52 Mandatory statements.

(a) *Responsible advertiser*. The advertisement shall state the name and address of the brewer, bottler, packer, wholesaler, or importer responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class*. The advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

(c) *Exception*. (1) If an advertisement refers to a general malt beverage line or all of the malt beverage products of one company, whether by the company name or by the brand name common to all the malt beverages in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of malt beverage is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the company name or brand name of the product.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–180, 49 FR 31675, Aug. 8, 1984]

§ 7.53 Legibility of mandatory information.

(a) Statements required under §§ 7.50 through 7.55 of this part that appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information shall be so stated in both the print and audiovisual media that it will be readily apparent to the persons viewing the advertisement.

[T.D. ATF–180, 49 FR 31675, Aug. 8, 1984]

§ 7.54 Prohibited statements.

(a) *General prohibition*. An advertisement of malt beverages shall not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of

falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) Any statement that the malt beverages are brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulation; and if a municipal or State permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) The words ''bonded'', ''bottled in bond'', ''aged in bond'', ''bonded age'', ''bottled under customs supervision'', or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing.

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Alcoholic content.* (1) Advertisements shall not contain the words ''strong,'' ''full strength,'' ''extra strength,'' ''high test,'' ''high proof,'' ''full alcohol strength,'' or any other statement of alcoholic content, or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, figures, or similar words or statements, likely to be considered as statements of alcoholic content, unless required by State law. This does not preclude use of the terms ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol-free,'' as used on labels, in accordance with § 7.71 (d), (e), and (f).

(2) An approved malt beverage label which bears a statement of alcoholic content permitted under § 7.71 may be depicted in any advertising media. The statement of alcoholic content on the label may not appear more prominently in the advertisement than it does on the approved label.

(3) An actual malt beverage bottle showing the approved label bearing a statement of alcoholic content permitted under § 7.71 may be displayed in any advertising media.

(d) *Class.* (1) No product containing less than one-half of 1 per centum of alcohol by volume shall be designated in any advertisement as ''beer'', ''lager beer'', ''lager'', ''ale'', ''porter'', or ''stout'', or by any other class or type designation commonly applied to fermented malt beverages containing one-half of 1 per centum or more of alcohol by volume.

(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall be designated in any advertisement by any of these class designations.

(e) *Curative and therapeutic claims.* Advertisements shall not contain any statement, design, representation, pictorial representation, or device representing that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(f) *Confusion of brands.* Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or a newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 7.50 through 7.54 or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such

flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF–180, 49 FR 31675, Aug. 8, 1984; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF–339, 58 FR 21232, Apr. 19, 1993]

§ 7.55 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods,* ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF–180, 49 FR 31676, Aug. 8, 1984]

Subpart G—General Provisions

§ 7.60 Exports.

This part shall not apply to malt beverages exported in bond.

Subpart H—Interim Regulations for Alcoholic Content Statements

§ 7.71 Alcoholic content.

(a) *General.* Alcoholic content and the percentage and quantity of the original gravity or extract may be stated on a label unless prohibited by State law. When alcoholic content is stated, and the manner of statement is not required under State law, it shall be stated as prescribed in paragraph (b) of this section.

(b) *Form of statement.* (1) Statement of alcoholic content shall be expressed in percent alcohol by volume, and not by percent by weight, proof, or by maximums or minimums.

(2) For malt beverages containing 0.5 percent or more alcohol by volume, statements of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by paragraph (c) (1) and (2) of this section. For malt beverages containing less than 0.5 percent alcohol by volume, alcoholic content may be expressed in one-hundredths of a percent, subject to the tolerance permitted in paragraph (c)(3) of this section.

(3) Alcoholic content shall be expressed in the following fashion: ''alcohol—percent by volume,'' ''alcohol by volume—percent,'' ''—percent alcohol by volume,'' or ''—percent alcohol/volume.'' The abbreviations ''alc'' and ''vol'' may be used in lieu of the words ''alcohol'' and ''volume,'' and the symbol ''%'' may be used in lieu of the word ''percent.''

(c) *Tolerances.* (1) For malt beverages containing 0.5 percent or more alcohol by volume, a tolerance of 0.3 percent will be permitted, either above or below the stated percentage of alcohol. Any malt beverage which is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance.

(2) For malt beverages which are labeled as ''low alcohol'' or ''reduced alcohol'' under paragraph (d) of this section, the actual alcoholic content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c)(1) of this section.

(3) For malt beverages containing less than 0.5 percent alcohol by volume, the actual alcoholic content may not exceed the labeled alcoholic content. A malt beverage may not be labeled with an alcoholic content of 0.0 percent alcohol by volume unless it is also labeled as ''alcohol free'' and contains no alcohol.

(d) *Low alcohol and reduced alcohol.* The terms ''low alcohol'' or ''reduced alcohol'' may be used only on malt beverages containing less than 2.5 percent alcohol by volume.

(e) *Non-alcoholic.* The term ''non-alcoholic'' may be used on malt beverages, provided the statement ''contains less than 0.5 percent (or .5%) alcohol by volume'' appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(f) *Alcohol free.* The term ''alcohol free'' may be used only on malt beverages containing no alcohol.

[T.D. ATF–339, 58 FR 21232, Apr. 19, 1993]

PART 8—EXCLUSIVE OUTLETS

Subpart A—Scope of Regulations

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8.51 Exclusion, in general.
8.52 Practices which result in exclusion.
8.53 Practice not resulting in exclusion.
8.54 Criteria for determining retailer independence.

AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF–74, 45 FR 63256, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 8.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are exclusive outlets under section 105(a) of the Act and criteria for determining whether a practice is a violation of section 105(a) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(a) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20425, Apr. 26, 1995]

§ 8.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 8.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members; for example, between a producer and a wholesaler.

(b) *Transactions involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 8.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member requires, by agreement or otherwise, a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) If: (i) The requirement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using a requirement to

such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(a) of the Federal Alcohol Administration Act (27 U.S.C. 205(a)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

§ 8.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 8 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11. ATF delegation orders, such as ATF Order 1130.7, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

§ 8.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* Any appropriate ATF officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate ATF officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate ATF officer*—(1) *General.* The appropriate ATF officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate ATF officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20425, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart B—Definitions

§ 8.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

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 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11.

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

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

T.D. ATF–74, 45 FR 63256, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20425, Apr. 26, 1995; T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart C—Prohibited Practices

§ 8.21 General.

It is unlawful for an industry member to require, by agreement or otherwise, that any retailer purchase distilled spirits, wine, or malt beverages from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce. This prohibition includes purchases coerced by industry members, through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.

§ 8.22 Contracts to purchase distilled spirits, wine, or malt beverages.

Any contract or agreement, written or unwritten, which has the effect of requiring the retailer to purchase distilled spirits, wine, or malt beverages from the industry member beyond a single sales transaction is prohibited. Examples of such contracts are:

(a) An advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's products; or

(b) A sales contract awarded on a competitive bid basis which has the effect of prohibiting the retailer from purchasing from other industry members by:

(1) Requiring that for the period of the agreement, the retailer purchase a product or line of products exclusively from the industry member; or

(2) Requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

§ 8.23 Third party arrangements.

Industry member requirements, by agreement or otherwise, with non-retailers which result in a retailer being required to purchase the industry member's products are within the exclusive outlet provisions. These industry member requirements are covered whether the agreement or other arrangement originates with the industry member or the third party. For example, a supplier enters into a contractual agreement or other arrangement with a third party. This agreement or arrangement contains an industry member requirement as described above. The third party, a ballclub, or municipal or private corporation, not acting as a retailer, leases the concession rights and is able to control the purchasing decisions of the retailer. The third party, as a result of the requirement, by agreement or otherwise, with the industry member, requires the retailer to purchase the industry member's products to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce. The business arrangements entered into by the industry member and the third party

may consist of such things as sponsoring radio or television broadcasting, paying for advertising, or providing other services or things of value.

[T.D. ATF–364, 60 FR 20425, Apr. 26, 1995]

Subpart D—Exclusion

SOURCE: T.D. ATF–364, 60 FR 20425, Apr. 26, 1995, unless otherwise noted.

§ 8.51 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer, and

(2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 8.52 lists practices that result in exclusion. Section 8.53 lists practices not resulting in exclusion. Section 8.54 lists the criteria used for determining whether other practices can put retailer independence at risk.

§ 8.52 Practices which result in exclusion.

The practices specified in this section result in exclusion under section 105(a) of the Act. The practices specified here are examples and do not constitute a complete list of such practices:

(a) Purchases of distilled spirits, wine or malt beverages by a retailer as a result, directly or indirectly, of a threat or act of physical or economic harm by the selling industry member.

(b) Contracts between an industry member and a retailer which require the retailer to purchase distilled spirits, wine, or malt beverages from that industry member and expressly restrict the retailer from purchasing, in whole or in part, such products from another industry member.

§ 8.53 Practice not resulting in exclusion.

The practice specified in this section is deemed not to result in exclusion under section 105(a) of the Act: a supply contract for one year or less between the industry member and retailer under which the industry member agrees to sell distilled spirits, wine, or malt beverages to the retailer on an ''as needed'' basis provided that the retailer is not required to purchase any minimum quantity of such product.

§ 8.54 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in §§ 8.52 and 8.53, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 9—AMERICAN VITICULTURAL AREAS

Subpart A—General Provisions

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9.59 Arroyo Seco.
9.60 Shenandoah Valley.
9.61 El Dorado.
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9.63 Linganore.
9.64 Dry Creek Valley.
9.65 North Fork of Roanoke.
9.66 Russian River Valley.
9.67 Catoctin.
9.68 Merritt Island.
9.69 Yakima Valley.
9.70 Northern Sonoma.
9.71 Hermann.
9.72 Southeastern New England.
9.73 Martha's Vineyard.
9.74 Columbia Valley.
9.75 Central Coast.
9.76 Knights Valley.
9.77 Altus.
9.78 Ohio River Valley.
9.79 Lake Michigan Shore.
9.80 York Mountain.
9.81 Fiddletown.
9.82 Potter Valley.
9.83 Lake Erie.
9.84 Paso Robles.
9.85 Willow Creek.
9.86 Anderson Valley.
9.87 Grand River Valley.
9.88 Pacheco Pass.
9.89 Umpqua Valley.
9.90 Willamette Valley.
9.91 Walla Walla Valley.
9.92 Madera.
9.93 Mendocino.
9.94 Howell Mountain.
9.95 Clarksburg.
9.96 Mississippi Delta.
9.97 Sonoita.
9.98 Monterey.
9.99 Clear Lake.
9.100 Mesilla Valley.
9.101 The Hamptons, Long Island.
9.102 Sonoma Mountain.
9.103 Mimbres Valley.
9.104 South Coast.
9.105 Cumberland Valley.
9.106 North Yuba.
9.107 Lodi.
9.108 Ozark Mountain.
9.109 Northern Neck George Washington Birthplace.
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9.111 Kanawha River Valley.
9.112 Arkansas Mountain.
9.113 North Fork of Long Island.
9.114 Old Mission Peninsula.
9.115 Ozark Highlands.
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9.117 Stags Leap District.
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9.144 Texas High Plains.
9.145 Dunnigan Hills.
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9.147 Hames Valley.
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9.149 St. Helena.
9.150 Cucamonga Valley.
9.151 Puget Sound.
9.152 Malibu-Newton Canyon.
9.153 Redwood Valley.
9.154 Chiles Valley.
9.155 Texas Davis Mountains.
9.156 Diablo Grande.
9.157 San Francisco Bay.
9.158 Mendocino Ridge.
9.159 Yorkville Highlands.
9.160 Yountville.
9.162 Santa Rita Hills.
9.164 River Junction.
9.165 Applegate Valley.
9.166 Diamond Mountain District.
9.167 Red Mountain.
9.168 Fair Play.
9.170 Long Island.
9.172 West Elks.
9.173 Rockpile.

AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. ATF–60, 44 FR 56692, Oct. 2, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 9.1 Scope.

The regulations in this part relate to American viticultural areas.

§ 9.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 9.3 Relation to parts 4 and 70 of this chapter.

(a) *Procedure*. In accordance with §§ 4.25a(e)(2) and 70.701(c) of this chapter, the Director shall receive petitions to establish American viticultural areas and shall use the informal rulemaking process, under 5 U.S.C. 553, in establishing viticultural areas in this part.

(b) *Information to establish an American viticultural area*. A petition, made in writing, shall contain the following information:

(1) Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application;

(2) Historical or current evidence that the boundaries of the viticultural area are as specified in the application;

(3) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(4) The specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(5) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80225. If the map name is not known, request a map index by State.)

[T.D. ATF–60, 44 FR 56692, Oct. 2, 1979, as amended by T.D. ATF–92, 46 FR 46913, Sept. 23, 1981; T.D. ATF –355, 59 FR 14553, Mar. 29, 1994; T.D. ATF–432, 65 FR 69253, Nov. 16, 2000]

Subpart B—Definitions

§ 9.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this section.

American. Of or relating to the several States, the District of Columbia, and Puerto Rico; ''State'' includes the District of Columbia and Puerto Rico.

Approved map. The map used to define the boundaries of an approved viticultural area.

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

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

U.S.G.S. The United States Geological Survey.

Viticultural area. A delimited, grape-growing region distinguishable by geographical features, the boundaries of

which have been delineated in subpart C of this part.

Subpart C—Approved American Viticultural Areas

§9.21 General.

The viticultural areas listed in this subpart are approved for use as appellations of origin in accordance with part 4 of this chapter.

§9.22 Augusta.

(a) *Name.* The name of the viticultural area described in this section is ''Augusta.''

(b) *Approved maps.* The approved maps for the Augusta viticultural area are two U.S.G.S. maps. They are titled:

(1) ''Washington East, Missouri'', 7.5 minute quadrangle; and

(2) ''Labadie, Missouri'', 7.5 minute quadrangle.

(c) *Boundaries.* The boundaries of the Augusta viticultural area are located in the State of Missouri and are as follows:

(1) The beginning point of the boundary is the intersection of the St. Charles County line, the Warren County line and the Franklin County line.

(2) The western boundary is the St. Charles County-Warren County line from the beginning point to the township line identified on the approved maps as ''T45N/T44N.''

(3) The northern boundary is the township line ''T45N/T44N'' from the St. Charles County-Warren County line to the range line identified on the approved maps as ''R1E/R2E.''

(4) The eastern boundary is the range line ''R1E/R2E'' from township line ''T45N/T44N'' extended to the St. Charles County-Franklin County line.

(5) The southern boundary is the St. Charles County-Franklin County line from the extension of range line ''R1E/R2E'' to the beginning point.

[T.D. ATF–72, 45 FR 41633, June 20, 1980]

§9.23 Napa Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Napa Valley.''

(b) *Approved maps.* The maps showing the boundaries of the Napa Valley viticultural area are the:

(1) ''Mt. St. Helena'' U.S.G.S. 7.5 minute quadrangle;

(2) ''Detert Reservoir'' U.S.G.S. 7.5 minute quadrangle;

(3) ''St. Helena'' U.S.G.S. 15 minute quadrangle;

(4) ''Jericho Valley'' U.S.G.S. 7.5 minute quadrangle;

(5) ''Lake Berryessa'' U.S.G.S. 15 minute quadrangle;

(6) ''Mt. Vaca'' U.S.G.S. 15 minute quadrangle;

(7) ''Cordelia'' U.S.G.S. 7.5 minute quadrangle;

(8) ''Cuttings Wharf'' U.S.G.S. 7.5 minute quadrangle; and

(9) Appropriate Napa County tax assessor's maps showing the Napa County-Sonoma County line.

(c) *Boundaries.* The Napa Valley viticultural area is located within Napa County, California. From the beginning point at the conjuction of the Napa County-Sonoma County line and the Napa County-Lake County line, the boundary runs along—

(1) The Napa County-Lake County line;

(2) Putah Creek and the western and southern shores of Lake Berryessa;

(3) The Napa County-Solano County line; and

(4) The Napa County-Sonoma County line to the beginning point.

[T.D. ATF–79, 46 FR 9063, Jan. 28, 1981, as amended by T.D. ATF–201, 50 FR 12533, Mar. 29, 1985]

§9.24 Chalone.

(a) *Name* The name of the viticultural area described in this section is ''Chalone.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Chalone viticultural area are four U.S.G.S. 7.5 minute quadrangle maps. They are titled:

(1) ''Mount Johnson, California, 1968'';

(2) ''Bickmore Canyon, California, 1968'';

(3) ''Soledad, California, 1955''; and

(4) ''North Chalone Peak, California, 1969.''

(c) *Boundaries.* The Chalone viticultural area includes 8640 acres, primarily located in Monterey County, California, with small portions in the north and east located in San Benito

County, California. The boundaries of the Chalone viticultural area encompass:

(1) Sections 35 and 36, in their entirety, of T.16 S., R.6.E.;

(2) Sections 1, 2 and 12, in their entirety, of T.17 S., R.6 E.;

(3) Sections 6, 7, 8, 9, 16, and 17, in their entirety, the western half of Section 5, and the eastern half of Section 18 of T.17 S., R.7 E.; and

(4) Section 31, in its entirety, and the western half of Section 32 of T.16 S., R.7 E.

[T.D. ATF–107, 47 FR 25519, June 14, 1982]

§ 9.25 San Pasqual Valley.

(a) *Name*. The name of the viticultural area described in this section is ''San Pasqual Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundaries are three U.S.G.S. maps. They are entitled:

(1) ''Escondido Quadrangle, California—San Diego County'', 7.5 minute series;

(2) ''San Pasqual Quadrangle, California—San Diego County'', 7.5 minute series;

(3) ''Valley Center Quadrangle, California—San Diego County'', 7.5 minute series.

(c) *Boundaries*. The San Pasqual Valley viticultural area is located in San Diego County, California.

(1) From the beginning point at the intersection of Interstate 15 and the 500-foot contour line, north of the intersection of point of Interstate 15 and T.12 S./T.13 S., the boundary line follows the 500-foot contour line to;

(2) The point nearest San Pasqual Road and the 500-foot contour line, the boundary line follows the Escondido Corporate Boundary line to the 500–foot contour line on the hillock and circumnavigates said hillock back to the Escondido Corporate Boundary line and returns to the 500-foot contour line nearest to San Pasqual Road and;

(3) Continues along the 500-foot contour line completely around San Pasqual Valley to a point where the 500-foot contour line intersects with Pomerado Road, at this point, the boundary line, in a straight, northwesterly direction crosses over to;

(4) The 500-foot contour line of Battle Mountain, following the 500-foot contour line around Battle Mountain to point nearest to Interstate 15, at which point the boundary line crosses over to Interstate 15; and

(5) Continues northward along Interstate 15 to the point of beginning.

[T.D. ATF–92, 46 FR 41493, Sept. 23, 1981]

§ 9.26 Guenoc Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Guenoc Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Guenoc Valley viticultural area are four USGS maps. They are titled:

(1) ''Middletown Quadrangle, California-Lake Co.,'' 7.5 minute series;

(2) ''Jericho Valley Quadrangle, California,'' 7.5 minute series;

(3) ''Detert Reservoir Quadrangle, California,'' 7.5 minute series; and

(4) ''Aetna Springs Quadrangle, California,'' 7.5 minute series.

(c) *Boundaries*. The Guenoc Valley viticultural area is located within Lake County, California. The beginning point of the boundary is Station 20 of Denton's Survey of Guenoc Rancho, presently marked by a 1½ inch galvanized pipe located atop Jim Davis Peak. On the approved maps, Jim Davis Peak is the unnamed peak (elevation 1,455 feet) located on the western boundary of Section 35, Township 11 North, Range 6 West. From this beginning point the boundary runs:

(1) South 07°49′34″ East, 9,822.57 feet to the USGS triangulation station ''Guenoc;''

(2) Then, South 29°14′31″ West, 10,325.08 feet;

(3) Then, South 00°00′ West, 2,100.00 feet;

(4) Then, North 90°00′ West, 4,150.00 feet;

(5) Then, North 24°23′11″ West, 16,469.36 feet;

(6) Then, North 75°47′20″ East, 7,943.08 feet; and

(7) Then, North 60°47′00″ East, 7,970.24 feet to the beginning point.

[T.D. ATF–95, 46 FR 56786, Nov. 19, 1981]

§9.27 Lime Kiln Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Lime Kiln Valley.''

(b) *Approved Map*. The appropriate map for determining the boundaries of the Lime Kiln Valley Viticultural area is: ''Paicines Quadrangle, California,'' 1968, 7.5 minute series.

(c) *Boundaries*. The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1,288 feet) in the northwest quarter of Section 28, T.14 S./R.6 E.;

(1) Thence in a straight line from the summit of the unnamed peak (1,288 feet) to a point where it intersects the 1,400-foot contour line, by the elevation marker, in the southwest quarter of T.14 S./R.6 E, Section 28;

(2) Thence following the 1,400-foot contour line through the following sections; Sections 28, 29, and 30, T.14 S./R.6 E.; Section 25, T.14 S./R.5 E.; Sections 30, 19, 20, and returning to 19, T.14 S./R.6 E., to a point where the 1,400-foot contour line intersects with the section line between Sections 19 and 18, T.14 S./R.6 E.;

(3) Thence in a straight line to the Cienega School Building along Cienega Road;

(4) Thence along Cienega Road to the point of beginning.

[T.D. ATF–106, 47 FR 24296, June 4, 1982, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§9.28 Santa Maria Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Santa Maria Valley.''

(b) *Approved maps*. The approved maps for the Santa Maria Valley are two U.S.G.S. maps entitled:

(1) ''Santa Maria'', N.I. 10–6, 9, series V 502, scale 1: 250,000; and

(2) ''San Luis Obispo'', N.I. 10–3, series V 502, scale 1: 250,000.

(c) *Boundaries*. The boundaries of the Santa Maria Valley viticultural area are located in portions of Santa Barbara and San Luis Obispo Counties, California, and are as follows:

(1) Beginning at a point east of Orcutt where Highway U.S. 101 and the unnamed road (known locally as Clark Road) intersects; Thence northerly along U.S. 101 to a point where it intersects with Highway 166;

(2) Thence along Highway 166 in a general easterly direction to a point where Highway 166 intersects with the section line at the southwest section of Chimney Canyon;

(3) Thence in a straight, southerly, line to the summit of Los Coches Mountain (3016 feet);

(4) Thence in a straight, southeasterly, line to the summit of Bone Mountain (2822 feet);

(5) Thence in a straight, south-southwesterly, line to the intersection of two unnamed roads (known locally as Alisos Canyon Road and Foxen Canyon Road) in Foxen Canyon at the elevation marker of 1116 feet;

(6) Thence along the unnamed road (known locally as Foxen Canyon Road) in a northwesterly direction to the community of Sisquoc; and

(7) Thence in a westerly direction along the unnamed road (known locally as Clark Road) to the point of beginning.

[T.D. ATF–89, 46 FR 39812, Aug. 5, 1981, as amended by T.D. ATF–216, 50 FR 43130, Oct. 24, 1985]

§9.29 Sonoma Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Sonoma Valley.''

(b) *Approved maps*. The maps showing the boundaries of the Sonoma valley viticultural area are entitled:

(1) ''Cuttings Wharf, Calif.'', 1949 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(2) ''Petaluma Point, Calif.'', 1959 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(3) ''Sears Point, Calif.'', 1951 (photorevised 1968), 7.5 minute quadrangle;

(4) ''Petaluma River, Calif.'', 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(5) ''Glen Ellen, Calif.'', 1954 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(6) ''Cotati, Calif.'', 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(7) ''Santa Rosa, Calif.'', 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(8) ''Kenwood, Calif.'', 1954 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle; and

(9) Appropriate Sonoma County tax assessor's maps showing the Sonoma County-Napa County line.

(c) *Boundaries*. The Sonoma Valley viticultural area is located within Sonoma County, California. From the beginning point at the junction of Tolay Creek and San Pablo Bay, the boundary runs:

(1) Northerly along Tolay Creek to Highway 37;

(2) Westerly along Highway 37 to its junction with Highway 121;

(3) Northwesterly in a straight line to the peak of Wildcat Mountain;

(4) Northwesterly in a straight line to Sonoma Mountain to the horizontal control station at elevation 2,271 feet;

(5) Northwesterly in a straight line to the peak of Taylor Mountain;

(6) Northeasterly in a straight line to the point at which Los Alamos Road joins Highway 12;

(7) Easterly in a straight line to the peak of Buzzard Peak;

(8) Easterly in a straight line to the peak of Mount Hood;

(9) Easterly in a straight line to an unnamed peak located on the Sonoma County-Napa County line and identified as having an elevation of 2,530 feet (This unnamed peak is located in the northeast quarter of Section 9, Township 7 North, Range 6 West, Mt. Diablo Base and Meridian);

(10) Southerly along the Sonoma County-Napa County line to the point at which Sonoma Creek enters San Pablo Bay; and

(11) Southwesterly along the shore of San Pablo Bay to the beginning point.

[T.D. ATF–96, 46 FR 59238, Dec. 4, 1981, as amended by T.D. ATF–201, 50 FR 12533, Mar. 29, 1985; T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§ 9.30 North Coast.

(a) *Name*. The name of the viticultural area described in this section is ''North Coast.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the North Coast viticultural area are three U.S.G.S. maps. They are entitled:

(1) ''San Francisco, Cal.'', scaled 1:250,000, edition of 1956, revised 1980;

(2) ''Santa Rosa, Cal.'', scaled 1:250,000, edition of 1958, revised 1970; and

(3) ''Ukiah, Cal.'', scaled 1:250,000, edition of 1957, revised 1971.

(c) *Boundaries*. The North Coast viticultural area is located in Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties, California. The beginning point is found on the ''Santa Rosa, California'' U.S.G.S. map at the point where the Sonoma and Marin County boundary joins the Pacific Ocean.

(1) Then east and southeast following the boundary between Marin and Sonoma Counties to the point where Estero Americano/Americano Creek crosses State Highway 1 east of Valley Ford;

(2) Then southeast in a straight line for approximately 22.0 miles to the peak of Barnabe Mountain (elevation 1466 feet);

(3) Then southeast in a straight line for approximately 10.0 miles to the peak of Mount Tamalpais (western peak, elevation 2604 feet);

(4) Then northeast in a straight line for approximately 5.8 miles to the confluence of San Rafael Creek and San Rafael Bay in San Rafael;

(5) Then north and northeast following San Rafael Bay and San Pablo Bay to Sonoma Creek;

(6) Then north following Sonoma Creek to the boundary between Napa and Solano Counties;

(7) Then east and north following the boundary between Napa and Solano Counties to the right-of-way of the Southern Pacific Railroad in Jameson Canyon;

(8) Then east following the right-of-way of the Southern Pacific Railroad to the junction with the Southern Pacific in Suisun City;

(9) Then north in a straight line for approximately 5.5 miles to the extreme southeastern corner of Napa County;

(10) Then north following the boundary between Napa and Solano Counties to the Monticello Dam at the eastern end of Lake Berryessa;

(11) Then following the south and west shore of Lake Berryessa to Putah Creek;

(12) Then northwest following Putah Creek to the boundary between Napa and Lake Counties;

(13) Then northwest in a straight line for approximately 11.4 miles to the peak of Brushy Sky High Mountain (elevation 3196 feet);

(14) Then northwest in a straight line for approximately 5.0 miles to Bally Peak (elevation 2288 feet);

(15) Then northwest in a straight line for approximately 6.6 miles to the peak of Round Mountain;

(16) Then northwest in a straight line for approximately 5.5 miles to Evans Peak;

(17) Then northwest in a straight line for approximately 5.0 miles to Pinnacle Rock Lookout;

(18) Then northwest in a straight line for approximately 8.0 miles to Youngs Peak (elevation 3683 feet);

(19) Then northwest in a straight line for approximately 11.2 miles to the peak of Pine Mountain (elevation 4057 feet);

(20) Then northwest in a straight line for approximately 12.1 miles to the peak of Sanhedrin Mountain (elevation 6175 feet);

(21) Then northwest in a straight line for approximately 9.4 miles to the peak of Brushy Mountain (elevation 4864 feet);

(22) Then southwest in a straight line for approximately 17.6 miles to the confluence of Redwood Creek and the Noyo River;

(23) Then west following the Noyo River to its mouth at the Pacific Ocean;

(24) Then southeast following the Pacific Ocean shoreline to the point of beginning.

[T.D. ATF–145, 48 FR 42977, Sept. 21, 1983]

§9.31 Santa Cruz Mountains.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Cruz Mountains.''

(b) *Approved maps.* The 24 approved U.S.G.S. maps for determining the boundaries are 23 7.5 minute scale and one 5×11 minute scale.

(1) ''Ano Nuevo Quadrangle, California'';

(2) ''Big Basin Quadrangle, California'';

(3) ''Castle Rock Ridge Quadrangle, California'';

(4) ''Cupertino Quadrangle, California'';

(5) ''Davenport Quadrangle, California—Santa Cruz County'';

(6) ''Felton Quadrangle, California—Santa Cruz County'';

(7) ''Franklin Point Quadrangle, California'';

(8) ''Half Moon Bay Quadrangle, California—San Mateo County'';

(9) ''La Honda Quadrangle, California— San Mateo County'';

(10) ''Laurel Quadrangle, California'';

(11) ''Loma Prieta Quadrangle, California'';

(12) ''Los Gatos Quadrangle, California'';

(13) ''Mt. Madonna Quadrangle, California'';

(14) ''Mindego Hill Quadrangle, California'';

(15) ''Morgan Hill Quadrangle, California—Santa Clara County'';

(16) ''Palo Alto Quadrangle, California'';

(17) ''San Gregorio Quadrangle, California—San Mateo County'';

(18) ''San Mateo Quadrangle, California—San Mateo County'';

(19) ''Santa Teresa Hills Quadrangle—Santa Clara County'';

(20) ''Soquel Quadrangle, California—Santa Cruz County'';

(21) ''Watsonville East Quadrangle, California'';

(22) ''Watsonville West Quadrangle, California'';

(23) ''Woodside Quadrangle, California—San Mateo County''; and

(24) One 5×11 minute series map entitled: ''Santa Cruz, California.''

(c) *Boundaries.* The Santa Cruz Mountains viticultural area is located in portions of San Mateo, Santa Clara, and Santa Cruz Counties, California.

(1) From the beginning point where Highway 92 and the 400-foot contour line intersect (Half Moon Bay Quadrangle), the boundary line follows Highway 92, beginning in a southeasterly direction, to a point where Highway 92 and the 400-foot contour line intersect (San Mateo Quadrangle);

(2) Thence along the 400-foot contour line, beginning in a southeasterly direction, to a point where the 400-foot contour line and Canada Road intersect (Woodside Quadrangle);

(3) Thence along Canada Road, beginning in a southerly direction, to a point where Canada Road and Highway 280 intersect (Woodside Quadrangle);

(4) Thence along Highway 280, beginning in a southeasterly direction, to a point where Highway 280 and 84 intersect (Palo Alto Quadrangle);

(5) Thence along Highway 84, beginning in a southwesterly direction, to a point where Highway 84 and Mountain Home Road intersect (Woodside Quadrangle);

(6) Thence along Mountain Home Road, beginning in a southerly direction, to a point where Mountain Home Road and Portola Road intersect (Palo Alto Quadrangle);

(7) Thence along Portola Road, beginning in a westerly direction, to a point where Portola Road and Highway 84 intersect (Woodside Quadrangle);

(8) Thence along Highway 84, beginning in a southwesterly direction, to a point where Highway 84 and the 600-foot contour line intersect (Woodside Quadrangle);

(9) Thence along the 600-foot contour line, beginning in a northeasterly direction, to a point where the 600-foot contour line and Regnart Road intersect (Cupertino Quadrangle);

(10) Thence along Regnart Road, beginning in a northeasterly direction, to a point where Regnart Road and the 400-foot contour line intersect (Cupertino Quadrangle);

(11) Thence along the 400-foot contour line, beginning in a southerly direction, to a point where the 400-foot contour line and the north section line of Section 35, T. 6 S./R. 2 W, intersect (Cupertino Quadrangle);

(12) Thence along the north section line of Sections 35 and 36, in an easterly direction, to a point where the section line and Highway 85 intersect (Cupertino Quadrangle);

(13) Thence along Highway 85, in a southerly direction, to a point where Highway 85 and the southern section line of Section 36 intersect (Cupertino Quadrangle);

(14) Thence along the section line, in a westerly direction, to a point where the section line and the 600-foot contour line intersect (Cupertino Quadrangle);

(15) Thence along the 600-foot contour line, beginning in a southerly direction, to a point where the 600-foot contour line and Pierce Road intersect (Cupertino Quadrangle);

(16) Thence along Pierce Road, in a southerly direction, to a point where Pierce Road and the 800-foot contour line intersect (Cupertino Quadrangle);

(17) Thence along the 800-foot line, beginning in a northwesterly direction, to a point where the 800-foot contour line and the east section line of Section 25, T. 10 S./R. 2 E., intersect (Mt. Madonna Quadrangle);

(18) Thence along the east section line, in a southerly direction, to a point where this section line and the 800-foot contour line intersect (Mt. Madonna Quadrangle);

(19) Thence along the 800-foot contour line, beginning in a southeasterly direction, to a point where the 800-foot contour line and Highway 152 intersect (Watsonville East Quadrangle);

(20) Thence along Highway 152, in a southwesterly direction, to a point where Highway 152 and the 400-foot contour line intersect (Watsonville East Quadrangle);

(21) Thence along the 400-foot contour line, beginning in a northwesterly direction, to a point where the 400-foot contour line and the Felton Empire Road intersect (Felton Quadrangle);

(22) Thence along Felton Empire Road, in an easterly direction, to a point where Felton Empire Road and Highway 9 intersect (Felton Quadrangle);

(23) Thence along Highway 9, in a southerly direction, to a point where Highway 9 and Bull Creek intersect (Felton Quadrangle);

(24) Thence along Bull Creek, beginning in a southwesterly direction, to a point where Bull Creek and the 400-foot contour line intersect (Felton Quadrangle); and

(25) Thence along the 400-foot contour line, beginning in a southeasterly direction, back to the point of beginning.

[T.D. ATF–98, 46 FR 59240, Dec. 4, 1981]

§9.32 Los Carneros.

(a) *Name.* The name of the viticultural area described in this section is ''Los Carneros.''

(b) *Approved maps.* The approved maps for the Carneros viticultural area are the following U.S.G.S. maps:

(1) ''Sonoma Quadrangle, California,'' 7.5 minute series (topographic), 1951 (photorevised 1968).

(2) ''Napa Quadrangle, California—Napa Co.,'' 7.5 minute series (topographic), 1951 (photorevised 1968 and 1973).

(3) ''Cuttings Wharf Quadrangle, California,'' 7.5 minute series (topographic), 1949 (photorevised 1968; photoinspected 1973).

(4) ''Sears Point Quadrangle, California,'' 7.5 minute series (topographic), 1951 (photorevised 1968).

(5) ''Petaluma River Quadrangle,California—Sonoma Co.,'' 7.5 minute series (topographic), 1954 (photorevised 1980).

(6) ''Glen Ellen Quadrangle, California—Sonoma Co.,'' 7.5 minute series (topographic), 1954 (photorevised 1980).

(c) *Boundaries.* The boundaries of the Carneros viticultural area are located in Napa and Sonoma Counties, California, and are as follows:

(1) The point of beginning is the intersection of highway 12/121 and the Napa County-Sonoma County line, near the extreme southeast corner of the Sonoma Quadrangle map.

(2) From there, following the Napa County-Sonoma County line generally northwestward for about 1.6 miles to the summit of an unnamed hill with a marked elevation of 685 ft.

(3) From there in a straight line northeastward to the summit of Milliken Peak (743 ft.), located on the Napa Quadrangle map.

(4) From there due eastward to the 400 ft. contour line.

(5) Then following that contour line generally northwestward to Carneros Creek (on the Sonoma Quadrangle map).

(6) Then following the same contour line generally southeastward to the range line R. 5 W/R. 4 W (on the Napa Quadrangle map).

(7) Then continuing to follow the same contour line generally northward for about one mile, till reaching a point due west of the summit of an unnamed hill having a marked elevation of 446 ft. (That hill is about .8 mile southwest of Browns Valley School.)

(8) From that point due eastward to the summit of that hill.

(9) From there in a straight line northeastward across Buhman Avenue to the summit of an unnamed hill having a marked elevation of 343 ft.

(10) From there due eastward to the Napa-Entre Napa land grant boundary.

(11) Then northeastward along that land grant boundary to Browns Valley Road.

(12) Then eastward along Browns Valley Road to Highway 29.

(13) Then southward along Highway 29 to Imola Avenue.

(14) Then eastward along Imola Avenue to the Napa River.

(15) Then generally southward along the west bank of the Napa River to the Southern Pacific Railroad tracks

(16) Then generally westward and northwestward along the Southern Pacific Railroad tracks to their intersection with the township line T. 5 N./T. 4 N. (on the Sears Point Quadrangle map).

(17) From there due westward to the Northwestern Pacific Railroad tracks.

(18) Then generally southward along the Northwestern Pacific Railroad tracks to Highway 37.

(19) The westward along Highway 37 to its intersection with Highway 121.

(20) From there northwestward in a straight line to the summit of Wildcat Mountain (682 ft.).

(21) From there northwestward, following a straight line toward the summit of Sonoma Mountain (2295 ft.—on the Glenn Ellen Quadrangle map) till reaching a point due west of the intersection of Lewis Creek with the 400-ft. contour line. (That point is about 4⅓ miles southeast of Sonoma Mountain.)

(22) From that point due eastward to Lewis Creek.

(23) Then generally southeastward along Lewis Creek to Felder Creek.

(24) Then generally eastward along Felder Creek to Leveroni Road (on the Sonoma Quadrangle map).

(25) Then generally eastward along Leveroni Road to Napa Road.

(26) Then eastward and southeastward along Napa Road to Highway 12/121.

(27) Then eastward along Highway 12/121 to the starting point.

[T.D. ATF–142, 48 FR 37368, Aug. 18, 1983, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§ 9.33 Fennville.

(a) *Name.* The name of the viticultural area described in this section is ''Fennville.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fennville Viticultural Area are three U.S.G.S. maps. They are entitled:

(1) ''Fennville Quadrangle, Michigan-Allegan County,'' 15 minute series;

(2) ''Bangor Quadrangle, Michigan,'' 15 minute series; and

(3) ''South Haven Quadrangle, Michigan,'' 15 minute series.

(c) *Boundaries.* The Fennville viticultural area is primarily located in the southwestern portion of Allegan County, Michigan, with a small finger extending into the northwest corner of Van Buren County, Michigan.

(1) The western boundary is the eastern shore of Lake Michigan, extending from the Black River, at the City of South Haven, north to the Kalamazoo River.

(2) The northern boundary is the Kalamazoo River, extending easterly from Lake Michigan to 86°5′ west longitude.

(3) The eastern boundary is the 86°5′ west longitude meridian, extending from the Kalamazoo River to the intersection of the Middle Fork of the Black River.

(4) The southern boundary is the Middle Fork of the Black River extending westerly from 86°5′ west longitude until it joins the Black River, continuing west along the Black River to the eastern shore of Lake Michigan.

[T.D. ATF–91, 46 FR 46320, Sept. 18, 1981]

§ 9.34 Finger Lakes.

(a) *Name.* The name of the viticultural area described in this section is ''Finger Lakes.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Finger Lakes viticultural area are two U.S.G.S. maps scaled 1:250,000. They are entitled:

(1) ''Rochester,'' Location diagram NK 18–1, 1961; and

(2) ''Elmira,'' Location diagram NK 18–4, 1968.

(c) *Boundaries.* The boundaries of the Finger Lakes viticultural area, based on landmarks and points of reference found on the approved maps, are as follows:

(1) Starting at the most northwest point, the intersection of the Erie Canal and the north/south Conrail line south of the City of Rochester.

(2) Then east along the course of the Erie Canal approximately 56 miles (45 miles due east) to the intersection of New York State Highway 89 (NY–89).

(3) Then south on NY–89 four miles to the intersection of highway US–20.

(4) Then east on US–20 for 36 miles to the intersection of interstate 81 (I–81).

(5) Then south along I–81 for ten miles to NY–281.

(6) Then south along NY–281 for 20 miles around the western city limits of Cortland where NY–281 becomes NY–13.

(7) Then continuing southwest on NY–13 (through the cities of Dryden and Ithaca) approximately 36 miles to the intersection of NY–224.

(8) Then due west one mile to the southern boundary of Schuyler County.

(9) Then continuing west along this county line 20 miles to the community of Meads Creek.

(10) Then north along the Schuyler-Steuben county line four miles to the major east-west power line.

(11) Then west along the power line for eight miles to the intersection of NY–17 (four miles southeast of the community of Bath).

(12) Then northwest on NY–17 approximately nine miles to the intersection of I–390.

(13) Then northwest on I–390 for 21 miles to the intersection of NY–36.

(14) Then north for two miles through the community of Dansville to NY–63.

(15) Then northwest on NY–63 approximately 18 miles to the intersection of NY–39, just south of Genesco.

(16) Then north on NY–39 nine miles to the intersection where the west and north/south Conrail lines meet at the community of Avon.

(17) Then north along the north/south Conrail line for 15 miles to the beginning point at the intersection of the Erie Canal.

[T.D. ATF–113, 47 FR 38518, Sept. 1, 1982, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§ 9.35 Edna Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Edna Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Edna Valley viticultural area for four U.S.G.S. maps, They are titled:

(1) ''San Luis Obispo Quadrangle, California—San Luis Obispo Co.,'' 7.5 minute series;

(2) ''Lopez Mtn, Quadrangle, California—San Luis Obispo Co.,'' 7.5 minute series;

(3) ''Pismo Beach Quadrangle, California—San Luis Obispo Co.,'' 7.5 minute series; and

(4) ''Arroyo Grande NE Quadrangle, California—San Luis Obispo Co.'', 7.5 minute series.

(c) *Boundaries.* The Edna Valley viticultural area is located in San Luis Obispo County, California. The beginning point is Cuesta Canyon County Park, located on U.S.G.S. map ''San Luis Obispo Quadrangle'' at the north end of Section 25, Township 30 South, Range 12 East.

(1) From the beginning point, the boundary runs southwesterly along San Luis Obispo Creek to a point .7 mile southerly of the confluence with Davenport Creek;

(2) Thence due east to the intersection with the 400-foot contour line of the northeastern flank of the San Luis Range;

(3) Thence in a generally easterly and then a southeasterly direction along this 400-foot contour line of the northeastern flank of the San Luis Range, which forms the southwestern rim of Edna Valley, to the township line identified as ''T31S/T32S'' on the U.S.G.S. map;

(4) Thence east along township line ''T31S/T32S'', across Price Canyon to Tiber;

(5) Thence in a generally easterly direction along the 400-foot contour line of Tiber Canyon and the southern rim of Canada Verde, crossing Corbit Canyon Road and continuing along the 400-foot contour line to longitude line 120°32′30″;

(6) Thence north along longitude line 120°32′30″ to the 600-foot contour line of the southwestern flank of the Santa Lucia Mountain Range;

(7) Thence in a generally northwesterly direction along the 600-foot contour line of the southwestern flank of the Santa Lucia Range to Cuesta Canyon County Park, the beginning point.

[T.D. ATF–101, 47 FR 20299, May 12, 1982, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§ 9.36 McDowell Valley.

(a) *Name.* The name of the viticultural area described in this section is ''McDowell Valley.''

(b) *Approved maps.* The appropriate map for determining the boundaries of the McDowell Valley viticultural area is a USGS map. That map is titled: ''Hopland Quadrangle California'' 7.5 minute series.

(c) *Boundaries.* (1) Beginning at the northwest corner of Section 22 T13N R11W.

(2) Then southerly along the section line between Sections 22 and 21 approximately 1700 feet to the intersection of the section line and the ridge line (highest elevation line) between the McDowell Creek Valley and the Dooley Creek Valley.

(3) Then southeasterly along the ridge line (highest elevation line) to the intersection of the ridge line and the 1000-foot contour line in Section 27.

(4) Then southeasterly and on the McDowell Creek Valley side of the ridge along the 1000-foot contour line to the intersection of the 1000-foot contour line and the south section line of Section 27.

(5) Then easterly along the section line between Sections 27 and 34 and between Sections 26 and 35 to the intersection of the section line and the centerline of Younce Road.

(6) Then southeasterly and then northeasterly along Younce Road to the intersection of Younce Road and the section line between Sections 26 and 35.

(7) Then due north from the section line, across Coleman Creek approximately 1250 feet, to the 1000-foot contour line.

(8) Then westerly and then meandering generally to the north and east along the 1000-foot contour line to the intersection of the 1000-foot contour line and section line between Sections 26 and 25.

(9) Then continuing along the 1000-foot countour line easterly and then northwesterly in Section 25 to the intersection of the 1000-foot contour line and the section line between Sections 26 and 25.

(10) Then northerly along the 1000-foot contour line to the intersection of the 1000-foot contour line and the section line between Sections 23 and 24.

(11) Then northerly along the section line across State Highway 175 approximately 1000 feet to the intersection of the section line and the 1000-foot contour line.

(12) Then generally to the northwest along the 1000-foot contour line through Sections 23 and 14 and into Section 15 to the intersection of the 1000-foot contour line and the flowline of an unnamed creek near the northeast corner of Section 15.

(13) Then southwesterly and down stream along the flowline of said unnamed creek and across Section 15, to the stream's intersection with the section line between Sections 15 and 16.

(14) Then southerly along the section approximately 100 feet to the northwest corner of Section 22 and to the point of beginning.

[T.D. ATF–97, 46 FR 59243, Dec. 4, 1981, as amended by T.D. ATF–249, 52 FR 5956, Feb. 27, 1987]

§ 9.37 California Shenandoah Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Shenandoah Valley'' qualified by the word ''California'' in direct conjunction with the name ''Shenandoah Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the California Shenandoah Valley viticultural area are two 1962 U.S.G.S. maps. The maps are titled: ''Fiddletown Quadrangle California'' 7.5 minute series and ''Amador City Quadrangle California-Amador Co.'' 7.5 minute series.

(c) *Boundaries.* The Shenandoah Valley viticultural Area is located in portions of Amador and El Dorado Counties of California. The boundaries are as follows:

(1) Beginning at the point where the Consumnes River meets Big Indian Creek.

(2) Then south, following Big Indian Creek, until Big Indian Creek meets the boundary between Sections 1 and 2 of Township 7 North Range 10 East.

(3) Then following this boundary south until it meets the Oleta (Fiddletown) Road.

(4) Then following the Oleta Road east until it meets the boundary between Sections 6 and 5 of Township 7 North Range 11 East.

(5) Then following that boundary north into Township 8 North Range 11 East, and continues north on the boundary between Sections 31 and 32 until this boundary meets Big Indian Creek.

(6) Then following Big Indian Creek in a northeasterly direction until Big Indian Creek meets the boundary between Sections 28 and 27 of Township 8 North Range 11 East.

(7) Then following this boundary north until it reaches the southeast corner of Section 21 of Township 8 North Range 11 East.

(8) The boundary then proceeds east, then north, then west along the boundary of the western half of Section 22 of Township 8 North Range 11 East to the intersection of Sections 16, 15, 21, and 22.

(9) Then proceeding north along the boundary line between Sections 16 and 15 of Township 8 North Range 11 East and continues north along the boundary of Sections 9 and 10 of Township 8 North Range 11 East to the intersection of Sections 9, 10, 3, and 4 of Township 8 North Range 11 East.

(10) Then proceeding west along the boundary of Sections 9 and 4.

(11) Then continuing west along the boundary of Sections 5 and 8 of Township 8 North Range 11 East to the Consumnes River.

(12) Then the boundary proceeds west along the Consumnes River to the point of the beginning.

[T.D. ATF–121, 47 FR 57696, Dec. 28, 1982, as amended by T.D. ATF–249, 52 FR 5957, Feb. 27, 1987]

§ 9.38 Cienega Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Cienega Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Cienega Valley viticultural area are four U.S.G.S. maps. They are titled:

(1) ''Hollister Quadrangle, California,'' 7.5 minute series (1971);

(2) ''Tres Pinos Quadrangle, California,'' 7.5 minute series (1971);

(3) ''Mt. Harlan Quadrangle, California,'' 7.5 minute series (1968); and

(4) ''Paicines Quadrangle, California,'' 7.5 minute series (1968).

(c) *Boundaries.* The Cienega Valley viticultural area is located in San Benito County, California. The beginning point is the Gaging Station, located on U.S.G.S. map ''Paicines Quadrangle'' in the southeast portion of Section 21, Township 14 South, Range 6 East.

(1) From the beginning point, the boundary follows the Pescadero Creek Bed in a southeasterly direction about 100 feet to the unimproved road and continues southwesterly on the unimproved road .5 mile to where it intersects with the south border of Township 14 South, Range 6 East, Section 21;

(2) Thence in a straight line to the southwest portion of Section 28, Township 14 South, Range 6 East, where the 1400-foot contour line intersects the south border of Section 28;

(3) Thence following the 1400-foot contour line through the following sections; Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East, to a point where the 1400-foot contour line intersects with the section line between Sections 19 and 18, Township 14 South, Range 6 East;

(4) Thence in a straight line due north to the intersection with the 1200-foot contour line in Section 18, Township 14 South, Range 6 East;

(5) Thence following the 1200-foot contour line in a generally northwesterly direction to where it intersects with the north boundary of Township 14 South, Range 5 East, Section 10; then following this boundary line in a northwesterly direction to where this boundary intersects with the 1600-foot contour line; thence following the 1600-foot contour line in a generally northerly direction to where it intersects with the unimproved road;

(6) Thence looping southward along the unimproved road and continuing on in an easterly direction past the designated ''Spring'' and then in a northeasterly direction parallel with the Gulch to the Vineyard School on Cienega Road; thence in a southeasterly direction on Cienega Road .4 mile to where the unimproved road intersects; thence traveling north and following the unimproved road in a northwesterly direction about 5. mile; then looping in an easterly direction .75 mile to the intersection of the unimproved road and branching in a southeasterly direction;

(7) Thence crossing Township 13 South to Township 14 South and following the unimproved road to the intersection of the western border of Township 14 South, Range 6 East, Section 6; thence south to the northwest corner of Section 7;

(8) Thence continuing in a straight diagonal line to the southeast corner of Township 14 South, Range 6 East, Section 7; thence from the southeast corner of Section 7 .25 mile west to where it intersects with an unimproved road;

(9) Thence following this unimproved road in a southeasterly direction to the Gaging Station, the point of beginning.

[T.D. ATF–109, 47 FR 36126, Aug. 19, 1982]

§ 9.39 Paicines.

(a) *Name.* The name of the viticultural area described in this section is ''Paicines.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Paicines viticultural area are the three U.S.G.S. maps. They are titled:

(1) ''Tres Pinos Quadrangle, California,'' 7.5 minute series (1971);

(2) ''Paicines Quadrangle, California,'' 7.5 minute series (1968); and

(3) ''Cherry Peak Quadrangle, California,'' 7.5 minute series (1968).

(c) *Boundaries.* The Paicines viticultural area is located in San Benito County, California. The beginning point is the northwestern-most point of the proposed area at Township 14 South, Range 6 East, Section 3, northwest corner, located on U.S.G.S. map ''Tres Pinos Quadrangle.''

(1) From the beginning point the boundary runs east along the north border of Sections 3, 2, and 1, Township 14 South, Range 6 East;

(2) Thence south along the east border of Section 1, Township 14 South, Range 6 East; thence east along the north border of Section 7, Township 14 South, Range 7 East; thence south along the east border of Section 7, Township 14 South, Range 7 East;

(3) Thence continuing south along the east border of Section 18, Township 14 South, Range 7 East; thence east along the north border of Section 20, Township 14 South, Range 7 East; thence south along the east border of Sections 20, 29 and 32, Township 14 South, Range 7 East;

(4) Thence continuing south along the east border of Section 5, Township 15 South, Range 7 East; thence south along the east border of Sections 8 and 17, Township 15 South, Range 7 East to latitude line 36°37′30″;

(5) Thence west along latitude line 36°37′30″ to the west border of Section 18, Township 15 South, Range 7 East;

(6) Thence north along the west border of Sections 18 and 7, Township 15 South, Range 7 East; thence west along the south border of Section 1, Township 15 South, Range 6 East; thence north along the west border of Section 1, Township 15 South, Range 6 East to the 800-foot elevation contour line and then in a generally northwest direction along this 800-foot contour line to where it intersects with the south border of Section 35, Township 14 South, Range 6 East;

(7) Thence west along the south border of Section 35, Township 14 South, Range 6 East; thence north along the east border of Section 34, Township 14 South, Range 6 East; thence in a northwest direction along the northeast border of Section 34, Township 14 South, Range 6 East; thence continuing in a northwest direction along the east border of Section 27, Township 14 South, Range 6 East;

(8) Thence continuing in a northwest direction to the northeast border of Section 22, Township 14 South, Range 6 East to where an unnamed, unimproved dirt road intersects the northeast border; thence east and then northwest along the unimproved dirt road to the intersection with the San Benito River; thence following the San Benito River and meandering north to the intersection with the east border of Section 4, Township 14 South, Range 6 East;

(9) Thence continuing north along the east border of Section 4, Township 14 South, Range 6 East to the point of beginning.

[T.D. ATF–108, 47 FR 35481, Aug. 16, 1982]

§ 9.40 Leelanau Peninsula.

(a) *Name.* The name of the viticultural area described in this section is ''Leelanau Peninsula.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Leelanau Peninsula viticultural area are four U.S.G.S. maps. They are entitled:

(1) ''Empire Quadrangle, Michigan,'' 15 minute series;

(2) ''Maple City Quadrangle, Michigan,'' 15 minute series;

(3) ''Traverse City Quadrangle, Michigan,'' 15 minute series; and

(4) ''Northport Quadrangle, Michigan,'' 15 minute series.

(c) *Boundaries.* The Leelanau Peninsula viticultural area encompasses all of Leelanau County, Michigan, excluding the offshore islands.

[T.D. ATF–99, 47 FR 13329, Mar. 30, 1982]

§ 9.41 Lancaster Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Lancaster Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lancaster Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) ''Lancaster County, Pennsylvania'', scaled 1:50,000, edition of 1977; and

(2) ''Honey Brook Quadrangle'', 7.5 minute series, edition of 1955, photorevised 1969 and 1974.

(c) *Boundaries.* The Lancaster Valley viticultural area is located in Lancaster County and Chester County, Pennsylvania. The beginning point is where Pennsylvania Highway 23 crosses the Lancaster and Berks County boundary.

(1) Then in a southeasterly direction following the Lancaster County boundary for approximately 0.9 mile to the 500 foot contour line immediately south of the Conestoga River.

(2) Then following the 500 foot contour in a southwesterly direction to the Caernarvon-East Earl Township boundary.

(3) Then south approximately 0.1 mile following the Caernarvon-East Earl Township boundary to U.S. Highway 322.

(4) Then west following U.S. Highway 322 for approximately 1.7 miles to the electric transmission line between Fetterville and Cedar Grove School.

(5) Then southwest in a straight line for approximately 5.2 miles to the intersection of Earl, Upper Leacock, and Leacock Townships at the Mill Creek.

(6) Then southeast following the boundary between Earl Township and Leacock Township to the point where Earl, East Earl, Salisbury, and Leacock Townships intersect.

(7) Then east in a straight line for approximately 4.8 miles to the point where the 500 foot contour line intersects Pequea Creek northwest of Mt. Pleasant School.

(8) Then following the 500 foot contour line past Cole Hill through the town of Gap and along Mine Ridge to the 76°07′30″ west longitude line in Paradise Township.

(9) Then southwest in a straight line for approximately 7.7 miles to the Boehm Church south of Willow Street.

(10) The northwest in a straight line for approximately 1.2 miles to the township school in West Willow.

(11) Then west in a straight line for 4.2 miles to the confluence of Stehman Run and the Conestoga River.

(12) Then northwest in a straight line for approximately 0.5 mile to the confluence of Indian Run and Little Conestoga Creek.

(13) Then west following Indian Run for approximately 3.6 miles to the source of the more northerly branch.

(14) Then northwest in a straight line for approximately 0.25 mile to the source of Wisslers Run.

(15) Then west following Wisslers Run downstream for approximately 0.7 mile to the 300 foot contour line.

(16) Then north following the 300 foot contour line to its intersection with Pennsylvania Highway 999 in Washington Boro.

(17) Then east following Pennsylvania Highway 999 to the school in Central Manor.

(18) Then northeast in a straight line for approximately 2.7 miles to the point where the West Branch of the Little Conestoga Creek intersects with Pennsylvania Highway 462.

(19) Then west following Pennsylvania Highway 462 for approximately 1.5 miles to Strickler Run.

(20) Then following Strickler Run southwest to the Columbia municipal boundary.

(21) Then north following the eastern boundary of Columbia to Shawnee Run.

(22) Then northeast in a straight line for approximately 5.8 miles to the intersection of Pennsylvania Highway 23 and Running Pump Road [unnamed on map] at elevation check point 436 near Centerville.

(23) Then east following Pennsylvania Highway 23 for approximately 0.5 mile to the 400 foot contour line.

(24) Then following the 400 foot contour line north around Chestnut Ridge, past Millers Run and continuing until the 400 foot contour line intersects an unnamed stream.

(25) Then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23.

(26) Then west following Pennsylvania Highway 23 to the intersection with Pennsylvania Highway 441 at Marietta.

(27) Then west following Pennsylvania Highway 441 to Pennsylvania Highway 241 near Bainbridge.

(28) Then northwest in a straight line for approximately 5.5 miles to the point where the Consolidated Railroad Corporation crosses the West Donegal-

Mount Joy Township boundary in Rheems.

(29) Then east in a straight line for approximately 3.3 miles to the Mt. Pleasant Church.

(30) Then east in a straight line for approximately 3.8 miles to the Erismans Church.

(31) Then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View.

(32) Then following the 400 foot contour line east to Pennsylvania Highway 501.

(33) Then east in a straight line for approximately 2.9 miles to the Union Meetinghouse.

(34) Then southeast in a straight line for approximately 1.0 miles to the point where Pennsylvania Highway 272 (indicated as U.S. Highway 222 on the map) crosses Cocalico Creek (which forms the boundary between West Earl and Warwick Townships).

(35) Then northwest following the West Earl Township boundary to its intersection with U.S. Highway 322 southeast of Ephrata.

(36) Then east in a straight line for approximately 3.4 miles to the Lincoln Independence School.

(37) Then southeast in a straight line for approximately 1.7 miles to the West Terre Hill School.

(38) Then east in a straight line for approximately 8.5 miles to the beginning point.

[T.D. ATF–102, 47 FR 20301, May 12, 1982]

§ 9.42 Cole Ranch.

(a) *Name*. The name of the viticultural area described in this section is ''Cole Ranch.''

(b) *Approved map*. The approved map for the Cole Ranch viticultural area is the U.S.G.S. map entitled ''Elledge Peak Quadrangle California—Mendocino County,'' 7.5 minute series (topographic), 1958.

(c) *Boundaries*. The boundaries of the Cole Ranch viticultural area are located in Mendocino County California and are as follows:

(1) The point of beginning is the intersection of the 1480-foot-elevation contour line with the Boonville-Ukiah Cutoff Road near the southest coner of section 13;

(2) The Boundary follows the 1480-foot-elevation contour line southerly, then easterly, within section 24, then easterly and northwesterly within section 19 to its first intersection with this section line. The boundary proceeds due west on the north section line of section 19 until it intersects with the Boonville-Ukiah Cutoff Road;

(3) The boundary follows this road northwesterly to the point of beginning.

[T.D. ATF–130, 48 FR 16248, Apr. 15, 1983]

§ 9.43 Rocky Knob.

(a) *Name*. The name of the viticultural area described in this section is ''Rocky Knob.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Rocky Knob viticultural area are two 1968 U.S.G.S. maps. The maps are entitled: ''Willis Quadrangle Virginia'' 7.5 minute series and ''Woolwine Quadrangle Virginia'' 7.5 minute series.

(c) *Boundaries*. The Rocky Knob viticultural area is located in Floyd and Patrick Counties in southern Virginia. The boundaries are as follows:

(1) The beginning point is the intersection of Virginia State Route Nos. 776 and 779 at Connors Grove.

(2) Then follow State Route No. 779 south and east to the Blue Ridge Parkway.

(3) Then south on the parkway to its first intersection with State Route No. 758.

(4) Then follow State Route No. 758 east to the intersection of State Route No. 726 at the southern boundary of the Rocky Knob Recreation Area.

(5) Then follow the boundary of the Rocky Knob Recreation Area south then in a northeastern direction to where the boundary first intersects State Route No. 8.

(6) Then from that point at State Route No. 8, proceed northeast in a straight line to State Route No. 719 and Widgeon Creek at a point about 0.7 of a mile west of the intersection of State Route Nos. 719 and 710.

(7) Then proceed northwest in a straight line to the intersection with State Route No. 710 and the Blue Ridge Parkway.

(8) Then follow the Parkway southwest to the intersection with State Route No. 726.

(9) Then turn right on State Route No. 726 and proceed 0.6 of a mile to a roadway at the 3308 elevation point on the map.

(10) Then from that point, proceed west in a straight line back to the starting point at Connors Grove.

[T.D. ATF–124, 48 FR 1293, Jan. 12, 1983, as amended by T.D. ATF–249, 52 FR 5957, Feb. 27, 1987]

§9.44 Solano County Green Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Green Valley'' qualified by the words ''Solano County'' in direct conjunction with the name ''Green Valley.'' On a label the words ''Solano County'' may be reduced in type size to the minimum allowed in 27 CFR 4.38(b).

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Green Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) ''Mt. George Quadrangle, California'', 7.5 minute series (1968); and

(2) ''Cordelia Quadrangle, California'', 7.5 minute series (1968).

(c) *Boundaries.* The Green Valley viticultural area is located in Solano County, California. The beginning point is the intersection of the township line identified as T6N/T5N with the westernmost point of the Solano County/Napa County line on the north border of Section 4, located on U.S.G.S. map ''Mt. George Quadrangle.''

(1) From the beginning point, the boundary runs in a southerly direction along the Napa/Solano County border to State Road 12;

(2) Thence east along State Road 12 to where it intersects with Interstate 80;

(3) Thence southwest on Interstate 80 to where it intersects with the Southern Pacific Railroad track;

(4) Thence in an easterly direction along the Southern Pacific Railroad track to where it intersects with range line ''R3W/R2W'';

(5) Thence due north on range line ''R3W/R2W'' to where it intersects with the Solano County/Napa County line;

(6) Thence due west along the Solano County/Napa County line to the point of beginning.

[T.D. ATF–122, 47 FR 37922, Dec. 29, 1982]

§9.45 Suisun Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Suisun Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Suisun Valley viticultural area are four U.S.G.S. maps. They are titled:

(1) ''Mt. George Quadrangle, California'', 7.5 minute series (1968);

(2) ''Fairfield North Quadrangle, California'', 7.5 minute series (1973);

(3) ''Fairfield South Quadrangle, California'', 7.5 minute series (1968); and

(4) ''Cordelia Quadrangle, California'', 7.5 minute series (1968).

(c) *Boundaries.* The Suisun Valley viticultural area is located in Solano County, California. The beginning point is the intersection of the Southern Pacific Railroad track with range line ''R3W/R2W'' in the town of Cordelia, located on U.S.G.S. map ''Cordelia Quadrangle.''

(1) From the beginning point, the boundary runs northeast in a straight line to the intersection of Ledgewood Creek with township line ''T5N/T4N'';

(2) Thence in a straight line in a northeast direction to Bench Mark (BM) 19 located in the town of Fairfield;

(3) Thence in a straight line due north to Soda Springs Creek;

(4) Thence in a straight line in a northwest direction to the extreme southeast corner of Napa County located just south of Section 34, Township 6 North, Range 2 West;

(5) Thence due west along the Napa/Solano County border to where it intersects with range line ''R3W/R2W'';

(6) Thence due south along range line ''R3W/R2W'' to the point of beginning.

[T.D. ATF–117, 47 FR 52997, Nov, 24, 1982]

§9.46 Livermore Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Livermore Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of

the Livermore Valley viticultural area are seven U.S.G.S. maps. They are titled.

(1) ''Dublin Quadrangle, California,'' 7.5 minute series (1980);

(2) ''Livermore Quadrangle, California,'' 7.5 minute series (1973);

(3) ''La Costa Valley Quadrangle, California—Alameda Co.,'' 7.5 minute series (1968);

(4) ''Mendenhall Springs Quadrangle, California—Alameda Co.,'' 7.5 minute series (1971);

(5) ''Altamont Quadrangle, California—Alameda Co.,'' 7.5 minute series (1968);

(6) ''Byron Hot Springs Quadrangle, California,'' 7.5 minute series (1968);

(7) ''Tassajara Quadrangle, California,'' 7.5 minute series (1968);

(c) *Boundaries.* The Livermore Valley viticultural area is located in Alameda County, California. The beginning point is Bench Mark (BM) 425 located along the Alameda County/Contra Costa County line in the top portion of U.S.G.S. map ''Dublin Quadrangle.''

(1) From the beginning point, the boundary runs in a southeasterly direction along an unnamed road which crosses Interstate 580 and turns into Foothill Road;

(2) Thence continuing along Foothill Road in a southeasterly direction to the intersection of Castlewood Drive which is located directly east of the Castlewood Country Club;

(3) Thence east on Castlewood Drive to Bench Mark (BM) 333;

(4) Thence in a straight line in a southeasterly direction to VABM Vern (1264) located on U.S.G.S. map ''Livermore Quadrangle'';

(5) Thence continuing in a southeasterly direction in a straight line to Bench Mark (BM) 580, located in the northeast corner of U.S.G.S. map ''La Costa Valley Quadrangle'';

(6) Thence in a straight line in a southeasterly direction to the northeast corner of Section 15, located in the northwest portion of U.S.G.S. map ''Mendenhall Springs Quadrangle'';

(7) Thence south to the southeast corner of Section 15, then east on the south border of Section 14, then south along the west boundary of Section 24;

(8) Thence east on the south border of Sections 24 and 19 to the southwest corner of Section 20;

(9) Thence north along the east boundaries of Sections 19, 18, 7, 6, 31, 30, 19, 18, 7, 6, 31, 30, 19 and 18 located on U.S.G.S. maps ''Mendenhall Springs Quadrangle,'' ''Altamont Quadrangle,'' and ''Byron Hot Springs Quadrangle'';

(10) Thence west along the northern boundaries of Sections 18, 13, 14, 15, and 16 to where the northern boundary line of Section 16 intersects with the Alameda County/Contra Costa County line, located in the southeast corner of U.S.G.S. map ''Tassajara Quadrangle'';

(11) Thence in a southwesterly direction along the Alameda County/Contra Costa County line to the point of beginning.

[T.D. ATF–112, 47 FR 38520, Sept. 1, 1982]

§ 9.47 Hudson River Region.

(a) *Name.* The name of the viticultural area described in this section is ''Hudson River Region.''

(b) *Approved maps.* The approved maps for determining the boundaries of Hudson River Region viticultural area are four U.S.G.S. maps, as follows:

(1) Albany (NK 18–6), scale of 1:250,000 series;

(2) Hartford (NK 18–9), scale of 1:250,000 series;

(3) Scranton (NK 18–8), scale of 1:250,000 series;

(4) Binghamton (NK 18–5), scale of 1:250,000 series.

(c) *Boundary.* The Hudson River Region viticultural area is located in New York State. The boundary is as follows:

(1) The beginning point is the point where N.Y. Route 15 (Merritt Parkway) crosses the New York-Connecticut state line.

(2) The boundary proceeds northerly along the New York-Connecticut state line and the New York-Massachusetts state line to the northeast corner of Columbia County, New York.

(3) The boundary proceeds westerly along the Columbia County-Rensselaer County line to the Columbia County-Greene County line in the Hudson River.

(4) The boundary proceeds southerly along the Columbia County-Greene County line in the Hudson River to the northeast corner of Ulster County.

(5) The boundary proceeds westerly along the Ulster County-Greene County line to N.Y. Route 214.

(6) The boundary proceeds southerly along the eastern side of N.Y. Route 214 to the junction with N.Y. Route 28 in Phoenicia.

(7) The boundary proceeds southerly along the eastern side of N.Y. Route 28 to the junction with N.Y. Route 28A.

(8) The boundary proceeds southerly along the eastern side of N.Y. Route 28A to the intersection with the secondary, hard surface, southbound road leading toward Samsonville.

(9) The boundary proceeds southerly along the eastern side of this southbound road through Samsonville, Tabasco, Mombaccus, Fantinekill, and Pataukunk to the junction with U.S. Route 209.

(10) The boundary proceeds southerly along the eastern side of U.S. Route 209 to the New York-Pennsylvania state line in the Delaware River.

(11) The boundary proceeds easterly along the Delaware River to the New York-New Jersey state line.

(12) The boundary proceeds easterly along the New York-New Jersey state line to N.Y. Route 17.

(13) The boundary proceeds northerly along the western side of N.Y. Route 17 to the junction with Interstate Route 287.

(14) The boundary proceeds easterly along the northern side of Interstate Route 287 to the junction with N.Y. Route 15.

(15) The boundary proceeds easterly along the northern side of N.Y. Route 15 to the beginning point.

[T.D. ATF–105, 47 FR 24294, June 4, 1982]

§ 9.48 Monticello.

(a) *Name.* The name of the viticultural area described in this section is ''Monticello.''

(b) *Approved maps.* Approved maps for the Monticello viticultural area are three 1971 U.S.G.S. maps titled:

(1) Charlottesville Quadrangle, Virginia: 1:250,000 minute series;

(2) Roanoke Quadrangle, Virginia: 1:250,000 minute series; and

(3) Washington, DC: 1:250,000 minute series.

(c) *Boundaries.* (1) From Norwood, Virginia, following the Tye River west and northwest until it intersects with the eastern boundary of the George Washington National Forest;

(2) Following this boundary northeast to Virginia Rt. 664;

(3) Then west following Rt. 664 to its intersection with the Nelson County line;

(4) Then northeast along the Nelson County line to its intersection with the Albemarle County line at Jarman Gap;

(5) From this point continuing northeast along the eastern boundary of the Shenandoah National Park to its intersection with the northern Albemarle County line;

(6) Continuing northeast along the Greene County line to its intersection with Virginia Rt. 33;

(7) Follow Virginia Rt. 33 east to the intersection of Virginia Rt. 230 at Stanardsville;

(8) Follow Virginia Rt. 230 north to the Greene County line (the Conway River);

(9) Following the Greene County line (Conway River which becomes the Rapidan River) southeast to its intersection with the Orange County line;

(10) Following the Orange County line (Rapidan River) east and northeast to its confluence with the Mountain Run River;

(11) Then following the Mountain Run River southwest to its intersection with Virginia Rt. 20;

(12) Continuing southwest along Rt. 20 to the corporate limits of the town of Orange;

(13) Following southwest the corporate limit line to its intersection with U.S. Rt. 15;

(14) Continuing southwest on Rt. 15 to its intersection with Virginia Rt. 231 in the town of Gordonsville;

(15) Then southwest along Rt. 231 to its intersection with the Albemarle County line.

(16) Continuing southwest along the county line to its intersection with the James River;

(17) Then following the James River to its confluence with the Tye River at Norwood, Virginia, the beginning point.

[T.D. ATF–164, 49 FR 2758, Jan. 23, 1984, as amended by T.D. ATF–249, 52 FR 5957, Feb. 27, 1987; T.D. ATF–255, 52 FR 23652, June 24, 1987]

§ 9.49 Central Delaware Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Central Delaware Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Central Delaware Valley viticultural area are nine U.S.G.S. maps in the 7.5 minute series (topographic). They are titled:

(1) Bloomsbury Quadrangle, New Jersey, 1955 (photorevised 1970).

(2) Riegelsville Quadrangle, Pennsylvania-New Jersey, 1956 (photorevised 1968 and 1973).

(3) Frenchtown Quadrangle, Pennsylvania-New Jersey, 1955 (photorevised 1970).

(4) Lumberville Quadrangle, Pennsylvania-New Jersey, 1955 (photorevised 1968 and 1973).

(5) Stockton Quadrangle, New Jersey-Pennsylvania, 1954 (photorevised 1970).

(6) Hopewell Quadrangle, New Jersey, 1954 (photorevised 1970).

(7) Buckingham Quadrangle, Pennsylvania—Bucks Co., 1953 (photorevised 1968 and 1973).

(8) Lambertville Quadrangle, Pennsylvania-New Jersey, 1953 (photorevised 1968 and 1973).

(9) Pennington Quadrangle, New Jersey-Pennsylvania 1954 (photorevised 1970).

(c) *Boundary*—(1) *General.* The Central Delaware Valley viticultural area is located in Pennsylvania and New Jersey. The starting point of the following boundary description is the summit of Strawberry Hill, which is located in New Jersey near the Delaware River about one mile northwest of Titusville, at the southern end of the Central Delaware Valley viticultural area. The starting point is found on the Lambertville Quadrangle map.

(2) *Boundary Description:* (i) From the summit of Strawberry Hill (475 feet) in a straight line to the summit of Mt. Canoe (428 feet—on the Pennington Quadrangle map).

(ii) From there due east to Mercer County Route 579 (Bear Tavern Road) about .2 mile south of Ackors Corner.

(iii) Then northward along Mercer 579 to Harbourton.

(iv) From there northwestward along Route 3 (Mount Airy-Harbourton Road) to the 2nd English Presbyterian Church in Mount Airy (on the Stockton Quadrangle map).

(v) From there along Old York Road northward to Benchmark 157 on U.S. Route 202.

(vi) From there westward along Queen Road and northwestward along Mount Airy Road to Dilts Corner.

(vii) From there northwestward along Dilts Corner Road to Sandy Ridge Church.

(viii) From there northwestward via Cemetary Road to Benchmark 305.

(ix) From there northward along Covered Bridge Road to Green Sergeant Covered Bridge.

(x) From there generally westward along Sanford Road to its intersection with Route 519 about one mile north of Rosemont.

(xi) From there northward along Route 519 (via Kingwood, Barbertown and Baptistown) to Palmyra (on the Frenchtown Quadrangle map).

(xii) From the intersection in Palmyra, in a straight line northward to the 487 ft. elevation point near Nishisakawick Creek.

(xiii) From there in a straight line northwestward to Benchmark 787 on Rt. 579 (a secondary hard surface highway, unnamed on the map).

(xiv) From there northward along Route 579 to Benchmark 905 (on the Bloomsbury Quadrangle map).

(xv) From there in a straight line westward to the 952 ft. summit ;of Musconetcong Mountain (on the Frenchtown Quadrangle map).

(xvi) From there in a straight line southwestward to the 836 ft. summit of Musconetcong Mountain (on the Riegelsville Quadrangle map).

(xvii) From there in straight lines connecting the 838 ft., 839 ft., 707 ft., and 386 ft. summits of Musconetcong Mountain.

(xviii) From the 386 ft. summit of Musconetcong Mountain in a straight line across the Delaware River to the intersection of Routes 611 and 212.

(xix) From there along Route 212 to the intersection with the lane going up Mine Hill.

(xx) From there in a straight line to the summit of Mine Hill (488 feet).

(xxi) From there in a straight line southwestward to the 522 ft. summit elevation point.

(xxii) From there southeastward to the summit of Chestnut Hill (743 feet).

(xxiii) From there in a straight line southeastward to the 347 ft. summit elevation point (located south of Kintnersville near Benchmark 173, about .1 mile west of Route 611).

(xxiv) From there in a straight line eastward to the summit of Coffman Hill (826 feet).

(xxv) From there in a straight line southeastward to the 628 ft. summit elevation point (about .3 mile north of Camp Davis).

(xxvi) From there in a straight line southeastward to the point where Bridgeton, Nockamixon, and Tinicum Townships meet (on the Frenchtown Quadrangle map).

(xxvii) From there in a straight line southward to the intersection of Slant Hill Road (Covered Bridge Road) and Stump Road in Smiths Corner (on the Lumberville Quadrangle map).

(xxviii) From there in a straight line southeastward to the 472 ft. elevation point near Rocky Ridge School.

(xxix) From there southeastward in a straight line to the 522 ft. elevation point on Plumstead Hill.

(xxx) From there in a straight line to the 482 ft. elevation point about .7 mile northwest of Lahaska.

(xxxi) From there in a straight line southeastward to the 352 ft. elevation point approximately .6 mile northeast of Lahaska.

(xxxii) From there in a straight line to the point where a power transmission line crosses the 400 ft. contour line on the south side of Solebury Mountain (on the Lambertville Quadrangle map).

(xxxiii) From there in a straight line to the tower on Bowman Hill in Washington Crossing State Park.

(xxxiv) From there in a straight line across the Delaware River to the starting point, the summit of Strawberry Hill (475 feet).

[T.D. ATF–168, 49 FR 10117, Mar. 19, 1984, as amended by T.D. ATF–249, 52 FR 5958, Feb. 27, 1987]

§ 9.50 Temecula.

(a) *Name.* The name of the viticultural area described in this section is ''Temecula.''

(b) *Approved map.* The approved maps for determining the boundary of the Temecula viticultural area are seven U.S.G.S. guadrangle maps in the 7.5 minute series, as follows:

(1) Wildomar, California, dated 1953, photorevised 1973;

(2) Fallbrook, California, dated 1968;

(3) Murrieta, California, dated 1953, photorevised 1979;

(4) Temecula, California, dated 1968, photorevised 1975;

(5) Pechanga, California, dated 1968;

(6) Sage, California, dated 1954;

(7) Bachelor Mountain, California, dated 1953, photorevised 1973.

(c) *Boundary.* The Temecula viticultural area is located in Riverside County, California. The boundary is as follows:

(1) The beginning point is the northernmost point of the Santa Rosa Land Grant where the Santa Rosa Land Grant boundary intersects the easternmost point of the Cleveland National Forest boundary.

(2) The boundary follows the Cleveland National Forest boundary southwesterly to the point where it converges with the Riverside County-San Diego County line.

(3) The boundary follows the Riverside County-San Diego County line southwesterly, then southeasterly to the point where the Riverside County-San Diego County line diverges southward and the Santa Rosa Land Grant boundary continues southeasterly.

(4) The boundary follows the Santa Rosa Land Grant boundary southeasterly, then northeasterly, to its intersection with the Temecula Land Grant boundary.

(5) The boundary follows the Temecula Land Grant boundary southeasterly, then northeasterly, to its intersection with the Little Temecula Land Grant boundary.

(6) The boundary follows the Little Temecula Land Grant boundary southeasterly to its intersection with the boundary of that portion of the Pechanga Indian Reservation which, until 1907, was Lot ''E'' of the Little Temecula Land Grant.

(7) The boundary follows the Pechanga Indian Reservation boundary southeasterly, then northeasterly (including that portion of the Penchanga

Indian Reservation in the approved viticultural area) to the point at which it rejoins the Little Temecula Land Grant boundary.

(8) The boundary follows the Little Temecula Land Grant boundary northeasterly to its intersection with the Pauba Land Grant boundary.

(9) The boundary follows the Pauba Land Grant boundary southeasterly, then northeasterly, to the north-south section line dividing Section 23 from Section 24 in Township 8 South, Range 2 West.

(10) The boundary follows this section line south to the 1500-foot contour line.

(11) The boundary follows the 1500-foot contour line easterly to the range line dividing Range 2 West from Range 1 West.

(12) The boundary follows this range line north, across California State Highway 71/79, to the 1400-foot contour line of Oak Mountain.

(13) The boundary follows the 1400-foot contour line around Oak Mountain to its intersection with the 117°00′ West longitude meridian.

(14) The boundary follows the the 117°00′ West longitude meridian north to its intersection with the Pauba Land Grant boundary.

(15) The boundary follows the Pauba Land Grant boundary northwesterly, then west, then south, then west, to Warren Road (which coincides with the range line dividing Range 1 West from Range 2 West).

(16) The boundary follows Warren Road north to an unnamed east-west, light-duty, hard or improved surface road (which coincides with the section line dividing Section 12 from Section 13 in Township 7 South, Range 2 West).

(17) The boundary follows this road west to the north-south section line dividing Section 13 from Section 14 in Township 7 South, Range 2 West.

(18) The boundary follows this section line south to its intersection with Buck Road (which coincides with the east-west section line on the southern edge of Section 14 in Township 7 South, Range 2 West).

(19) The boundary follows Buck Road west to the point where it diverges northwesterly from the section line on the southern edge of Section 14 in Township 7 South, Range 2 West.

(20) The boundary follows this section line west, along the southern edges of Sections 14, 15, 16, 17, and 18 in Township 7 South, Range 2 West, to Tucalota Creek.

(21) The boundary follows Tucalota Creek southerly to Santa Gertrudis Creek.

(22) The boundary follows Santa Gertrudis Creek southwesterly to Murrieta Creek.

(23) The boundary proceeds northwesterly along the westernmost branches of Murrieta Creek to its intersection with Hayes Avenue, northwest of Murrieta, California.

(24) The boundary follows Hayes Avenue northwesterly, approximately 4,000 feet, to its terminus at an unnamed, unimproved, fair or dry weather road.

(25) The boundary follows this road southwesterly to Murrieta Creek.

(26) The boundary proceeds northwesterly along the westernmost branches of Murrieta Creek to its intersection with Orange Street in Wildomar, California.

(27) From the intersection of Murrieta Creek and Orange Street in Wildomar, California, the boundary proceeds in a straight line to the beginning point.

[T.D. ATF–188, 49 FR 42566, Oct. 23, 1984; 49 FR 43455, Oct. 29, 1984, as amended by T.D. ATF–221, 51 FR 750, Jan. 8, 1986; T.D. ATF–249, 52 FR 5958, Feb. 27, 1987]

§ 9.51 Isle St. George.

(a) *Name.* The name of the viticultural area described in this section is ''Isle St. George.''

(b) *Approved maps.* The approved map for determining the boundary of the Isle St. George viticultural area is the U.S.G.S. quadrangle map, ''Put-in-Bay, Ohio'', 7.5 minute series, edition of 1969.

(c) *Boundaries.* The Isle St. George viticultural area is located entirely within Ottawa County, Ohio. The boundary of the Isle St. George viticultural area is the shoreline of the island named ''North Bass Island'' on the ''Put-in-Bay, Ohio'' U.S.G.S. map, and the viticultural area comprises the entire island.

[T.D. ATF–110, 47 FR 36421, Aug. 20, 1982]

§9.52 Chalk Hill.

(a) *Name*. The name of the viticultural area described in this section is ''Chalk Hill.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Chalk Hill viticultural area are the U.S.G.S. topographic maps titled:

''Mark West Springs Quadrangle, California'', 7.5 minute series, 1958; and,

''Healdsburg Quadrangle, California'', 7.5 minute series, 1955 (Photorevised 1980).

(c) *Boundary*. The Chalk Hill viticultural area is located near the town of Windsor in Sonoma County, California. From the beginning point on the south line of Section 2, Township 8 North (T. 8 N.), Range 9 West (R. 9 W.) at the intersection of Arata Lane and Redwood Highway (a.k.a. Old Highway 101), on the ''Healdsburg Quadrangle'' map, the boundary proceeds—

(1) Southeasterly along Redwood Highway through Section 11, T. 8 N., R. 9 W., to the point of intersection with Windsor River Road;

(2) Then westerly along Windsor River Road on the south boundary of Section 11, T. 8 N., R. 9 W., to the point of intersection with Starr Road;

(3) The southerly along Starr Road to the point of intersection with the south line of Section 14, T. 8 N., R. 9 W.;

(4) Then easterly along the south line of Sections 14 and 13, T. 8 N., R. 9 W. and Section 18, T. 8 N., R. 8 W., to the point of intersection with the Redwood Highway;

(5) Then southeasterly along the Redwood Highway to the intersection with an unnamed road that intersects the Redwood Highway at a right angle from the northeast near the southwest corner of Section 28 near Mark West Creek, T. 8 N., R. 8 W.;

(6) Then northeast approximately 500 feet along the unnamed road to its intersection with the Pacific Gas and Electric power transmission line;

(7) Then northeast approximately 1,000 feet along the power transmission line (paralleling the unnamed road) to the point where the power transmission line turns in a northerly direction;

(8) Then in a northerly direction along the power transmission line to the point of its intersection with the south line of Section 17, T. 8 N., R. 8 W.;

(9) Then east along the south line of Sections 17, 16 and 15, T. 8 N., R. 8 W. to the point of intersection with Mark West Road on the ''Mark West Quadrangle Map'';

(10) Then northerly for approximately 1.3 miles along Mark West Road (which becomes Porter Creek Road), then northeasterly for approximately 1.7 miles on Porter Creek Road to its intersection with the unnamed medium duty road that parallels Porter Creek in Section 12, T. 8 N., R. 8 W.; then northeasterly on the Franz Valley Road over the Tarwater Grade and continuing along the Franz Valley Road for approximately 3 miles to its intersection with Franz Creek (approximately 2,000 feet west of the range line common to R. 7 W. and R. 8 W. in T. 9 N. and approximately 1,150 feet north of the north line of Section 25, T. 9 N., R. 8 W.);

(11) Then westerly along Franz Creek to its point of intersection with the east line of Section 21, T. 9 N., R. 8 W.;

(12) Then southerly along the east line of Section 21 to the southeast corner thereof;

(13) Then southerly, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the west line of section 27, T. 9 N., R. 8 W.;

(14) Then southeasterly, approximately 1.07 miles, along said road to the point at which the road is crossed by the east line of section 27, T. 9 N., R. 8 W.;

(15) Then southerly, approximately 0.65 mile, along the east lines of sections 27 and 34, T. 9 N., R. 8 W., to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects such line in section 34, T. 9 N., R. 8 W.;

(16) Then continuing along the north fork of Barnes Creek, approximately 0.5 mile, in a generally westerly direction to a small dwelling at the eastern terminus of an unnamed unimproved road (known locally as the access to the

Shurtleff Ranch) in section 34, T. 9 N., R. 8 W.;

(17) Then continuing in a generally westerly direction, approximately 1.4 miles, along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch) to its intersection with an unnamed unimproved road (known locally as Spurgeon Road) in section 33, T. 9 N., R. 8 W. on the Healdsburg, California, Quadrangle Map;

(18) Then westerly, approximately 0.45 mile, along the unnamed unimproved road (known locally as Spurgeon Road) to the point where the road intersects Chalk Hill Road in section 32, T. 9 N., R. 8 W.;

(19) Then in a generally northwesterly direction, approximately 1.3 miles, along Chalk Hill Road to the point where Chalk Hill Road crosses Brooks Creek in section 29, T. 9 N., R. 8 W.;

(20) Then north in a straight line, approximately 0.2 mile, to the top of a peak identified as Chalk Hill;

(21) Then west-northwesterly in a straight line to the confluence of Brooks Creek and the Russian River;

(22) Then westerly along the Russian River to the point of intersection with the range line common to R. 8 W. and R. 9 W. in T. 9 N.;

(23) Then southwesterly in a straight line to the point of a hill identified as having an elevation of 737 feet;

(24) Then south-southwesterly in a straight line to the point at the easterly terminus of Reiman Road;

(25) Then southwesterly in a straight line to the point at the intersection of the township line common to T. 8 N. and T. 9 N. in R. 9 W. and the frontage road (a.k.a. Los Amigos Road) for U.S. Highway 101;

(26) Then west approximately 3,000 feet along the township line common to T. 8 N. and T. 9 N. in R. 9 W.;

(27) Then southerly for approximately 2,000 feet in a straight line to the point of intersection with an unnamed stream drainage;

(28) Then east in a straight line to the point of intersection with Eastside Road;

(29) Then northeasterly along Eastside Road to the point of intersection with Redwood Highway;

(30) Then southeasterly along Redwood Highway to the point of beginning.

[T.D. ATF–155, 48 FR 48812, Oct. 21, 1983, as amended by T.D. ATF–272, 53 FR 17023, May 13, 1988]

§ 9.53 Alexander Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Alexander Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Alexander Valley viticultural area are seven U.S.G.S. maps entitled:

(1) ''Mark West Springs Quadrangle, California,'' 7.5 minute series, 1958;

(2) ''Mount St. Helena Quadrangle, California,'' 7.5 minute series, 1959;

(3) ''Jimtown Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955 (Photorevised 1975);

(4) ''Geyserville Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955 (Photorevised 1975);

(5) ''Healdsburg Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955;

(6) ''Asti Quadrangle, California,'' 7.5 minute series, 1959 (Photorevised 1978); and

(7) ''Cloverdale Quadrangle, California,'' 7.5 minute series, 1960.

(c) *Boundaries.* The Alexander Valley viticultural area is located in northeastern Sonoma County, California. From the beginning point at the northeast corner of Section 32, Township 12 North (T. 12 N.), Range 10 West (R. 10 W.), on the Asti Quadrangle map, the boundary runs—

(1) West along the north line of Sections 32 and 31, T. 12 N., R. 10 W., and Sections 36, 35, and 34, T. 12 N., R. 11 W., to the northwest corner of Section 34, on the Cloverdale Quadrangle map;

(2) Then south along the west line of Section 34 to the southwest corner thereof;

(3) Then east southeasterly in a straight line to the southeast corner of section 2, T. 11 N., R. 11 W.;

(4) Then south southeasterly in a straight line to the southeast corner of section 24, T. 11 N., R. 11 W.;

(5) Then southeasterly in a straight line across sections 30, 31 and 32, T. 11 N., R.. 10 W., to the point at 38°45′ N.

latitude and 123°00′ E. longitude in section 5, T. 10 N., R. 10 W.;

(6) Then southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northwest corner of Section 10, T. 10 N., R.10 W. on the Geyserville Quadrangle map;

(7) [Reserved]

(8) Then southerly along the west line of Section 10, T. 10 N., R. 10 W.;

(9) Then S. 74 degrees, E. 2,800 feet in a straight line to the northeasterly tip of a small lake;

(10) Then N. 57 degrees, E. 2,300 feet in a straight line to the southeast corner of Section 10, T. 10 N., R. 10 W.;

(11) Then S. 16 degrees, E. 1,800 feet in a straight line to the point on a peak identified as having an elevation of 664 feet;

(12) Then S. 55 degrees, E. 7,900 feet in a straight line to the most northerly point on the northeasterly line of ''Olive Hill'' Cemetery, lying on the easterly side of a light-duty road identified as Canyon Road;

(13) Then southeasterly along the northeasterly line of ''Olive Hill'' cemetery to most easterly point thereon;

(14) Then southerly 3,000 feet along the meanders of the west fork of Wood Creek to the point lying 400 feet north of the point on a peak identified as having an elevation of 781 feet;

(15) Then southerly 400 feet in a straight line to the point on a peak identified as having an elevation of 781 feet;

(16) Then S. 50½ degrees, E. 15,200 feet in a straight line to the point lying at the intersection of Lytton Creek with the township line common to T. 9 N. and T. 10 N. in R. 9 W.;

(17) Then southerly along the meanders of Lytton Creek to the point of intersection with a light-duty road identified as Lytton Springs Road in T. 9 N., R. 9 W.;

(18) Then easterly along Lytton Springs Road to the point of intersection with a heavy-duty road identified as U.S. Highway 101 (a.k.a. Redwood Highway), on the Jimtown Quadrangle map;

(19) Then southerly along U.S. Highway 101 to the point of intersection with an unnamed light-duty road (known locally as Chiquita Road), on the Geyserville Quadrangle map;

(20) Then easterly along the unnamed light-duty road to the point of intersection with an unnamed heavy-duty road (known locally as Healdsburg Avenue), on the Jimtown Quadrangle map;

(21) Then southeasterly in a straight line approximately 11,000 feet to the 991-foot peak of Fitch Mountain;

(22) Then east southeasterly approximately 7,000 feet in a straight line to the peak identified as having an elevation of 857 feet;

(23) Then east southeasterly approximately 1,750 feet to the peak identified as Black Peak;

(24) Then southeasterly approximately 7,333 feet to the peak identified as having an elevation of 672 feet;

(25) Then northeasterly approximately 5,000 feet in a straight line to the point of confluence of Brooks Creek with the Russian River in T. 9 N., R. 8 W., on the Healdsburg Quadrangle map;

(26) Then east-southeasterly 2,400 feet in a straight line to the top of a peak identified as Chalk Hill;

(27) Then south from said peak, in a straight line, approximately 0.2 mile to the point where Chalk Hill Road crosses Brooks Creek (on the Healdsburg Quadrangle map);

(28) Then southeasterly, approximately 1.3 miles, along the roadbed of Chalk Hill Road to the point near the confluence of Brooks Creek and Barnes Creek where Chalk Hill Road intersects an unnamed unimproved road (known locally as Spurgeon Road) that parallels Barnes Creek in section 32, T. 9 N., R. 8 W.;

(29) Then easterly, approximately 0.45 mile, along said road (known locally as Spurgeon Road) to the point where the road is intersected by an unnamed unimproved road (known locally as the access to the Shurtleff Ranch) in section 33, T. 9 N., R. 8 W.;

(30) Then continuing along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch), approximately 1.33 miles, in a generally easterly direction, to the eastern terminus of said road at a small dwelling along the north fork of Barnes Creek in section 34, T. 9 N., R. 8 W. on the Mark West Springs, California, Quadrangle map;

(31) Then easterly along the north fork of Barnes Creek, approximately 0.5 mile, to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects the east line of section 34, T. 9 N., R. 8 W.;

(32) Then north, approximately 0.65 mile, along the east lines of sections 34 and 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the eastern border of section 27, T. 9 N., R. 8 W.;

(33) Then in a generally northwesterly direction, approximately 1.07 miles, along said road to the point at which the road is crossed by the west line of section 27, T. 9 N., R. 8 W.;

(34) Then north, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the southeast corner of section 21, T. 9 N., R. 8 W.;

(35) Then northerly along the east line of Sections 21, 16, and 9, T. 9 N., R. 8 W. to the northeast corner of Section 9, on the Mount St. Helena Quadrangle map;

(36) Then westerly along the north line of Section 9 to the northwest corner thereof, on the Jimtown Quadrangle map;

(37) Then northerly along the western lines of section 4, of T. 9 N, R. 8 W., and sections 33, 28, 21, 16, and 9 of T. 10 N., R. 8 W.;

(38) Then westerly along the northern lines of section 8 and 7, T. 10 N., R. 8 W. and section 12, T. 10 N., R. 9 W. to the southeastern corner of section 2, T. 10 N., R. 9 W.;

(39) Then northwesterly in a straight line to the eastern line of section 3 at 38 degrees 45 minutes latitude, T. 10 N., R. 9 W.;

(40) Then westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude;

(41) Then northwesterly in a straight line to the southeast corner of section 4, T. 11 N., R. 10 W., on the Asti, Quadrangle map;

(42) Then northeasterly in a straight line to the southeast corner of section 34, T. 12 N., R. 10 W.;

(43) Then north along the east boundary of section 34, T. 12 N., R. 10 W., to the northeast corner of section 34, T. 12 N., R. 10 W.;

(44) Then west along the north boundaries of sections 34 and 33, T. 12 N., R. 10 W., to the point of beginning.

[T.D. ATF–187, 49 FR 42724, Oct. 24, 1984, as amended by T.D. ATF–233; 51 FR 30354, Aug. 26, 1986; T.D. ATF–272, 53 FR 17025, May 13, 1988; T.D. ATF–300, 55 FR 32402, Aug. 9, 1990; T.D. ATF–468, 66 FR 50565, Oct. 4, 2001]

§ 9.54 Santa Ynez Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Ynez Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Santa Ynez Valley viticultural area are 12 U.S.G.S. quadrangle maps. They are entitled:

(1) ''Figueroa Mountain, Cal.'', 7.5 minute series, edition of 1959;

(2) ''Foxen Canyon, Cal.'', 7.5 minute series, edition of 1964;

(3) ''Lake Cachuma, Cal.'', 7.5 minute series, edition of 1959;

(4) ''Lompoc, Cal.'', 7.5 minute series, edition of 1959 (photorevised 1974);

(5) ''Lompoc Hills, Cal.'', 7.5 minute series, edition of 1959;

(6) ''Los Alamos, Cal.'', 7.5 minute series, edition of 1959;

(7) ''Los Olivos, Cal.'', 7.5 minute series, edition of 1959 (photoinspected 1974);

(8) ''Santa Rosa Hills, Cal.'', 7.5 minute series, edition of 1959;

(9) ''Santa Ynez, Cal.'', 7.5 minute series, edition of 1959 (photorevised 1974);

(10) ''Solvang, Cal.'', 7.5 minute series, edition of 1959 (photorevised 1974);

(11) ''Zaca Creek, Cal.'', 7.5 minute series, edition of 1959; and

(12) ''Zaca Lake, Cal.'', 7.5 minute series, edition of 1964.

(c) *Boundaries.* The Santa Ynez Valley viticultural area is located within Santa Barbara County, California. The beginning point is found on the ''Los Alamos, California'' U.S.G.S. map where California Highway 246 (indicated as Highway 150 on the Los Alamos map) intersects with the 120°22′30″ longitude line.

(1) Then north following the 120°22′30″ longitude line to Cebada Canyon Road.

(2) Then northeast following Cebada Canyon Road and an unnamed jeep

trail to the northern boundary of Section 9, T. 7 N., R. 33 W.

(3) Then east following the northern boundaries of Sections 9, 10, 11, 12, 7, and 8 to the northeast corner of Section 8, T. 7 N., R. 33 W.

(4) Then south following the eastern boundaries of Sections 8 and 17 to the intersection with the boundary dividing the La Laguna and San Carlos de Jonata Land Grants.

(5) Then east following the boundary between the La Laguna and the San Carlos de Jonata Land Grants to the intersection with Canada de Santa Ynez.

(6) Then northeast in a straight line for approximately 3.6 miles to Benchmark 947 at U.S. Highway 101.

(7) Then northeast in a straight line for approximately 2.6 miles to the southwest corner of the La Zaca Land Grant.

(8) Then following the boundary of the La Zaca Land Grant north, then east to its northeast corner.

(9) Then east in a straight line for approximately 2.0 miles to the point of intersection of the La Laguna and Sisquoc Land Grants with the Los Padres National Forest.

(10) Then following the boundary of the Los Padres National Forest south, east, and south until it intersects with the eastern boundary of Section 29, T. 7 N., R. 29 W.

(11) Then south following the eastern boundaries of Sections 29, 32, 5, 8, and 17 to the boundary of the Cachuma Recreation Area at Bitt Benchmark 1074.

(12) Then following the boundary of the Cachuma Recreation Area west and south to the point of intersection with the Los Padres National Forest.

(13) Then south and west following the boundary of the Los Padres National Forest to its intersection with the Las Cruces Land Grant at the southwest corner of Section 12, T. 5 N., R. 32 W.

(14) Then north following the boundary of the Las Cruces Land Grant to the southeast corner of Section 26, T. 6 N., R. 32 W.

(15) Then west following the southern boundaries of Sections 26, 27, 28, and 29 to the intersection with the northern boundary of the San Julian Land Grant at the southwestern corner of Section 29, T. 6 N., R. 32 W.

(16) Then northwest following the boundary of the San Julian Land Grant to its intersection with the 120°22′30″ longitude line.

(17) Then northwest in a straight line for approximately 3.2 miles to the point where Santa Rosa Road intersects Salsipuedes Creek.

(18) Then following Salsipuedes Creek downstream to the point of confluence with the Santa Ynez River.

(19) Then northeast in a straight line for approximately 1.4 miles to an unnamed hill, elevation 597 feet.

(20) Then northeast in a straight line for approximately 1.7 miles to the point of beginning.

[T.D. ATF–132, 48 FR 16252, Apr. 15, 1983]

§9.55 Bell Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Bell Mountain.''

(b) *Approved map.* The appropriate map for determining the boundaries of the Bell Mountain viticultural area is one U.S.G.S. map, titled: Willow City Quadrangle, 7.5 minute series, 1967.

(c) *Boundary*—(1) *General.* The Bell Mountain viticultural area is located in Gillespie County, Texas. The starting point of the following boundary description is the summit of Bell Mountain (1,956 feet).

(2) *Boundary Description.* (i) From the starting point, the boundary proceeds due southward for exactly one half mile;

(ii) Then southeastward in a straight line to the intersection of Willow City Loop Road with an unnamed unimproved road, where marked with an elevation of 1,773 feet;

(iii) Then generally southward along Willow City Loop Road (a light-duty road) to Willow City.

(iv) Then continuing southward and westward along the same light-duty road to the intersection having an elevation of 1,664 feet;

(v) Then continuing westward along the light-duty road to the intersection having an elevation of 1,702 feet;

(vi) Then turning southward along the light-duty road to the intersection having an elevation of 1,736 feet;

(vii) Then turning westward along the light-duty road to the intersection having an elevation of 1,784 feet;

(viii) Then turning southward and then westward, following the light-duty road to its intersection with Texas Highway 16, where marked with an elevation of 1,792 feet;

(ix) Then due westward to the longitude line 98°45′;

(x) Then northward along that longitude line to a point due west of an unnamed peak with an elevation of 1,784 feet;

(xi) Then due eastward to the summit of that unnamed peak;

(xii) Then in a straight line eastward to the intersection of an unnamed unimproved road with Texas Highway 16, where marked with an elevation of 1,822 feet;

(xiii) Then following that unnamed road, taking the right-hand fork at an intersection, to a point due west of the summit of Bell Mountain;

(xiv) Then due eastward to the summit of Bell Mountain.

[T.D. ATF–238, 51 FR 36400, Oct. 10, 1986]

§ 9.56 San Lucas.

(a) *Name.* The name of the viticultural area described in this section is ''San Lucas.''

(b) *Approved maps.* The appropriate maps for determining the boundary of San Lucas viticultural area are the following four U.S.G.S. topographical maps of the 7.5 minute series:

San Lucas, CA, 1949, photorevised 1979,
Nattrass Valley, CA, 1967,
San Ardo, CA, 1967, and,
Espinosa Canyon, CA, 1949, photorevised 1979.

(c) *Boundary.* The San Lucas viticultural area is located in Monterey County in the State of California. The boundary is as follows:

Beginning on the ''San Lucas Quadrangle'' map at the northwest corner of section 5 in Township 21 South, Range 9 East, the boundary proceeds northeasterly in a straight line approximately 0.35 mile to the 630-foot promontory in section 32, T. 20 S., R. 9 E.;

(1) Then east southeasterly in a straight line approximately 0.6 mile to the 499-foot promontory in the southwest corner of section 33, T. 20 S., R. 9 E.;

(2) Then east southeasterly in a straight line approximately 1.3 miles to the 847-foot promontory in section 3, T. 21 S., R. 9 E., on the ''Nattrass Valley Quadrangle'' map;

(3) Then south southeasterly in a straight line approximately 2.2 miles to the 828-foot promontory in section 14, T. 21 S., R. 9 E., on the ''San Ardo Quadrangle'' map;

(4) Then east southeasterly in a straight line approximately 1.3 miles to the 868-foot promontory in section 13, T. 21 S., R. 9 E.;

(5) Then southeasterly in a straight line approximately 0.94 mile to the 911-foot promontory in section 19, T. 21 S., R. 10 E.;

(6) Then easterly in a straight line approximately 1.28 miles to the 1,042-foot promontory in section 20, T. 21 S., R. 10 E.;

(7) Then east northeasterly in a straight line approximately 1.28 miles to the 998-foot promontory in southeast corner of section 16, T. 21 S., R. 10 E.;

(8) Then southerly in a straight line approximately 2.24 miles to the 1,219-foot promontory near the east boundary of section 28, T. 21 S., R. 10 E.;

(9) Then southwesterly in a straight line approximately 1.5 miles to the 937-foot promontory near the north boundary of section 32, T. 21 S., R. 10 E.;

(10) Then southwesterly in a straight line approximately 0.34 mile to the 833-foot promontory in section 32, T. 21 S., R. 10 E.;

(11) Then south southeasterly in a straight line approximately 0.5 mile to the 886-foot ''Rosenberg'' promontory in section 32, T. 21 S., R. 10 E.;

(12) Then south southeasterly approximately 1.1 miles to the 781-foot promontory in section 5, T. 22 S., R. 10 E.;

(13) Then southeasterly in a straight line approximately 0.7 mile to the 767-foot promontory in section 9, T. 22 S., R. 10 E.;

(14) Then southerly in a straight line approximately 0.5 mile to the 647-foot promontory along the south boundary of section 9, T. 22 S., R. 10 E.;

(15) Then southwesterly in a straight line approximately 2.67 miles to the 835-foot promontory in section 19, T. 22 S., R. 10 E.;

(16) Then west southwesterly in a straight line approximately 1.1 miles to the 1,230-foot promontory in section 24, T. 22 S., R. 9 E.;

(17) Then north northwesterly in a straight line approximately 1.4 miles to the 1,149-foot promontory in section 14, T. 22 S., R. 9 E.;

(18) Then northwesterly in a straight line approximately 0.57 mile to the 1,128-foot promontory in section 11, T. 22 S., R. 9 E.;

(19) Then west southwesterly in a straight line approximately 0.58 mile to the 1,220-foot promontory near the north boundary of section 15, T. 22 S., R. 9 E.;

(20) Then northwesterly in a straight line approximately 1.33 miles to the 1,071-foot promontory in the northwest corner of section 9, T. 22 S., R. 9 E.;

(21) Then northwesterly in a straight line approximately 2.82 miles to the 1,004-foot

promontory in section 31, T. 21 S., R. 9 E., on the ''Espinosa Canyon Quadrangle'' map;

(22) Then north northwesterly in a straight line approximately 1.32 miles to the 882-foot promontory in section 25, T. 21 S., R. 8 E.;

(23) Then northwesterly in a straight line approximately 1.05 miles to the 788-foot promontory in section 23, T. 21 S., R. 8 E.;

(24) Then northerly in a straight line approximately 1.54 miles to the 601-foot promontory in section 13, T. 21 S., R. 8 E.;

(25) Then northeasterly in a straight line approximately 3.2 miles to the point of beginning.

[T.D. ATF–248, 52 FR 2945, Jan. 29, 1987]

§9.57 Sonoma County Green Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Green Valley'' qualified by the words ''Sonoma County'' in direct conjunction with the name ''Green Valley.'' On a label the words ''Sonoma County'' may be reduced in type size to the minimum allowed in 27 CFR 4.38(b).

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Green Valley viticultural area are three U.S.G.S. maps. They are titled:

(1) ''Sebastopol Quadrangle, California—Sonoma Co.'', 7.5 minute series (1954, photorevised 1980);

(2) ''Camp Meeker Quadrangle, California—Sonoma Co.'', 7.5 minute series (1954, photorevised 1971); and

(3) ''Guerneville Quadrangle, California—Sonoma Co.'', 7.5 minute series (1955).

(c) *Boundaries*. The Green Valley viticultural area is located in Sonoma County, California. The beginning point is located in the northeastern portion of the ''Camp Meeker Quadrangle'' map where the line separating Section 31 from section 32, in Township 8 North (T.8N.), Range 9 West (R.9W.) intersects River Road.

(1) From the beginning point, the boundary runs south along the line separating Section 31 from Section 32, continuing south along Covey Road (shown on the map as an unnamed, light-duty road) to the town of Forestville where Covey Road intersects with State Highway 116 (Gravenstein Highway).

(2) Thence east along State Highway 116 until it turns in a southeasterly direction and then proceeding along State Highway 116 in a southeasterly direction until the point at which State Highway 116 intersects State Highway 12 in the town of Sebastopol (located on the ''Sebastopol Quadrangle'' map);

(3) Thence in a southwesterly direction on State Highway 12 through the town of Sebastopol;

(4) Thence in a westerly direction on State Highway 12, which becomes Bodega Road, until Bodega Road intersects with Pleasant Hill Road;

(5) Thence in a southerly direction on Pleasant Hill Road until it intersects with Water Trough Road;

(6) Thence westerly and then northwesterly on Water Trough Road until it intersects with Gold Ridge Road;

(7) Thence in a southwesterly, northwesterly, and then a northeasterly direction along Gold Ridge Road until it intersects with Bodega Road;

(8) Thence in a southwesterly direction along Bodega Road until Bodega Road intersects with Jonive Road in Township 6 North (T.6N.), Range 9 West (R.9W.) located in the southeast portion of U.S.G.S. map ''Camp Meeker Quadrangle'';

(9) Thence proceeding in a northwesterly direction on Jonive Road until it intersects Occidental Road;

(10) Thence proceeding on Occidental Road in a northwesterly direction until Occidental Road intersects the west border of Section 35;

(11) Thence proceeding due north along the west borders of Sections 35, 26, 23, and 14 to the northwest corner of Section 14;

(12) Thence in an easterly direction along the north border of Section 14 to the northeast corner of Section 14;

(13) Thence north along the west borders of Sections 12, 1, and 36 to the northwest corner of Section 36 located in the extreme southern portion of the ''Guerneville Quadrangle'' map;

(14) Thence in an easterly direction along the north border of Section 36 until it intersects with River Road;

(15) Thence in a southeasterly direction along River Road to the point of beginning located on the ''Camp Meeker Quadrangle'' map.

[T.D. ATF–161, 48 FR 52579, Nov. 21, 1983]

§ 9.58 Carmel Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Carmel Valley.''

(b) *Approved maps.* The approved maps for determining the boundary of the Carmel Valley viticultural area are five U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) Mt. Carmel, Calif., dated 1956;

(2) Carmel Valley, Calif., dated 1956;

(3) Ventana Cones, Calif., dated 1956;

(4) Chews Ridge, Calif., dated 1956; and

(5) Rana Creek, Calif., dated 1956.

(c) *Boundary.* The Carmel Valley viticultural area is located in Monterey County, California. The boundary is as follows:

(1) The beginning point is the northeast corner of Section 5 in Township 17 South, Range 2 East.

(2) The boundary follows the Los Laurelles Land Grant boundary south, then easterly, to the north-south section line dividing Section 9 from Section 10 in Township 17 South, Range 2 East.

(3) The boundary follows this section line south to the southwest corner of Section 22 in Township 17 South, Range 2 East.

(4) From this point, the boundary follows section lines in Township 17 South, Range 2 East:

(i) To the southeast corner of Section 22,

(ii) To the southwest corner of Section 26,

(iii) To the southeast corner of Section 26,

(iv) To the southwest corner of Section 36.

(5) From this point, the boundary follows the Los Padres National Forest boundary east, then south, then east to the southwest corner of Section 9 in Township 18 South, Range 3 East.

(6) The boundary follows the section line east to the southeast corner of the same section, where the section line rejoins the Los Padres National Forest boundary.

(7) The boundary follows the Los Padres National Forest boundary to the north-south section line dividing Section 11 from Section 12 in Township 18 South, Range 3 East.

(8) The boundary follows this section line north to the township line dividing Township 17 South from Township 18 South.

(9) The boundary follows this township line west to the north-south section line dividing Section 34 from Section 35 in Township 17 South, Range 3 East.

(10) The boundary follows this section line north to the Los Tularcitos Land Grant boundary.

(11) The boundary follows the Los Tularcitos Land Grant boundary northwesterly to the Carmel River.

(12) The boundary follows the Carmel River northerly to the Los Tularcitos Land Grant boundary.

(13) The boundary follows the Los Tularcitos Land Grant boundary northeasterly to the unsurveyed township line (approximate location denoted by a line of red dashes) dividing Township 16 South form Township 17 South.

(14) The boundary follows the unsurveyed township line west to the beginning point.

[T.D. ATF–119, 47 FR 55916, Dec. 14, 1982]

§ 9.59 Arroyo Seco.

(a) *Name.* The name of the viticultural area described in this section is ''Arroyo Seco.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Arroyo Seco viticultural area are four U.S.G.S. quadrangle maps. They are entitled:

(1) ''Greenfield, California,'' 7.5 minute series, edition of 1956;

(2) ''Paraiso Springs, California,'' 7.5 minute series, edition of 1956;

(3) ''Soledad, California,'' 7.5 minute series, edition of 1955; and

(4) ''Sycamore Flat, California,'' 7.5 minute series, edition of 1956 (photoinspected 1972).

(c) *Boundaries.* The Arroyo Seco viticultural area is located in Monterey County, California. The beginning point is found on the ''Sycamore Flat'' U.S.G.S. map at the junction of Arroyo Seco Road and the Carmel Valley Road (indicated as the Jamesburg Road on the map).

(1) Then east following Arroyo Seco Road to the southwest corner of Section 22, T. 19 S., R. 5 E.

(2) Then east following the southern boundaries of Sections 22, 23, 24, 19, and 20 to the southeastern corner of Section 20, T. 19 S., R. 6 E.

(3) Then northeast in a straight line for approximately 1.3 miles to the summit of Pettits Peak.

(4) Then northeast in a straight line for approximately 1.8 miles to the point where the 400′ contour line intersects the northern boundary of Section 14, T. 19 S., R. 6 E.

(5) Then east following the 400′ contour line to a point immediately west of the Reservoir within the Posa de los Ositos Land Grant.

(6) Then following the ridge line in a northeasterly direction for approximately 7.5 miles to U.S. Highway 101 at the intersection of Underwood Road.

(7) Then east following Underwood Road to its intersection with the Posa de los Ositos Land Grant.

(8) Then north following the boundary of the Posa de los Ositos Land Grant to the west bank of the Salinas River.

(9) Then northwest following the west bank of the Salinas River to the southern boundary of Section 17, T. 18 S., R. 7 E.

(10) Then due west for approximately 2.0 miles following the southern boundary of Section 17, and continuing to U.S. Highway 101.

(11) Then following U.S. Highway 101 in a northwesterly direction to its intersection with Paraiso Road.

(12) Then south following Paraiso Road to the intersection with Clark Road.

(13) Then south in a straight line for approximately 1.8 miles to the northeast corner of Section 5, T. 19 S., R. 6 E.

(14) Then due south following the eastern boundaries of Sections 5, 8, and 17, to Arroyo Seco Road.

(15) Then southwest in a straight line for approximately 1.0 mile to Bench Mark 673.

(16) Then west in a straight line for approximately 1.8 miles to Bench Mark 649.

(17) Then northwest in a straight line for approximately 0.2 mile to the northeast corner of Section 23, T. 19 S., R. 5 E.

(18) Then west following the northern boundaries of Section 23 and 22 to the northwest corner of Section 22, T. 19 S., R. 5 E.

(19) Then south in a straight line for approximately 1.0 mile to the point of beginning.

[T.D. ATF–131, 48 FR 16246, Apr. 15, 1983]

§9.60 Shenandoah Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Shenandoah Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Shenandoah Valley viticultural area are four U.S.G.S. Eastern United States 1:250,000 scale maps. The maps are titled: Roanoke (1971), Charlottesville (1956, with a revision in 1965), Cumberland (1956, revised 1969) and Baltimore (1957, revised 1978).

(c) *Boundaries*. The Shenandoah Valley Viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

(1) The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia.

(2) Then the boundary proceeds southwesterly approximately 14.8 miles along the State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the western border line of Clarke County, Virginia.

(3) Then the boundary continues approximately 13.8 miles southwesterly along the county line and the crest of the Blue Ridge to its intersection with the western boundary line of Warren County, Virginia.

(4) Then the boundary continues approximately 15 miles along the Warren County line to its intersection with the Skyline Drive.

(5) Then the boundary continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with the Blue Ridge Parkway.

(6) Then the boundary continues approximately 53 miles in a southeasterly direction along the Blue Ridge Parkway to its intersection with the James River.

(7) Then the boundary proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock.

(8) Then the boundary proceeds approximately 10.5 miles in a northeasterly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the western boundary line of Rockbridge County.

(9) Then the boundary continues approximately 23 miles along the county line in the same northeasterly direction to its intersection with the Chesapeake and Ohio Railroad.

(10) Then the boundary continues approximately 23 miles along the railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap.

(11) Then the boundary continues approximately 81 miles northeasterly along the George Washington National Forest Line to the Vertical Control Station, (elevation 1883), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace.

(12) Then the boundary line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park.

(13) Then the boundary continues approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that Rivers intersection with the boundary line between West Virginia and Virginia.

[T.D. ATF–120, 47 FR 57698, Dec. 28, 1982, as amended by T.D. ATF–249, 52 FR 5958, Feb. 27, 1987]

§ 9.61 El Dorado.

(a) *Name.* The name of the viticultural area described in this section is ''El Dorado.''

(b) *Approved maps.* The approved U.S.G.S. topographic maps (7.5 series; quadrangles) showing the boundaries of the El Dorado viticultural area, including quadrangles showing the area within the boundaries, are as follows:

(1) ''Pilot Hill, California,'' 1954 (photorevised 1973);

(2) ''Auburn, California,'' 1953 (photorevised 1973);

(3) ''Greenwood, California,'' 1949 (photorevised 1973);

(4) ''Georgetown, California,'' 1949 (photorevised 1973);

(5) ''Foresthill, California,'' 1949 (photorevised 1973);

(6) ''Michigan Bluff, California,'' 1952 (photorevised 1973);

(7) ''Tunnel Hill, California,'' 1950 (photorevised 1973);

(8) ''Slate Mountain, California,'' 1950 (photorevised 1973);

(9) ''Pollock Pines, California,'' 1950 (photorevised 1973);

(10) ''Stump Spring, California,'' 1951 (photorevised 1973);

(11) ''Caldor, California,'' 1951 (photorevised 1973);

(12) ''Omo Ranch, California,'' 1952 (photorevised 1973);

(13) ''Aukum, California,'' 1952 (photorevised 1973);

(14) ''Fiddletown, California,'' 1949;

(15) ''Latrobe, California,'' 1949 (photorevised 1973);

(16) ''Shingle Springs, California,'' 1949;

(17) ''Coloma, California,'' 1949 (photorevised 1973);

(18) ''Garden Valley, California,'' 1949 (photorevised 1973);

(19) ''Placerville, California,'' 1949 (photorevised 1973);

(20) ''Camino, California,'' 1952 (photorevised 1973);

(21) ''Sly Park, California,'' 1952 (photorevised 1973);

(c) *Boundaries.* The boundaries of the El Dorado viticultural area which is located in El Dorado County, California, are as follows:

(1) The beginning point of the boundaries is the intersection of the North Fork of the American River (also the boundary line between El Dorado and Placer Counties) and the township line ''T. 11 N./T. 12 N.'' (''Pilot Hill'' Quadrangle);

(2) Thence northeast along the North Fork of the American River to its divergence with the Middle Fork of the American River, continuing then, following the Middle Fork of the American River to its intersection with the Rubicon River which continues as the boundary line between El Dorado and Placer Counties (''Auburn,'' ''Greenwood,'' ''Georgetown,'' ''Foresthill,'' and ''Michigan Bluff'' Quadrangles);

(3) Thence southeast along the Rubicon River to its intersection with the range line ''R. 11 E./R. 12 E.'' (''Tunnel Hill'' Quadrangle);

(4) Thence south along the range line through T. 13 N. and T. 12 N., to its intersection with the township line ''T. 12 N./T. 11 N.'' (''Tunnel Hill'' and ''Slate Mountain'' Quadrangles);

(5) Thence east along the range line to its intersection with the range line ''R. 12 E./R. 13 E.'' (''Slate Mountains'' and ''Pollock Pines'' Quadrangles);

(6) Thence south along the range line to its intersection with the township line ''T. 11 N./T. 10 N.'' (''Pollock Pines'' Quadrangle);

(7) Thence east along the township line to its intersection with the range line ''R. 13 E./R. 14 E.'' (''Pollock Pines'' and ''Stump Spring'' Quadrangles);

(8) Thence south along the range line through T. 10 N., T. 9 N., and T. 8 N. to its intersection with the South Fork of the Cosumnes River (also the boundary line between El Dorado and Amador Counties) (''Stump Spring'' and ''Caldor'' Quadrangles);

(9) Thence west and northwest along the South Fork of the Cosumnes River to its intersection with range line ''R. 11 E./R. 10 E.'' (''Caldor,'' ''Omo Ranch,'' ''Aukum,'' and ''Fiddletown'' Quadrangles);

(10) Thence north along the range line to its intersection with the township line ''T. 8 N./T. 9 N.'' (''Fiddletown'' Quadrangle);

(11) Thence west along the township line to its intersection with range line ''R. 10 E./R. 9 E.'' (''Fiddletown'' and ''Latrobe'' Quadrangles);

(12) Thence north along the range line to its intersection with U.S. Route 50;

(13) Thence west along U.S. Route 50 to its intersection with Cameron Park Drive;

(14) Thence north along Cameron Park Drive to its intersection with Green Valley Road;

(15) Thence east along Green Valley Road to its intersection with range line R.10 E/ R.9 E;

(16) Thence north along the range line to its intersection with the township line T.10 N./ T.11 N;

(17) Thence east along the township line approximately 4,000 feet to its intersection with the range line ''R. 9 E./R. 10 E.'' (''Coloma'' Quadrangle);

(18) Thence north on the range line to its intersection with the township line ''T. 11 N./T. 12 N.'' (''Coloma'' Quadrangle); and

(19) Thence west along the township line to the point of beginning (''Coloma'' and ''Pilot Hill'' Quadrangles).

[T.D. ATF–152, 48 FR 46520, Oct. 13, 1983, as amended by T.D. ATF–254, 52 FR 23651, June 24, 1987]

§9.62 Loramie Creek.

(a) *Name.* The name of the viticultural area described in this section is ''Loramie Creek.''

(b) *Approved map.* The approved map for the Loramie Creek viticultural area is the U.S.G.S. map entitled ''Fort Loramie Quadrangle, Ohio—Shelby Co.,'' 7.5 minute series (topographic), 1961 (photoinspected 1973).

(c) *Boundaries.* The Loramie Creek viticultural area is located entirely within Shelby County, Ohio. The boundaries are as follows:

(1) From the beginning point of the boundary at the intersection of State Route 47 and Wright-Puthoff Road, the boundary runs southward on Wright-Puthoff Road for a distance of 1⅜ miles to the intersection of the Wright-Puthoff Road with Consolidated Railroad Corporation (indicated on the U.S.G.S. map as New York Central Railroad);

(2) Then along the Consolidated Railroad Corporation right-of-way in a southwesterly direction for a distance of 2⅛ miles to the intersection of the Consolidated Railroad Corporation right-of-way with Loramie Creek;

(3) Then upstream along Loramie Creek in a northwesterly direction for a distance of approximately 3½ miles to the intersection of Loramie Creek and State Route 47;

(4) Then eastward on State Route 47 for a distance of approximately 4⅛ miles to the beginning point of State Route 47 and Wright-Puthoff Road.

[T.D. ATF–118, 47 FR 53356, Nov. 26, 1982]

§ 9.63 Linganore.

(a) *Name.* The name of the viticultural area described in this section is ''Linganore.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Linganor viticultural area are five U.S.G.S topographic maps. They are—

(1) ''Walkersville Quadrangle, Maryland—Frederick Co.'', 7.5 minute series, 1953 (Photorevised 1979);

(2) ''Libertytown Quadrangle, Maryland'', 7.5 minute series, 1944 (Photorevised 1971);

(3) ''Damascus Quadrangle, Maryland'', 7.5 minute series, 1944 (Photorevised 1979);

(4) ''Winfield Quadrangle, Maryland'', 7.5 minute series, 1950 (Photorevised 1979); and

(5) ''Union Bridge Quadrangle, Maryland,'' 7.5 minute series, 1953 (Photorevised 1971).

(c) *Boundaries.* The Linganore viticultural area is located in north central Maryland and encompasses parts of Frederick and Carroll Counties. From the beginning point lying at the confluence of Linganore Creek and the Monocacy River, on the Walkersville Quadrangle map, the boundary runs—

(1) South-southeasterly 5,000 feet in a straight line to the point lying approximately 1,000 feet south of Interstate Highway 70 at the intersection of two unnamed light duty roads in the town of Bartonsville;

(2) Then east-southeasterly 15,500 feet in a straight line to the point lying at the intersection of Mussetter Road and latitude line 39 degrees 22 minutes 30 seconds;

(3) Then east-northeasterly 8,125 feet in a straight line to the point lying at the intersection of Mill Road and State Highway 144;

(4) Then easterly along State Highway 144 on the Walkersville Quadrangle, Libertytown Quadrangle, and Damascus Quadrangle maps to the point of intersection with State Highway 27, approximately midway between the towns of Ridgeville and Parrsville, on the Damascus Quadrangle map;

(5) Then northeasterly along State Highway 27 on the Damascus Quadrangle, Libertytown Quadrangle, and Winfield Quadrangle maps to the point of intersection with State Highway 26 in the town of Taylorsville on the Winfield Quadrangle map;

(6) Then northerly 2,750 feet in a straight line to the point on a hill identified as having an elevation of 850 feet;

(7) Then northwesterly 21,000 feet in a straight line to the point lying at the intersection of State Highway 31 and latitude line 39 degrees 30 minutes on the Libertytown Quadrangle and Union Bridge Quadrangle maps;

(8) Then westerly 15,625 feet along latitude line 39 degrees 30 minutes to the point of intersection with Copper Mine Road;

(9) Then northwesterly along Copper Mine Road on the Union Bridge Quadrangle map to the point of intersection with longitude line 77 degrees 15 minutes;

(10) Then southerly 5,250 feet along longitude line 77 degrees 15 minutes to the point of intersection with latitude line 39 degrees 30 minutes on the Union Bridge Quadrangle and Walkersville Quadrangle maps;

(11) Then southwesterly 46,750 feet in a straight line on the Walkersville Quadrangle map to the point of beginning.

[T.D. ATF–140, 48 FR 37374, Aug. 18, 1983]

§ 9.64 Dry Creek Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Dry Creek Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Dry Creek Valley viticultural area are six U.S.G.S. topographic maps. They are—

(1) ''Geyserville Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955 (Photorevised 1975);

(2) ''Jimtown Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955 (Photorevised 1975);

(3) ''Healdsburg Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955 (Photorevised 1980);

(4) ''Guerneville Quadrangle, California—Sonoma County,'' 7.5 minute series, 1955;

(5) ''Cazadero Quadrangle, California—Sonoma County,'' 7.5 minute series, 1978; and

(6) ''Warm Springs Dam Quadrangle (formerly 'Skaggs Springs Quadrangle'), California—Sonoma County,'' 7.5 minute series, 1978.

(c) *Boundaries.* The Dry Creek Valley viticultural area is located in north central Sonoma County, California. From the beginning point, lying at the intersection of latitude line 38 degrees 45 minutes and the northwest corner of Section 5, T. 10 N., R. 10 W. on the ''Geyserville Quadrangle'' map, the boundary runs—

(1) Southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northeast corner of Section 9, T. 10 N., R. 10 W.;

(2) Then southerly along the east line of Section 9 to the southeast corner thereof;

(3) Then S. 74 degrees, E. 2,800 feet in a straight line to the northeasterly tip of a small unnamed lake;

(4) Then N. 57 degrees, E. 2,300 feet in a straight line to the southeast corner of Section 10, T. 10 N., R. 10 W.;

(5) Then S. 16 degrees, E. 1,800 feet in a straight line to the point on a peak identified as having an elevation of 664 feet;

(6) Then S. 55 degrees, E. 7,900 feet in a straight line to the most northerly point on the northeasterly line of ''Olive Hill'' cemetery lying on the easterly side of Canyon Road;

(7) Then southeasterly along the northeasterly line of ''Olive Hill'' cemetery to the most easterly point thereon;

(8) Then S. 2 degrees, E. 3,100 feet in a straight line to the point in the westerly fork of Wood Creek lying at the westerly terminus of a dirt road;

(9) Then southerly 3,000 feet along the west fork of Wood Creek to the point lying 400 feet north of the point on a peak identified as having an elevation of 781 feet;

(10) Then southerly 400 feet in a straight line to the point on a peak identified as having an elevation of 781 feet;

(11) Then S. 50½ degrees, E. 15,500 feet in a straight line to the point lying at the intersection of Lytton Creek and the township line common to T. 9 N. and T. 10 N. in R. 9 W.;

(12) Then southerly along the meanders of Lytton Creek to the point of intersection with Lytton Springs Road in T. 9 N., R. 9 W.;

(13) Then easterly along Lytton Springs Road to the point of intersection with U.S. Highway 101 (a.k.a. Redwood Highway) on the ''Jimtown Quadrangle'' map;

(14) Then southerly along U.S. Highway 101 to the point of intersection with an unnamed light duty road (known locally as Chiquita Road) on the ''Geyserville Quadrangle'' map;

(15) Then easterly along the unnamed light duty road to the point of intersection with an unnamed heavy duty road (known locally as Healdsburg Avenue) on the ''Jimtown Quadrangle'' map;

(16) Then southerly along the unnamed heavy duty road through the town of Healdsburg to the point of intersection with the Russian River on the ''Healdsburg Quadrangle'' map;

(17) Then southerly along the meanders of the Russian River to the confluence of Dry Creek;

(18) Then west-southwesterly 1,300 feet in a straight line to an unnamed light duty road (known locally as Foreman Lane);

(19) Then westerly along the unnamed light duty road, crossing West Dry Creek Road and passing Felta School, to the point of intersection with Felta Creek on the ''Guerneville Quadrangle'' map;

(20) Then southwesterly 18,000 feet along the meanders of Felta Creek to the point lying at the intersection of three springs in T. 8 N., R. 10 W., approximately 300 feet east from the word ''Springs'';

(21) Then S. 58 degrees, W. 15,000 feet in a straight line to the southwest corner of Section 9, T. 8 N., R. 10 W.;

(22) Then northerly along the west line of Sections 9 and 4, T. 8 N., R. 10

W., continuing along the west line of Section 33, T. 9 N., R. 10 W. to the northwest corner thereof;

(23) Then westerly along the south line of Sections 29 and 30, T. 9 N., R. 10 W. to the southwest corner of Section 30 on the ''Cazadero Quadrangle'' map;

(24) Then northerly along the west line of Sections 30 and 19, T. 9 N., R. 10 W. to the northwest corner of Section 19;

(25) Then westerly along the south line of Section 13, T. 9 N., R. 11 W. to the southwest corner thereof;

(26) Then southwesterly 14,200 feet in a straight line to the northeast corner of Section 20, T. 9 N., R. 11 W.;

(27) Then westerly along the north line of Section 20 to the northwest corner thereof;

(28) Then northerly along the east line of Sections 18, 7, and 6, T. 9 N., R. 11 W., continuing along the east line of Sections 31, 30, 19, 18, 7, and 6, T. 10 N., R. 11 W. to the point of intersection with latitude line 38 degrees 45 minutes on the ''Warm Springs Dam Quadrangle'' map; and

(29) Then easterly along latitude line 38 degrees 45 minutes to the point of beginning on the ''Geyserville Quadrangle'' map.

[T.D. ATF–137, 48 FR 35397, Aug. 4, 1983, as amended by T.D. ATF–468, 66 FR 50565, Oct. 4, 2001]

§ 9.65 North Fork of Roanoke.

(a) *Name*. The name of the viticultural area described in this section is ''North Fork of Roanoke.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the North Fork of Roanoke viticultural area are six U.S.G.S. Virginia, 7.5 minute series maps. They are:

(1) McDonalds Mill Quadrangle, 1965;

(2) Glenvar Quadrangle, 1965;

(3) Elliston Quadrangle, 1965;

(4) Ironto Quadrangle, 1965;

(5) Blacksburg Quadrangle, 1965; and

(6) Newport Quadrangle, 1965.

(c) *Boundaries*. The North Fork of Roanoke viticultural area is located in parts of Roanoke and Montgomery Counties in southern Virginia.

(1) The point of the beginning is in the north at the intersection of State Routes 785 and 697 in Roanoke County.

(2) Then the boundary follows State Route 697 northeast over Crawford Ridge to the intersection at State Route 624.

(3) Then the boundary turns southwest on State Route 624 along the boundary of the Jefferson National Forest and then continues across the Montgomery County line to U.S. 460 (business).

(4) Then the boundary follows U.S. Route 460 (business) south through the town of Blacksburg.

(5) Then the boundary continues on U.S. Route 460 (bypass) to the intersection of U.S. Route 460 East, where it turns east for approximately one mile to the intersection of U.S. Interstate Highway 81 at Interchange 37.

(6) Then the boundary continues northeast on Interstate Highway 81 to its intersection with State Route 603 at interchange 38.

(7) Then the boundary continues northwest on State Route 603 to its intersection with State Route 629.

(8) Then the boundary follows State Route 629 (which later becomes State Route 622 north of Brandshaw Creek) 2 miles across the Roanoke County line to where it intersects the Chesapeake and Potomac Telephone Company right-of-way.

(9) Then the boundary turns northwest along the C & P right-of-way over Pearis Mountain to the point where the right-of-way intersects State Route 785, one quarter mile northeast of the intersections of State Routes 785 and 697.

(10) Then the boundary follows State Route 784 back to the beginning point.

[T.D. ATF–129, 48 FR 16250, Apr. 15, 1983, as amended by T.D. ATF–249, 52 FR 5958, Feb. 27, 1987]

§ 9.66 Russian River Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Russian River Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Russian River Valley viticultural area are the 1954 U.S.G.S. 7.5 minute series maps titled:

''Healdsburg Quadrangle, California''
''Guerneville Quadrangle, California''
''Cazadero Quadrangle, California''
''Duncans Mills Quadrangle, California''

''Camp Meeker Quadrangle, California''
''Valley Ford Quadrangle, California''
''Sebastopol Quadrangle, California''
''Santa Rosa Quadrangle, California''
''Mark West Springs Quadrangle, California''
''Jimtown Quadrangle, California''

(c) *Boundaries.* The Russian River Valley viticultural area is located in Sonoma County, California.

(1) Starting point Healdsburg map-Healdsburg Avenue Bridge over the Russian River at Healdsburg. Proceed south along Russian River to the point where Russian River and Dry Creek converge, from this point proceed west in a straight line to Forman Lane.

(2) Proceed west along Foreman Lane to where it crosses Westside Road and becomes Felta School Road.

(3) Proceed west on Felta School Road to the point where it crosses Felta Creek.

(4) Proceed 18000′ up Felta Creek to its headwaters as shown on the *Guerneville, map* as ''Springs.''

(5) Proceed southwest in a straight line 58 degrees W 27000′ to an intersection with Hulbert Creek on the Cazadero map.

(6) Proceed south and southeast along Hulbert Creek to the point where it intersects California Hwy 116 on the Duncan Mills map.

(7) Proceed in a westerly direction along California Hwy 116 to Monte Rio where it intersects the Bohemian Hwy.

(8) Proceed southeast along the Bohemian Hwy onto the Camp Meeker Map and then the Valley Ford map to the town of Freestone where it intersects the Bodega Road.

(9) Proceed northeast along the Bodega Road onto the Sebastopol map to the city of Sebastopol where it becomes California Hwy 12 then northeast along California Hwy 12 to its intersection with Wright Road.

(10) Proceed north along Wright Road to where it becomes Fulton Road and into the town Fulton to where in intersects River Road.

(11) Proceed east along River Road to its intersection with Mark West Springs Road.

(12) Proceed north east along Mark West Springs Road through the *Santa Rosa map* and onto the *Mark West map* to where it becomes Porter Creek Road and onto its intersection with Franz Valley Road.

(13) Proceed in a northerly direction along Franz Vally Road to the northerly most crossing of Franz Creek.

(14) Proceed west along Franz Creek until it intersects the line separating Section 21 and Section 22.

(15) Proceed south on this line separating Section 21 and 22 to the corner common to Section 21 and 22 and Section 27 and 28.

(16) Proceed west from the common corner of Section 21 and 22 and 27 and 28 and in a straight line to the peak of Chalk Hill on the *Healdsburg map*.

(17) Proceed west from the peak of Chalk Hill in a straight line to the point where Brooks Creek joins the Russian River.

(18) Proceed north west in a straight line 8000′ to a peak marked 772′ elv. on the *Jimtown map*.

(19) Proceed north west in a straight line from hill top 772′ elv. to hill top 596″ elv.

(20) Proceed north west in a straight line from hill top 596′ elv. to hill top 516′ elv.

(21) Proceed north west in a straight line from hill top 516′ elv. to hill top 530′ elv.

(22) Proceed west in a straight line from hill top 530′ elv. to hill top 447′ elv.

(23) Proceed west in a straight line from hill top 447′ elv. to the point where Alexander Valley Road meets Healdsburg Avenue.

(24) Proceed south along Healdsburg Avenue through the city of Healdsburg on the *Healdsburg map* to the point where it crosses the Russian River at the point of beginning.

[T.D. ATF–159, 48 FR 48813, Oct. 21, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§9.67 Catoctin.

(a) *Name.* The name of the viticultural area described in this section is ''Catoctin.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Catoctin viticultural area are 12 U.S.G.S. maps in the scale 1:24,000. They are—

(1) ''Point of Rocks Quadrangle, Maryland—Virginia,'' 7.5 minute series, 1970;

(2) ''Buckeystown Quadrangle, Maryland,'' 7.5 minute series, 1952 (Photorevised 1971);

(3) ''Frederick Quadrangle, Maryland,'' 7.5 minute series, 1953 (Photorevised 1980);

(4) ''Catoctin Furnace Quadrangle, Maryland,'' 7.5 minute series, 1953 (Photorevised 1979);

(5) ''Blue Ridge Summit Quadrangle, Maryland—Pennsylvania,'' 7.5 minute series, 1953 (Photorevised 1971);

(6) ''Emmitsburg Quadrangle, Maryland—Pennsylvania,'' 7.5 minute series, 1953 (Photorevised 1971);

(7) ''Smithsburg Quadrangle, Maryland—Pennsylvania,'' 7.5 minute series, 1953 (Photorevised 1971);

(8) ''Myersville Quadrangle, Maryland,'' 7.5 minute series, 1953 (Photorevised 1971);

(9) ''Funkstown Quadrangle, Maryland,'' 7.5 minute series, 1953 (Photorevised 1971);

(10) ''Keedysville Quadrangle, Maryland—West Virginia,'' 7.5 minute series, 1978;

(11) ''Harpers Ferry Quadrangle, Virginia—Maryland—West Virginia,'' 7.5 minute series, 1969; and

(12) ''Charles Town Quadrangle, West Virginia—Virginia—Maryland,'' 7.5 minute series, 1978;

(13) ''Middletown Quadrangle, Maryland,'' 7.5 minute series, 1953 (photorevised 1979);

(c) *Boundaries.* The Catoctin viticultural area is located in western Maryland and encompasses parts of Frederick and Washington Counties. From the beginning point at the point where U.S. Highway 15 crosses the Potomac River and enters the land mass of Maryland on the ''Point of Rocks Quadrangle'' map, the boundary runs—

(1) Northerly 1,100 feet in a straight line to the point of intersection with a 500-foot contour line;

(2) Then northeasterly along the meanders of the 500-foot contour line on the ''Point of Rocks Quadrangle,'' ''Buckeystown Quadrangle,'' ''Frederick Quadrangle,'' ''Catoctin Furnace Quadrangle,'' ''Blue Ridge Summit Quadrangle,'' and ''Emmitsburg Quadrangle'' maps to the point of intersection with the Maryland—Pennsylvania State line on the ''Emmitsburg Quadrangle'' map;

(3) Then west along the Maryland-Pennsylvania State line on the ''Emmitsburg Quadrangle,'' ''Blue Ridge Summit Quadrangle,'' and ''Smithsburg Quadrangle'' maps to the point of intersection with the first 800-foot contour line lying west of South Mountain on the ''Smithsburg Quadrangle'' map;

(4) Then southwesterly along the meanders of the 800-foot contour line on the ''Smithburg Quadrangle,'' ''Myersville Quadrangle,'' ''Funkstown Quadrangle,'' and ''Keedysville Quadrangle'' maps to the point of intersection with an unnamed light duty road (known locally as Clevelandville Road) north of the town of Clevelandville on the ''Keedysville Quadrangle'' map;

(5) Then southerly along the unnamed light duty road to the point of intersection with Reno Monument Road;

(6) Then southwesterly 13,500 feet in a straight line to the point lying at the intersection of Highway 67 and Millbrook Road;

(7) Then westerly along Millbrook Road to the point of intersection with Mount Briar Road;

(8) Then northerly along Mount Briar Road to the point of intersection with a 500-foot contour line;

(9) Then northerly along the 500-foot contour line to the point of intersection with Red Hill Road;

(10) Then southerly along the 500-foot contour line to the point of intersection with Porterstown Road;

(11) Then south-southwesterly 29,000 feet in a straight line to the most eastern point on the boundary line of the Chesapeake and Ohio Canal National Historical Park lying north of the town of Dargan;

(12) Then southwesterly 7,500 feet in a straight line to the point of the ''Harpers Ferry Quadrangle'' map lying approximately 600 feet northwest of Manidokan Camp at the confluence of an unnamed stream and the Potomac River; and

(13) Then easterly along the meanders of the Potomac River on the ''Harpers Ferry Quadrangle,'' ''Charles Town Quadrangle,'' and ''Point of

Rocks Quadrangle'' maps to the point of beginning.

[T.D. ATF–154, 48 FR 46523, Oct. 13, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.68 Merritt Island.

(a) *Name.* The name of the viticultural area described in this section is ''Merritt Island.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Merritt Island viticultural area are two U.S.G.S. maps, 7.5 minute series. They are entitled:

(1) ''Clarksburg Quadrangle, California,'' 1967 (Photo revised 1980); and

(2) ''Courtland Quadrangle, California,'' 1978.

(c) *Boundaries.* The Merritt Island viticultural area is located in Yolo County, California, six miles south of the City of Sacramento. The boundaries of the Merritt Island viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Starting at the most southernly point, the intersection of Sutter Slough with the Sacramento River.

(2) Then west along the course of Sutter Slough for 0.54 miles until it intersects Elk Slough.

(3) Then northeast along the course of Elk Slough for 9.58 miles to the community of Clarksburg and the intersection of Sacramento River.

(4) Then southeasterly along the course of the Sacramento River for 7.8 miles to the beginning point.

[T.D. ATF–134, 48 FR 22146, May 17, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.69 Yakima Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Yakima Valley.''

(b) *Approved maps.* The approved maps for determining the boundary of the Yakima Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) ''Walla Walla, Washington,'' scaled 1:250,000, edition of 1953, limited revision 1963; and

(2) ''Yakima, Washington,'' scaled 1:250,000, edition of 1958, revised 1971.

(c) *Boundaries.* The Yakima Valley viticultural area is located in Benton and Yakima Counties, Washington. The beginning point is found on the ''Yakima, Washington,'' U.S.G.S. map at the Wapato Dam located on the Yakima River.

(1) Then east following the crest of the Rattlesnake Hills across Elephant Mountain, Zillah Peak, High Top (elevation 3031 feet), and an unnamed mountain (elevation 3629 feet) to the Bennett Ranch;

(2) Then due east approximately 0.2 mile to the boundary of the Hanford Atomic Energy Commission Works;

(3) Then southeast following the boundary of the Hanford AEC Works along the Rattlesnake Hills to the Yakima River;

(4) Then southeast across the top of Red Mountain to the peak of Badger Mountain;

(5) Then due south for approximately 4.9 miles to the 1000 foot contour line immediately south of the Burlington Northern Railroad (indicated on map as the Northern Pacific Railroad);

(6) Then west following the 1000 foot contour line to its intersection with U.S. Highway 97 immediately west of Hembre Mountain;

(7) Then west following the Toppenish Ridge, across an unnamed mountain (elevation 2172 feet), an unnamed mountain (elevation 2363 feet), to the peak of Toppenish Mountain (elevation 3609 feet);

(8) Then northwest in straight line for approximately 9.3 miles to the lookout tower at Fort Simcoe Historical State Park;

(9) Then north in a straight line for approximately 11.7 miles to an unnamed peak, (elevation 3372 feet); and

(10) Then east following Ahtanum Ridge, crossing unnamed peaks of 2037 feet elevation, 2511 feet elevation, 2141 feet elevation, to the Wapato Dam at the point of beginning.

[T.D. ATF–128, 48 FR 14375, Apr. 4, 1983]

§ 9.70 Northern Sonoma.

(a) *Name.* The name of the viticultural area described in this section is ''Northern Sonoma.''

(b) *Approved maps.* The approved maps for determining the boundary of

the Northern Sonoma viticultural area are the U.S.G.S. Topographical Map of Sonoma County, California, scale 1:100,000, dated 1970, the Asti Quadrangle, California, 7.5 minute series (Topographic) Map, dated 1959, photorevised 1978, and the Jimtown Quadrangle, California-Sonoma County, 7.5 Minute series (Topographic) Map, dated 1955, photorevised 1975.

(c) *Boundary*. The Northern Sonoma Viticultural area is located in Sonoma County, California. The boundary description in paragraphs (c)(1) through (c)(28) of this section includes (in parentheses) the local names of roads which are not identified by name on the map.

(1) On the U.S.G.S. Topographical Map of Sonoma County, California, the beginning point is the point, in the town of Monte Rio, at which a secondary highway (Bohemian Highway) crosses the Russian River.

(2) The boundary follows this secondary highway (Bohemian Highway) southeasterly across the Russian River, along Dutch Bill Creek, through the towns of Camp Meeker, Occidental, and Freestone, then northeasterly to the point at which it is joined by State Highway 12.

(3) The boundary follows State Highway 12 through the town of Sebastopol to the point, near a bench mark at elevation 96 feet, at which it intersects a northbound secondary highway (Fulton Road) leading toward the town of Fulton.

(4) The boundary follows this secondary highway (Fulton Road) north to the town of Fulton where it intersects an east-west secondary highway (River Road).

(5) The boundary follows this secondary highway (River Road)—

(i) East past U.S. Highway 101 (where the name of this secondary highway changes to Mark West Springs Road),

(ii) Easterly, then northerly to the town of Mark West Springs (where the name of this secondary highway changes to Porter Road),

(iii) Easterly to the town of Petrified Forest (where the name of this secondary highway changes to Petrified Forest Road), and

(iv) Northeasterly to the Sonoma County-Napa County line.

(6) The boundary follows the Sonoma County-Napa County line northerly to the Sonoma County-Lake County line.

(7) The boundary follows the Sonoma County-Lake County line northwesterly to the section line on the north side of Section 11, Township 10 North, Range 8 West.

(8) The boundary follows this section line west to the northwest corner of Section 9, Township 10 North, Range 8, West.

(9) The boundary follows the section line south to the southwest corner of Section 4, Township 9 North, Range 8, West.

(10) The boundary proceeds northerly along the western lines of section 4, of Township 9 North, Range 8 West, and sections 33, 28, 21, 16, and 9 of Township 10 North, Range 8 West of the Jimtown Quadrangle map.

(11) The boundary proceeds westerly along the northern lines of sections 8 and 7, Township 10 North, Range 8 West and section 12, Township 10 North, Range 9 West to the southeastern corner of section 2, Township 10 North, Range 9 West.

(12) The boundary proceeds northwesterly in a straight line to the eastern line of section 3 at 38 degrees 45 minutes latitude, Township 10 North, Range 9 West.

(13) The boundary proceeds westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude.

(14) The boundary proceeds northwesterly in a straight line to the southeast corner of section 4, Township 11 North, Range 10 West, on the Asti, Quadrangle map.

(15) The boundary proceeds northeasterly in a straight line to the southeast corner of section 34, Township 12 North, Range 10 West.

(16) The boundary proceeds north along the east boundary of section 34, Township 12 North, Range 10 West on the U.S.G.S. Topographical Map of Sonoma County, California, to the Sonoma County-Mendocino County line.

(17) The boundary proceeds along the Sonoma County-Mendocino County line west then south to the southwest corner of section 34, Township 12 North, Range 11 West.

(18) The boundary proceeds in a straight line east southeasterly to the southeast corner of section 2, Township 11 North, Range 11 West.

(19) The boundary proceeds in a straight line south southeasterly to the southeast corner of section 24, Township 11 North, Range 11 West.

(20) The boundary proceeds in a straight line southeasterly across sections 30, 31, and 32 in Township 11 North, Range 10 West, to the point at 38 degrees 45 minutes North latitude parallel and 123 degrees 00 minutes East longitude in section 5, Township 10 North, Range 10 West.

(21) The boundary proceeds along this latitude parallel west to the west line of section 5, Township 10 North, Range 11 West.

(22) The boundary proceeds along the section line south to the southeast corner of section 18, Township 9 North, Range 11 West.

(23) The boundary proceeds in a straight line southwesterly approximately 5 miles to the peak of Big Oat Mountain, elevation 1,404 feet.

(24) The boundary proceeds in a straight line southerly approximately 2¾ miles to the peak of Pole Mountain, elevation 2,204 feet.

(25) The boundary proceeds in a straight line southeasterly approximately 4¾ miles to the confluence of Austin Creek and the Russian River.

(26) The boundary proceeds along the Russian River northeasterly, then southeasterly to the beginning point.

[T.D. ATF–204, 50 FR 20562, May 17, 1985, as amended by T.D. ATF–233; 51 FR 30354, Aug. 26, 1986; T.D. ATF–300, 55 FR 32402, Aug. 9, 1990]

§ 9.71 Hermann.

(a) *Name.* The name of the viticultural area described in this section is ''Hermann.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Hermann viticultural area are six U.S.G.S. Missouri Quadrangle maps, 7.5 minute series. They are entitled:

(1) Hermann (1974).

(2) Berger (1974).

(3) Gasconade (1974).

(4) Pershing (1974).

(5) Swiss (1973).

(6) Dissen (1973).

(c) *Boundaries.* The Hermann viticultural area is located in central Missouri along and south of the Missouri River, in the northern portions of Gasconade and Franklin Counties. The boundaries of the Hermann viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Starting at the intersection of the Gasconade River with the Missouri River.

(2) Then continuing east and northeast approximately 16.5 miles along the Missouri River Pacific Railroad, as it parallels the Missouri River, to the Gasconade/Franklin County line.

(3) Then continuing along the Missouri Pacific Railroad southeast approximately 8.5 miles to the intersection Big Berger Creek.

(4) Then southwest along the winding course of Big Berger Creek for approximately 20 miles (eight miles due southwest) to Township line T.44/45N.

(5) Then west along the T.44/45N. line approximately 15.5 miles to the intersection of First Creek.

(6) Then north and northwest along the course of First Creek approximately 13.7 miles (6.5 miles straight northwest) to the intersection of the Gasconade River.

(7) Then northeast along the course of the Gasconade River approximately 3.8 miles to the beginning point.

[T.D. ATF–136, 48 FR 37372, Aug. 18, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.72 Southeastern New England.

(a) *Name.* The name of the viticultural area described in this section is ''Southeastern New England.''

(b) *Approved maps.* The approved maps for determining the boundary of the Southeastern New England viticultural area are three U.S.G.S. maps. They are entitled:

(1) ''Boston, Mass.; N.H.; Conn.; R.I.; Maine'', scaled 1:250,000, edition of 1956, revised 1970;

(2) ''Hartford, Conn.; N.Y.; N.J.; Mass.'', scaled 1:250,000, edition of 1962, revised 1975; and

(3) ''Providence, R.I.; Mass.; Conn.; N.Y.'', scaled 1:250,000, edition of 1947, revised 1969.

(c) *Boundaries*. The Southeastern New England viticultural area is located in the counties of New Haven, New London, and Middlesex in Connecticut; in the counties of Bristol, Newport, Providence, and Washington, in Rhode Island; and in the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, and Plymouth in Massachusetts. The beginning point is found on the ''Hartford'' U.S.G.S. map in New Haven Harbor;

(1) Then north following the Quinnipiac River to U.S. Interstate 91;

(2) Then east following U.S. Interstate 91 to Connecticut Highway 80;

(3) Then east following Connecticut Highway 80 to Connecticut Highway 9 near Deep River;

(4) Then north following Connecticut Highway 9 to Connecticut Highway 82;

(5) Then north, east, south and east following Connecticut Highway 82 and 182 to Connecticut Highway 2 in Norwich;

(6) Then east following Connecticut Highway 2 to Connecticut Highway 165;

(7) Then east following Connecticut and Rhode Island Highway 165 to Interstate Highway 95 near Millville;

(8) Then north following Interstate Highway 95 to the Kent County-Washington County boundary;

(9) Then east following the Kent County-Washington County boundary into Narragansett Bay;

(10) Then north through Narragansett Bay, the Providence River, and the Blackstone River to the Rhode Island-Massachusetts State boundary;

(11) Then east and south following the Rhode Island-Massachusetts State boundary to the Norfolk-Bristol (Mass.) County boundary;

(12) Then northeast following the Norfolk-Bristol (Mass.) County boundary to the Amtrak right-of-way (Penn Central on map) northeast of Mansfield;

(13) Then north following the Amtrak right-of-way to the Neponset River immediately east of the Norwood Memorial Airport;

(14) Then northeast following the Neponset River into Dorchester Bay;

(15) Then east following the Norfolk-Suffolk County boundary, and the Plymouth-Suffolk County boundary into Massachusetts Bay;

(16) Then returning to the point of beginning by way of Massachusetts Bay, the Atlantic Ocean, Block Island Sound and Long Island Sound; and including all of the offshore islands in Norfolk, Plymouth, Barnstable, Nantucket, Dukes, and Bristol Counties, Massachusetts; all offshore islands in Rhode Island; and all offshore islands in Connecticut east of the Quinnipiac River.

[T.D. ATF–169, 49 FR 11830, Mar. 28, 1984]

§ 9.73 Martha's Vineyard.

(a) *Name*. The name of the viticultural area described in this section is ''Martha's Vineyard.''

(b) *Approved maps*. The approved map for determining the boundary of the Martha's Vineyard viticultural area is the U.S.G.S. map, ''Providence, R.I.; Mass.; Conn.; N.Y.;'' scaled 1:250,000, edition of 1947 revised 1969.

(c) *Boundaries*. The Martha's Vineyard viticultural area is located entirely within Dukes County, Massachusetts. The boundary of the Martha's Vineyard viticultural area is the shoreline of the islands named ''Martha's Vineyard'' and ''Chappaquiddic Island'' on the ''Providence'' U.S.G.S. map, and the viticultural area comprises the entire area of the islands.

[T.D. ATF–193, 50 FR 256, Jan 3, 1985]

§ 9.74 Columbia Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Columbia Valley.''

(b) *Approved maps*. The approved maps for determining the boundary of the Columbia Valley viticultural area are nine 1:250,000 scale U.S.G.S. maps. They are entitled:

(1) ''Concrete, Washington, U.S.; British Columbia, Canada,'' edition of 1955, limited revision 1962;

(2) ''Okanogan, Washington,'' edition of 1954, limited revision 1963;

(3) ''Pendleton, Oregon, Washington,'' edition of 1953, revised 1973;

(4) ''Pullman, Washington, Idaho,'' edition of 1955, revised 1974;

(5) ''Ritzville, Washington,'' edition of 1953, limited revision 1965;

(6) ''The Dalles, Oregon, Washington,'' edition of 1953, revised 1971;

(7) ''Walla Walla, Washington, Oregon,'' edition of 1953, limited revision 1963;

(8) ''Wenatchee, Washington,'' edition of 1957, revised 1971; and

(9) ''Yakima, Washington,'' edition of 1958, revised 1971.

(c) *Boundaries.* The Columbia Valley viticultural area is located in Adams, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Stevens, Walla Walla, Whitman, and Yakima Counties, Washington, and in Gilliman, Morrow, Sherman, Umatilla, and Wasco Counties, Oregon. The beginning point is found on ''The Dalles'' U.S.G.S. map at the confluence of the Klickitat and Columbia Rivers:

(1) Then north and east following the Klickitat and Little Klickitat Rivers to U.S. Highway 97 northeast of Goldendale;

(2) Then north following U.S. Highway 97 to the 1,000′ contour line southwest of Hembre Mountain;

(3) Then west following the Toppenish Ridge, across unnamed mountains of 2,172′ and 2,363′ elevation, to the peak of Toppenish Mountain, elevation 3,609′;

(4) Then northwest in a straight line for approximately 11.3 miles to the intersection of Agency Creek with the township line between R. 15 E. and R. 16 E.;

(5) Then north following the township line between R. 15 E. and R. 16 E. to the Tieton River;

(6) Then northeast following the Tieton River to the confluence with the Naches River;

(7) Then east in a straight line for approximately 15.3 miles to the intersection of the 46°45′ latitude line with the Yakima River;

(8) Then north following the Yakima River to the confluence with the North Branch Canal approximately one mile northwest of Throp;

(9) Then north, east, and southeast following the North Branch Canal to its intersection with U.S. Interstate 90 in Johnson Canyon;

(10) Then east following U.S. Interstate 90 to the Columbia River;

(11) Then north following the Columbia River to the township line between T. 21 N. and T. 22 N. immediately north of the Rock Island Dam;

(12) Then west following the township line between T. 21 N. and T. 22 N. for approximately 7.1 miles (from the west shore of the Columbia River) to the 2,000′ contour line immediately west of Squilchuck Creek;

(13) Then north and west following the 2,000′ contour line to the township line between R. 18 E. and R. 19 E. west of the landing area at Cashmere-Dryden;

(14) Then north following the township line between R. 18 E. and R. 19 E. for approximately 4.4 miles to the 2,000′ contour line in Ollala Canyon;

(15) Then east, north, and northwest following the 2,000′ contour line to the township line between R. 19 E. and R. 20 E. immediately west of Ardenoir;

(16) Then north following the township line between R. 19 E. and R. 20 E for approximately 2.8 miles to the 2,000′ contour line immediately north of the secondary road;

(17) Then southwest and north following the 2,000′ contour line to the township line between T. 28 N. and T. 29 N.;

(18) Then east following the township line between T. 28 N. and T. 29 N. for approximately 2.1 miles to the 2,000′ contour line immediately east of Lake Chelan;

(19) Then southeast and north following the 2,000′ contour line (beginning in the ''Wenatchee'' U.S.G.S. map, passing through the ''Ritzville'' and ''Okanogan'' maps, and ending in the ''Concrete'' map) to the point where the 2,000′ contour line intersects the township line between T. 30 N. and T. 31 N. immediately west of Methow;

(20) Then east following the township line between T. 30 N. and T. 31 N. for approximately 20.2 miles to the 2,000′ contour line east of Monse;

(21) Then south and east following the 2,000′ contour line to the township line between T. 30 N. and T. 31 N. west of Alkali Lake;

(22) Then northeast in a straight line for approximately 10.7 miles to the point of intersection of the 2,000′ contour line with Coyote Creek;

(23) Then east, north, south, east, and north following the 2,000′ contour line to the township line between T. 29 N.

and T. 30 N. immediately west of the Sanpoil River;

(24) Then east following the township line between T. 29 N. and T. 30 N. for approximately 2.3 miles to the 2,000′ contour line immediately east of the Sanpoil River;

(25) Then south, east, and north following the 2,000′ contour line to the township line between T. 29 N. and T 30 N. at Ninemile Flat;

(26) Then east following the township line between T. 29 N. and T. 30 N. for approximately 10.7 miles to the township line between R. 36 E. and R. 37 E.;

(27) Then south following the township line between R. 36 N. and R. 37 E. to the township line between T. 26 N. and T. 27 N.;

(28) Then west following the township line between T. 26 N. and T. 27 N. to Banks Lake;

(29) Then south following Banks Lake to Dry Falls Dam;

(30) Then west and south following U.S. Highway 2 and Washington Highway 17 to the intersection with Washington Highway 28 in Soap Lake;

(31) Then southeast in a straight line for approximately 4.7 miles to the source of Rocky Ford Creek near a fish hatchery;

(32) Then south following Rocky Ford Creek and Moses Lake to U.S. Interstate 90 southwest of the town of Moses Lake;

(33) Then east following U.S. Interstate 90 to the Burlington Northern (Northern Pacific) Railroad right-of-way at Raugust Station;

(34) Then south following the Burlington Northern (Northern Pacific) Railroad right-of-way to Washington Highway 260 in Connell;

(35) Then east following Washington Highway 260 through Kahlotus to the intersection with Washington Highway 26 in Washtucna;

(36) Then east following Washington Highways 26 and 127 through La Crosse and Dusty to the intersection with U.S. Highway 195 at Colfax;

(37) Then south following U.S. Highway 195 to the Washington-Idaho State boundary;

(38) Then south following the Washington-Idaho State boundary to the Snake River and continuing along the Snake River to the confluence with Asotin Creek;

(39) Then west following Asotin Creek and Charley Creek to the township line between R. 42 E. and R. 43 E.;

(40) Then north following the township line between R. 42 E. and R. 43 E. to Washington Highway 128 in Peola;

(41) Then north following Washington Highway 128 to the intersection with U.S. Highway 12 in Pomeroy;

(42) Then west following U.S. Highway 12 for approximately 5 miles to the intersection with Washington Highway 126 [in Zumwalt];

(43) Then southwest following Washington Highway 126 and U.S. Highway 12 through Marengo, Dayton, and Waitsburg to a point where an unnamed light-duty road leaves Highway 12 in an easterly direction in Minnick Station, Washington;

(44) Then east following the unnamed light-duty road for approximately 250 feet until it reaches the 2000′ contour line;

(45) Then south and southwest following the 2000′ contour line to the place where it crosses Oregon Highway 74 in Windmill, Oregon;

(46) Then west following Oregon Highway 74 to Highway 207 in Heppner;

(47) Then southwest following Oregon Highway 207 to Highway 206 in Ruggs;

(48) Then northwest following Oregon Highway 206 to the intersection with the township line between T. 1 S. and T. 2 S.;

(49) Then west following the township line between T. 1 S. and T. 2 S. to the Deschutes River;

(50) Then north following the Deschutes River to the Willamette Base Line;

(51) Then west following the Willamette Base Line to the township line between R. 12 E. and R. 13 E.;

(52) Then north following the township line between R. 12 E. and R. 13. to the Columbia River;

(53) Then west following the Columbia River to the confluence with the Klickitat River and the point of beginning.

[T.D. ATF–190, 49 FR 44897, Nov. 13, 1984, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987; 52 FR 10224, Mar. 31, 1987; T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. ATF–441, 66 FR 11542, Feb. 26, 2001]

§9.75 Central Coast.

(a) *Name*. The name of the viticultural area described in this section is ''Central Coast.''

(b) *Approved maps*. The approved maps for determining the boundary of the Central Coast viticultural area are the following 18 U.S.G.S. topographic maps:

(1) Monterey, California (formerly, the Santa Cruz map), scale 1:250,000, NJ 10–12, dated 1974;

(2) Watsonville East, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968;

(3) Mt. Madonna, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1980;

(4) Loma Prieta, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968;

(5) Morgan Hill, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1980;

(6) Santa Teresa Hills, Calif. Quadrangle, Scale 1:24,000, dated 1953, photorevised 1968;

(7) Los Gatos, Calif. Quadrangle, Scale 1:24,000, dated 1953, photorevised 1980;

(8) Castle Rock Ridge, Calif. Quadrangle, Scale 1:24,000, dated 1955, photorevised 1968, photoinspected 1973;

(9) San Jose, California, scale 1:250,000, NJ 10–9, dated 1962, revised 1969;

(10) Dublin, Calif. Quadrangle, scale 1:24,000, dated 1961, photorevised 1980;

(11) Livermore, Calif. Quadrangle, scale 1:24,000, dated 1961, photorevised 1968 and 1973;

(12) Tassajara, Calif. Quadrangle, scale 1:24,000, dated 1953, photoinspected 1974;

(13) Byron Hot Springs, Calif. Quadrangle, scale 1:24,000, dated 1953, photorevised 1968;

(14) Altamont, Calif. Quadrangle, scale 1:24,000, dated 1953, photorevised 1968;

(15) Mendenhall Springs, Calif. Quadrangle, scale 1:24,000, dated 1956, photorevised 1971;

(16) San Luis Obispo, California, scale 1:250,000, NI 10–3, dated 1956, revised 1969 and 1979;

(17) Santa Maria, California, scale 1:250,000, NI 10–6, 9, dated 1956, revised 1969;

(18) Los Angeles, California, scale 1:250,000, NI 11–4, dated 1974;

(19) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980;

(20) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980;

(21) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980;

(22) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980;

(23) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980;

(24) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980;

(25) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980;

(26) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980;

(27) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980;

(28) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973;

(29) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980;

(30) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980;

(31) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973;

(32) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968;

(33) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(34) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(35) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968;

(36) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968;

(37) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981;

(38) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980;

(39) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(40) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980; and

(41) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980.

(c) *Boundary*. The Central Coast viticultural area is located in the following California counties: Monterey, Santa Cruz, Santa Clara, Alameda, San

Benito, San Luis Obispo, Santa Barbara, San Francisco, San Mateo, and Contra Costa. The Santa Cruz Mountains viticultural area is excluded. (The boundaries of the Santa Cruz Mountains viticultural area are described in 27 CFR § 9.31.)

(1) The beginning point is the point at which the Pajaro River flows into Monterey Bay. (Monterey map)

(2) The boundary follows north along the shoreline of the Pacific Ocean (across the Watsonville West, Soquel, Santa Cruz, Davenport, Año Nuevo, Franklin Point, Pigeon Point, San Gregorio, Half Moon Bay, Montara Mountain and San Francisco South maps) to the San Francisco/Oakland Bay Bridge. (San Francisco North Quadrangle)

(3) From this point, the boundary proceeds east on the San Francisco/Oakland Bay Bridge to the Alameda County shoreline. (Oakland West Quadrangle)

(4) From this point, the boundary proceeds east along the shoreline of Alameda County and Contra Costa County across the Richmond, San Quentin, Mare Island, and Benicia maps to a point marked BM 15 on the shoreline of Contra Costa County. (Vine Hill Quadrangle)

(5) From this point, the boundary proceeds in a southeasterly direction in a straight line across the Honker Bay map to Mulligan Hill elevation 1,438. (Clayton Quadrangle)

(6) The boundary proceeds in southeasterly direction in a straight line to Mt. Diablo elevation 3,849. (Clayton Quadrangle)

(7) The boundary proceeds in a southeasterly direction in a straight line across the Diablo and Tassajara maps to Brushy Peak elevation 1,702. (Byron Hot Springs Quadrangle)

(8) The boundary proceeds due south, approximately 400 feet, to the northern boundaries of Section 13, Township 2 South, Range 2 East. (Byron Hot Springs Quadrangle)

(9) The boundary proceeds due east along the northern boundaries of Section 13 and Section 18, Township 2 South, Range 3 East, to the northeast corner of Section 18. (Byron Hot Springs Quadrangle)

(10) Then proceed south along the eastern boundaries of Sections 18, 19, 30, and 31 in Township 2 South, Range 3 East to the southeast corner of Section 31. (Byron Hot Springs Quadrangle)

(11) Then proceed east along the southern border of Section 32, Township 2 South, Range 3 East to the northwest corner of Section 4. (Altamont Quadrangle)

(12) Then proceed south along the western border of Sections 4 and 9. (Altamont Quadrangle)

(13) Then proceed south along the western border of Section 16 approximately 4275 feet to the point where the 1100 meter elevation contour intersects the western border of Section 16. (Altamont Quadrangle)

(14) Then proceed in a southeasterly direction along the 1100 meter elevation contour to the intersection of the southern border of Section 21 with the 1100 meter elevation contour. (Altamont Quadrangle)

(15) Then proceed west to the southwest corner of Section 20. (Altamont Quadrangle)

(16) Then proceed south along the western boundaries of Sections 29 and 32, Township 3 South, Range 3 East and then south along the western boundaries of Sections 5, 8, 17, 20, Township 4 South, Range 3 East to the southwest corner of Section 20. (Mendenhall Springs Quadrangle)

(17) The boundary follows the east-west section line west along the southern boundary of Section 19 in Township 4 South, Range 3 east, and west along the southern boundary of Section 24 in Township 4 South, Range 2 east, to the southwest corner of that Section 24. (Mendenhall Springs Quadrangle)

(18) The boundary follows the north-south section line north along the western boundary of Section 24 in Township 4 South, Range 2 east, to the northwest corner of that Section 24. (Mendenhall Springs Quadrangle)

(19) The boundary follows the east-west section line west along the southern boundary of Section 14 in Township 4 South, Range 2 east, to the southwest corner of that Section 14. (Mendenhall Springs Quadrangel)

(20) The boundary follows the north-south section line north along the

western boundary of Section 14 in Township 4 South, Range 2 east, to the Hetch Hetchy Aqueduct. (Mendenhall Springs Quadrangle)

(21) The boundary follows the Hetch Hetchy Aqueduct southwesterly to the range line dividing Range 1 East from Range 2 East. (San Jose map)

(22) The boundary follows this range line south to its intersection with State Route 130. (San Jose map)

(23) The boundary follows State Route 130 southeasterly to its intersection with the township line dividing Township 6 South from Township 7 South. (San Jose map)

(24) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East. (San Jose map)

(25) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East. (San Jose map)

(26) From this point, the boundary proceeds in a straight line southeasterly to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South. (San Jose map)

(27) From this point, the boundary proceeds in a straight line southeasterly to the intersection of the 37°00′ North latitude parallel with State Route 152. (San Jose map)

(28) The boundary follows the 37°00′ North latitude parallel east to the range line dividing Range 5 East from Range 6 East. (Monterey map)

(29) The boundary follows this range line south to the San Benito-Santa Clara County line. (Monterey map)

(30) The boundary follows the San Benito-Santa Clara County line easterly to the San Benito-Merced County line. (Monterey map)

(31) The boundary follows the San Benito-Merced County line southeasterly to the conjunction of the county lines of San Benito, Merced, and Fresno Counties. (Monterey map)

(32) From this point, the boundary proceeds in a southwesterly extension of the Merced-Fresno County line to Salt Creek. (Monterey map)

(33) From this point, the boundary proceeds in a straight line southeasterly to the conjunction of the county lines of Monterey, San Benito, and Fresno Counties. (Monterey map)

(34) The boundary follows the Monterey-Fresno County line southeasterly to the Monterey-Kings County line. (Monterey and San Luis Obispo maps)

(35) The boundary follows the Monterey-Kings County line southeasterly to the San Luis Obispo-Kings County line. (San Luis Obispo map)

(36) The boundary follows the San Luis Obispo-Kings County line east to the San Luis Obispo-Kern County line. (San Luis Obispo map)

(37) The boundary follows the San Luis Obispo-Kern County line south, then east, then south to the point at which the county line diverges easterly from the range line dividing Range 17 East from Range 18 East. (San Luis Obispo map)

(38) The boundary follows this range line south to the township line dividing Township 28 South from Township 29 South. (San Luis Obispo map)

(39) The boundary follows the township line west to the range line dividing Range 13 East from Range 14 East. (San Luis Obispo map)

(40) The boundary follows this range line south to the boundary of the Los Padres National Forest. (San Luis Obispo map)

(41) The boundary follows the boundary of the Los Padres National Forest southeasterly to the creek of Toro Canyon. (San Luis Obispo, Santa Maria, and Los Angeles maps)

(42) The boundary follows the creek of Toro Canyon southerly to the Pacific Ocean. (Los Angeles map)

(43) The boundary follows the shoreline of the Pacific Ocean and Monterey Bay northerly to the beginning point. (Los Angeles, Santa Maria, San Luis Obispo, and Monterey maps)

[T.D. ATF–216, 50 FR 43130, Oct. 24, 1985, as amended by T.D. ATF–407, 64 FR 3023, Jan. 20, 1999]

§9.76 Knights Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Knights Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Knights Valley viticultural area are four U.S.G.S. maps. They are—

(1) ''Mount St. Helena Quadrangle, California,'' 7.5 minute series, 1959 (Photoinspected 1973);

(2) ''Jimtown Quadrangle, California,'' 7.5 minute series, 1955 (Photorevised 1975);

(3) ''Mark West Springs Quadrangle, California,'' 7.5 minute series, 1958; and

(4) ''Detert Reservoir Quadrangle, California,'' 7.5 minute series, 1958 (Photorevised 1980).

(c) *Boundary*. The Knights Valley viticultural area is located in northeastern Sonoma County, California. From the beginning point lying at the intersection of the Sonoma/Lake County line and the north line of Section 11, Township 10 North (T. 10 N.), Range 8 West (R. 8 W.) on the ''Mount St. Helena Quadrangle'' map, the boundary runs—

(1) Westerly along the north line of Sections 11, 10, and 9, T. 10 N., R. 8 W. to the northwest corner of Section 9 on the ''Jimtown Quadrangle'' map;

(2) Then southerly along the west line of Sections 9, 16, 21, 28, and 33, T. 10 N., R. 8 W., continuing along the west line of Section 4, T. 9 N., R. 8 W. to the southwest corner thereof;

(3) Then easterly along the south line of Section 4 to the southeast corner thereof on the ''Mount St. Helena Quadrangle'' map;

(4) Then southerly along the west line of Sections 10, 15, and 22, T. 9 N., R. 8 W. to the point of intersection with Franz Creek in Section 22 on the ''Mark West Springs Quadrangle'' map;

(5) Then easterly along Franz Creek approximately 14,000 feet to the centerline of Franz Valley Road;

(6) Then southerly along the centerline of Franz Valley Road to the point of intersection with the west line of Section 6, T. 8 N., R. 7 W.;

(7) Then southerly along the west line of Section 6 to the southwest corner thereof;

(8) Then easterly along the south line of Sections 6, 5, and 4, T. 8 N., R. 7 W. to the southeast corner of Section 4;

(9) Then northerly along the east line of Section 4 to the point of intersection with the Sonoma/Napa County line;

(10) Then northerly along the meanders of the Sonoma/Napa County line on the ''Mark West Springs Quadrangle,'' ''Detert Reservoir Quadrangle,'' and ''Mount St. Helena Quadrangle'' maps to the point of intersection with the Lake County line on the ''Mount St. Helena Quadrangle'' map;

(11) Then northerly along the meanders of the Sonoma/Lake County line on the ''Mount St. Helena Quadrangle'' and ''Detert Reservoir Quadrangle'' maps to the point of beginning.

[T.D. ATF–158, 48 FR 48816, Oct. 21, 1983]

§ 9.77 Altus.

(a) *Name*. The name of the viticultural area described in this section is ''Altus.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Altus viticultural area are five U.S.G.S. maps in the 7.5 minute series. They are titled:

(1) Ozark Quadrangle, 1966.

(2) Coal Hill Quadrangle, 1961.

(3) Hartman Quadrangle, 1961.

(4) Hunt Quadrangle, 1963.

(5) Watalula Quadrangle, 1973.

(c) *Boundary*—(1) *General*. The Altus viticultural area is located in Arkansas. The starting point of the following boundary description is the crossing of the Missouri Pacific Railroad over Gar Creek, near the Arkansas River at the southeast corner of the city of Ozark, Arkansas (on the Ozark Quadrangle map).

(2) *Boundary Description:*

(i) From the crossing of the Missouri Pacific Railroad over Gar Creek, following the railroad tracks eastward to the crossing over Horsehead Creek (on the Hartman Quadrangle map).

(ii) From there northward along Horsehead Creek to the merger with Dirty Creek (on the Coal Hill Quadrangle map).

(iii) From there generally northwestward along Dirty Creek to Arkansas Highway 352 (where Dirty Creek passes under the highway as a perennial stream—on the Hunt Quadrangle map).

(iv) From there along Highway 352 westward to Arkansas Highway 219 (on the Watalula Quadrangle map).

(v) Then southward along Highway 219 to Gar Creek (on the Ozark Quadrangle map).

(vi) Then southeastward along Gar Creek to the beginning point.

[T.D. ATF–176, 49 FR 22471, May 30, 1984]

§9.78 Ohio River Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Ohio River Valley.''

(b) *Approved maps*. The approved maps for determining the boundary of the Ohio River Valley viticultural area are 12 U.S.G.S. topographic maps in the scale 1:250,000, as follows:

(1) Paducah NJ 16–7 (dated 1949, revised 1969);

(2) Belleville NJ 16–4 (dated 1958, revised 1977);

(3) Vincennes NJ 16–5 (dated 1956, revised 1969);

(4) Louisville NJ 16–6 (dated 1956, revised 1969);

(5) Cincinnati NJ 16–3 (dated 1953, revised 1974);

(6) Columbus NJ 17–1 (dated 1967);

(7) Clarksburg NJ 17–2 (dated 1956, limited revision 1965);

(8) Canton NJ 17–11 (dated 1957, revised 1969);

(9) Charleston NJ 17–5 (dated 1957, limited revision 1965);

(10) Huntington NJ 17–4 (dated 1957, revised 1977);

(11) Winchester NJ 16–9 (dated 1957, revised 1979); and

(12) Evansville NJ 16–8 (dated 1957, revised 1974);

(c) *Boundary*. The Ohio River Valley viticultural area is located in Indiana, Ohio, West Virginia and Kentucky. The boundary description in paragraphs (c)(1)–(c)(21) of this section includes, for each point, the name of the map sheet (in parentheses) on which the point can be found.

(1) The beginning point is the point at which the Kentucky, Illinois, and Indiana State lines converge at the confluence of the Wabash River and the Ohio River (Paducah map).

(2) The boundary follows the Illinois-Indiana State line northerly (across the Belleville map) to Interstate Route 64 (Vincennes map).

(3) From the intersection of Interstate Route 64 and the Wabash River, the boundary proceeds in a straight line northeasterly to the town of Oatsville in Pike County, Indiana (Vincennes map).

(4) The boundary proceeds in a straight line southeasterly to the point in Spencer County, Indiana, at which State Route 162 diverges northerly from U.S. Route 460, which is knownlocally as State Route 62 (Vincennes map).

(5) The boundary proceeds in a straight line northeasterly to the point in Harrison County, Indiana, at which State Route 66 diverges northerly from State Route 64 (Vincennes map).

(6) The boundary proceeds in a straight line northeasterly (across the Louisville map) to the town of New Marion in Ripley County, Indiana (Cincinnati map).

(7) The boundary proceeds in a straight line northerly to the town of Clarksburg in Decatur County, Indiana (Cincinnati map).

(8) The boundary proceeds in a straight line easterly to the town of Ridgeville in Warren County, Ohio (Cincinnati map).

(9) The boundary proceeds in a straight line southeasterly to the town of Chapman in Jackson County, Ohio (Columbus map).

(10) The boundary proceeds in a straight line northeasterly to the town identified on the map as Hesboro, also known as Ilesboro, in Hocking County, Ohio (Columbus map).

(11) The boundary proceeds in a straight line northeasterly to the town of Tacoma in Belmont County, Ohio (Clarksburg map).

(12) The boundary proceeds in a straight line easterly to the town of Valley Grove in Ohio County, West Virginia (Canton map).

(13) The boundary proceeds in a straight line southerly to the town of Jarvisville in Harrison County, West Virginia (Clarksburg map).

(14) The boundary proceeds in a straight line southwesterly to the town of Gandeeville in Roane County West Virginia (Charleston map).

(15) The boundary proceeds in a straight line southwesterly to the town of Atenville in Lincoln County West Virginia (Huntington map).

(16) The boundary proceeds in a straight line westerly to the town of Isonville in Elliott County, Kentucky (Huntington map).

(17) The boundary proceeds in a straight line northwesterly to the town of Berlin in Bracken County, Kentucky (Louisville map).

(18) The boundary proceeds in a straight line westerly to the town of Dry Ridge in Grant County, Kentucky (Louisville map).

(19) The boundary proceeds in a straight line southwesterly to the town of Crest in Hardin County, Kentucky (Winchester map).

(20) The boundary proceeds in a straight line westerly to the intersection of State Route 56 and U.S. Route 41 in the city of Sebree in Webster County, Kentucky (Evansville map).

(21) The boundary proceeds in a straight line northwesterly to the beginning point (Paducah map).

[T.D. ATF–144, 48 FR 40379, Sept. 7, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.79 Lake Michigan Shore.

(a) *Name.* The name of the viticultural area described in this section is ''Lake Michigan Shore.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lake Michigan Shore viticultural area are four U.S.G.S. maps, 1:250,000 series. They are entitled: (1) Chicago (1953, revised 1970); (2) Fort Wayne (1953, revised 1969); (3) Racine (1958, revised 1969); and (4) Grand Rapids (1958, revised 1980).

(c) *Boundaries.* The Lake Michigan Shore viticultural area is located in the southwestern corner of the State of Michigan. The boundaries of the Lake Michigan Shore viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S maps, are as follows:

(1) Starting at the most northern point, the intersection the Kalamazoo River with Lake Michigan.

(2) Then southeast along the winding course of the Kalamazoo River for approximately 35 miles until it intersects the Penn Central railroad line just south of the City of Otsego.

(3) Then south along the Penn Central railroad line, through the City of Kalamazoo, approximately 25 miles until it intersects the Grand Trunk Western railroad line at the community of Schoolcraft.

(4) Then southwest along the Grand Trunk Western railroad line approximately 35 miles to the Michigan/ Indiana State line.

(5) Then west along the Michigan-Indiana State line approximately 38 miles until it meets Lake Michigan.

(6) Then north along the eastern shore of Lake Michigan approximately 72 miles to the beginning point.

[T.D. ATF–153, 48 FR 46526, Oct. 13, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.80 York Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''York Mountain.''

(b) *Approved map.* The approved map for the York Mountain viticultural area is the U.S.G.S. map entitled ''York Mountain Quadrangle,'' 7.5 minute series (topographic), 1949 (photorevised 1979).

(c) *Boundaries.* The York Mountain viticultural area is located in San Luis Obispo County, California. The boundaries are as follows:

(1) From the beginning point at the northwest corner of the York Mountain Quadrangle map where the Dover Canyon Jeep Trail and Dover Canyon Road intersect, proceed east along Dover Canyon Road 1.5 miles to the western boundary line of Rancho Paso de Robles;

(2) Follow the western boundary line of Rancho Paso de Robles southwest 6.0 miles to where the boundary joins Santa Rita Creek;

(3) Turn right at Santa Rita Creek and follow the creek 5 miles to where the waters of Dover Canyon and Santa Rita Creek meet; and

(4) Then proceed north along Dover Canyon Creek to its intersection with Dover Canyon Road, then following Dover Canyon Road (which becomes Dover Canyon Jeep Trail) back to the point of beginning.

[T.D. ATF–143, 48 FR 38463, Aug. 24, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.81 Fiddletown.

(a) *Name.* The name of the viticultural area described in this section is ''Fiddletown.''

(b) *Approved maps*. The approved maps for the Fiddletown viticultural area are four U.S.G.S. maps entitled:

(1) Fiddletown, CA, 1949, 7.5 minute series;

(2) Amador City, CA, 1962, 7.5 minute series;

(3) Pine Grove, CA, 1948 (photoinspected 1973), 7.5 minute series;

(4) Aukum, CA, 1952 (photorevised 1973), 7.5 minute series.

(c) *Boundaries*. The Fiddletown viticultural area is located in Amador County, California. The boundaries are as follows:

(1) From the beginning point at the north boundary where Fiddletown Shenandoah Road crosses Big Indian Creek in Section 28, Township 8 N, Range 11 E, proceed in a southwesterly direction following Big Indian Creek through the southeast corner of Section 29, crossing the northwest corner of Section 32 to where it meets Section 31;

(2) Then in a southerly direction follow the Section line between Sections 31 and 32, Township 8 N, Range 11 E, and Sections 5 and 6, 7 and 8, Township 7 N, Range 11 E, to where the Section line meets the South Fork of Dry Creek;

(3) Then following the South Fork of Dry Creek in an easterly direction crossing the lower portions of Sections 8, 9, 10, 11, 12 and into Township 8 N, Range 12 E, at Section 7 and across Section 7 to where it meets Section 8;

(4) Then north following the Section line between Sections 7 and 8, 5 and 6 into Township 8 N, Range 12 E, between Sections 31 and 32, to Big Indian Creek; and

(5) Then following Big Indian Creek in a northwesterly direction through Sections 31, 30, 25, 26 and 27, returning to the point of beginning.

[T.D. ATF–147, 48 FR 45239, Oct. 4, 1983, as amended by T.D. ATF–249, 52 FR 5959, Feb. 27, 1987]

§ 9.82 Potter Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Potter Valley.''

(b) *Approved map*. The approved maps for the Potter Valley viticultural area are the U.S.G.S. maps entitled ''Potter Valley Quadrangle, California,'' 1960, and ''Ukiah Quadrangle, California,'' 1958, 15 minute series (topographic).

(c) *Boundaries*. The Potter Valley viticultural area is located in Mendocino County, California. The boundaries are as follows:

(1) From the beginning point at the southeast corner of quadrant 36 and southwest corner of quadrant 32 (a point where Mendocino and Lake Counties border on the T. 17 N.–T. 16 N. township line), the boundary runs northwest to the northeastern corner of quadrant 4, on the T. 18 N.–T. 17 N. township line;

(2) Then west to the northwest corner of quadrant 1;

(3) Then south to the southwest corner of quadrant 36;

(4) Then east to R. 12 W.–R. 11 W. range line at the southeast corner of quadrant 36;

(5) Then south to Highway 20;

(6) Then southeast on Highway 20 to where Highway 20 passes from quadrant 20 to quadrant 21; and

(7) Thence northeast, returning to the point of beginning.

[T.D. ATF–151, 48 FR 46521, Oct. 13, 1983]

§ 9.83 Lake Erie.

(a) *Name*. The name of the viticultural area described in this section is ''Lake Erie.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Lake Erie viticultural area are four U.S.G.S. maps. They are titled:

(1) ''Toledo,'' scale 1:250,000 (1956, revised 1978);

(2) ''Cleveland,'' scale 1:250,000 (1956, revised 1972);

(3) ''Erie,'' scale 1:250,000 (1959, revised 1972); and

(4) ''Buffalo,'' scale 1:250,000 (1962).

(c) *Boundaries*. The Lake Erie viticultural area is located along the shore and on the islands of Lake Erie across the States of New York, Pennsylvania, and Ohio. The beginning point is where Buffalo Creek empties into Lake Erie at Buffalo Harbor.

(1) From the beginning point the boundary proceeds up Buffalo Creek to the confluence of Cazenovia Creek.

(2) The boundary proceeds up Cazenovia Creek and thence up the west branch of Cazenovia Creek to a point approximately one mile north of

Colden, New York, exactly 12 statute miles inland from any point on the shore of Lake Erie.

(3) The boundary proceeds southwestward and along a line exactly 12 statute miles inland from any point on the shore of Lake Erie to a point approximately one mile north of Dayton, New York, where it intersects the 1,300-foot contour line.

(4) The boundary proceeds generally southwestward along the 1,300-foot contour line to a point almost two miles north-northwest of Godard, Pennsylvania, exactly six statute miles inland from any point on the shore of Lake Erie.

(5) The boundary proceeds southwestward along a line exactly six statute miles inland from any point on the shore of Lake Erie to the point where it intersects Ohio Route 45 near the intersection with Interstate 90.

(6) The boundary proceeds southward along Ohio Route 45 to a point exactly 14 statute miles inland from any point on the shore of Lake Erie approximately one mile north of Rock Creek, Ohio.

(7) The boundary proceeds southwestward, then westward, then northwestward along a line 14 statute miles inland from any point on the shore of Lake Erie to the point where it intersects the Ohio-Michigan boundary just north of Centennial, Ohio.

(8) The boundary then follows the Ohio-Michigan border in an easterly direction to the shoreline of Lake Erie. Thence in a generally southeasterly direction along the shoreline of Lake Erie to the mouth of the Portage River just north of Port Clinton. Thence due north in a straight line to the United States-Canada border. Thence in a southeasterly and then an easterly direction along the United States-Canada border until a point is reached which is due north of the easternmost point of Kelleys Island.

(9) The boundary then proceeds due south until it reaches the shoreline of Lake Erie. Thence the boundary follows the lakeshore in a generally northeasterly direction to the beginning point at the mouth of Buffalo Creek.

[T.D. ATF–156, 48 FR 48819, Oct. 21, 1983]

§ 9.84 Paso Robles.

(a) *Name.* The name of the viticultural area described in this section is ''Paso Robles''.

(b) *Approved map.* The map showing the boundaries of the Paso Robles viticultural area is: ''San Luis Obispo'', NI 10–3, scale 1:250,000 (1956, revised 1969).

(c) *Boundaries.* The Paso Robles viticultural area is located within San Luis Obispo County, California. From the point of beginning where the county lines of San Luis Obispo, Kings and Kern Counties converge, the county line also being the township line between T.24S. and T.25S., in R.16E.:

(1) Then in a westerly direction along this county line for 42 miles to the range line between R.9E. and R.10E.;

(2) Then in a southerly direction for 12 miles along the range line to the southwest of corner of T.26S. and R.10E.;

(3) Then in a southeasterly direction, approximately 5.5 miles to a point of intersection of the Dover Canyon Jeep Trail and Dover Canyon Road;

(4) Then in an easterly direction along Dover Canyon Road, approximately 1.5 miles, to the western border line of Rancho Paso de Robles;

(5) Then, following the border of the Paso Robles land grant, beginning in an easterly direction, to a point where it intersects the range line between R.11E. and R.12E.;

(6) Then southeasterly for approximately 16.5 miles to the point of intersection of the township line between T.29S. and T.30S. and the range line between R.12E. and R.13E.;

(7) Then in an easterly direction for approximately 6 miles to the range line between R.13E. and R.14E.;

(8) Then in a northerly direction for approximately 6 miles to the township line between T.28S. and T.29S.;

(9) Then in an easterly direction for approximately 18 miles to the range line between R.16E. and R.17E.;

(10) Then in a northerly direction for approximately 24 miles to the point of beginning.

[T.D. ATF–148, 48 FR 45241, Oct. 4, 1983, as amended by T.D. ATF–377, 61 FR 29953, June 13, 1996]

§9.85 Willow Creek.

(a) *Name.* The name of the viticultural area described in this section is ''Willow Creek.''

(b) *Approved map.* The map showing the boundary of the Willow Creek viticultural area is: ''Willow Creek Quadrangle,'' California, U.S.G.S. 15 minute series (1952).

(c) *Boundaries.* The Willow Creek viticultural area is located within portions of Humboldt and Trinity Counties, California. From the point of beginning where the 1,000-foot contour line intersects Kirkham Creek (directly north of section 19, T.7 N./R.5E.), beginning in a southerly direction, the boundary line the 1,000-foot contour line to;

(1) The point of intersection between the 1,000-foot contour line and the north section line of section 27, T.6N./R.5E.;

(2) Then in a straight, north easterly line to the point of intersection between the 1,000-foot contour line and the east section line of section 13, T.6N./R.5E.;

(3) Then in a straight, northwesterly line to the point of intersection between the 1,000-foot contour line and the north section line of section 11, T.6N./R.5E.;

(4) Then in a straight, south-southwesterly line to the point of intersection between the 1,000-foot contour line and the east section line of section 15, T.6N./R.5E.;

(5) Then following the 1,000-foot contour line, beginning in a westerly direction, to the point of intersection between the 1,000-foot contour line and Coons Creek;

(6) Then in a straight, westerly line to the point of beginning.

[T.D. ATF–141, 48 FR 37376, Aug. 18, 1983]

§9.86 Anderson Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Anderson Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Anderson Valley viticultural area are three U.S.G.S. maps. They are titled:

(1) ''Navarro Quadrangle, California—Mendocino Co.,'' 15 minute series (1961);

(2) ''Boonville Quadrangle, California—Mendocino Co.,'' 15 minute series (1959); and

(3) ''Ornbaun Valley Quadrangle, California,'' 15 minute series (1960).

(c) *Boundaries.* The Anderson Valley viticultural area is located in the western part of Mendocino County, California. The beginning point is at the junction of Bailey Gulch and the South Branch North Fork Navarro River in Section 8, Township 15 North (T.15N.), Range 15 West (R.15W.), located in the northeast portion of U.S.G.S. map ''Navarro Quadrangle.''

(1) From the beginning point, the boundary runs southeasterly in a straight line to an unnamed hilltop (elevation 2015 feet) in the northeast corner of Section 9, T.13N., R.13W., located in the southeast portion of U.S.G.S. map ''Boonville Quadrangle'';

(2) Then southwesterly in a straight line to Benchmark (BM) 680 in Section 30, T.13N., R.13W., located in the northeast portion of U.S.G.S. map ''Ornbaun Valley Quadrangle'';

(3) Then northwesterly in a straight line to the intersection of an unnamed creek and the south section line of Section 14, T.14N., R.15W., located in the southwest portion of U.S.G.S. map ''Boonville Quadrangle'';

(4) Then in a westerly direction along the south section lines of Sections 14, 15, and 16, T.14N., R.15W., to the intersection of the south section line of Section 16 with Greenwood Creek, approximately .2 miles west of Cold Springs Road which is located in the southeast portion of U.S.G.S. map ''Navarro Quadrangle'';

(5) Then in a southwesterly and then a northwesterly direction along Greenwood Creek to a point in Section 33 directly south (approximately 1.4 miles) of Benchmark (BM) 1057 in Section 28, T.15N., R.16W.;

(6) Then directly north in a straight line to Benchmark (BM) 1057 in Section 28, T.15N., R.16W.;

(7) Then in a northeasterly direction in a straight line to the beginning point.

[T.D. ATF–139, 48 FR 37370, Aug. 18, 1983]

§ 9.87 Grand River Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Grand River Valley.''

(b) *Approved map.* The approved map for determining the boundary of the Grand River Valley viticultural area is the U.S.G.S. topographic map in the scale of 1:250,000, entitled Cleveland, number NK 17–8, dated 1956, revised 1972.

(c) *Boundary.* The Grand River Valley viticultural area is located in the following Ohio counties: Lake, Geauga, and Ashtabula. The viticultural area consists of all of the land within the Lake Erie viticultural area, described in § 9.83, which is also within 2 statute miles, in any direction, of the Grand River. Specifically, the Grand River Valley viticultural area consists of all of the land west of Ohio Route 45 which is within 2 statute miles, in any direction, of the Grand River, and which is also within 14 statute miles inland from any point on the shore of Lake Erie.

[T.D. ATF–157, 48 FR 48821, Oct. 21, 1983]

§ 9.88 Pacheco Pass.

(a) *Name.* The name of the viticultural area described in this section is ''Pacheco Pass.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of Pacheco Pass viticultural area are two U.S.G.S. maps. They are titled:

(1) San Felipe Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(2) Three Sisters Quadrangle, 7.5 minute series, 1954 (photorevised 1971).

(c) *Boundary*—(1) *General.* The Pacheco Pass viticultural area is located in California. The starting point of the following boundary description is the crossing of Pacheco Creek under California Highway 156, about 4 miles north of Hollister Municipal Airport, in San Benito County, California.

(2) *Boundary Description.* (i) From the starting point northwestward along Pacheco Creek to the intersection with the straight-line extension of Barnheisel Road. (NOTE.— This is an old land grant boundary and appears on the U.S.G.S. map as the western boundary of an orchard.)

(ii) From there in a straight line northeastward to the intersection of Barnheisel Road and California Highway 156.

(iii) From there northward along Highway 156 to California Highway 152 (''Pacheco Pass Highway'').

(iv) Then northward along Pacheco Pass Highway to the 37° latitude line.

(v) Then eastward along that latitude line to the land line R. 5E./R. 6E.

(vi) Then southward along that land line, crossing Foothill Road, and continuing southward to a point exactly 2,300 feet south of Foothill Road.

(vii) From there is a straight line to the starting point.

[T.D. ATF–167, 49 FR 9169, Mar. 12, 1984]

§ 9.89 Umpqua Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Umpqua Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Umpqua Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) ''Roseburg,'' scale 1:250,000 (1958, revised 1970); and

(2) ''Medford,'' scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Umpqua Valley viticultural area is located entirely within Douglas County, Oregon, which is in the southwest part of the State. The beginning point is the intersection of Interstate Highway 5 with the Douglas/Lane County line in Township 21 South (T21S), Range 4 West (R4W) on the ''Roseburg'' map.

(1) From the beginning point, the boundary proceeds north along the Douglas/Lane County line approximately .5 miles to the the 1,000-foot contour line;

(2) Thence northwest along the 1,000-foot contour line to the Douglas/Lane County line; thence west along the Douglas/Lane County line approximately 2.5 miles, returning to the 1,000-foot contour line; thence in a generally westerly direction along the 1,000-foot contour line to the R9W/R10W range line;

(3) Thence south along the R9W/R10W range line approximately 2.75 miles to the center of the Umpqua River; thence along a straight line in an easterly direction approximately 6.25 miles to the

intersection of range line R8W/R9W with the center of the Umpqua River; thence south along range line R8W/R9W approximately 3.5 miles to its intersection with township line T22S/T23S;

(4) Thence southeast approximately 8.5 miles along a straight line to the intersection of township line T23S/T24S with range line R7W/R8W; thence south along the R7W/R8W range line approximately 8 miles to its intersection with the 1,000-foot contour line; thence in a southeasterly direction in a straight line approximately 3.5 miles toward the intersection of township line T25S/T26S with range line R6W/R7W, returning to the 1,000-foot contour line;

(5) Thence in a southerly direction along the 1,000-foot contour line to the intersection of township line T27S/T28S with range line R7W/R8W; thence in a southwesterly direction in a straight line approximately 3.5 miles toward the intersection of township line T28S/T29S with range line R8W/R9W, returning to the 1,000-foot contour line; thence south along the 1,000-foot contour line to its intersection with township line T29S/T30S;

(6) Thence east along township line T29S/T30S approximately .33 miles, rejoining the 1,000-foot contour line; thence in a northerly and eventually a southerly direction along the 1,000-foot contour line past the town of Riddle on the ''Medford'' map to range line R6W/R7W; thence south along the R6W/R7W range line approximately .5 miles back to the 1,000-foot contour line;

(7) Thence in an easterly, westerly, and eventually a northerly direction along the 1,000-foot contour line to a point approximately 3.5 miles east of Dillard, where the contour line crosses Interstate Highway 5 on the ''Roseburg'' map; thence northeast along Interstate Highway 5 approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally northeasterly, southeasterly, northwesterly, and eventually a northeasterly direction along the 1,000-foot contour line past the town of Idleyld Park to the R2W/R3W range line;

(8) Thence north along range line R2W/R3W approximately 1.75 miles to the T25S/T26S township line; thence west along township line T25S/T26S approximately .25 mile, returning to the 1,000-foot contour line; thence in a generally westerly and then a northerly direction along the 1,000-foot contour line up the valley of Calapooya Creek to the R3W/R4W range line; thence north along range line R3W/R4W approximately 2.25 miles, back to the 1,000-foot contour line;

(9) Thence in a westerly and then a northerly direction along the 1,000-foot contour line to the T23S/T24S township line; thence east along the T23S/T24S township line approximately 2.75 miles to the 1,000-foot contour line; thence in a northerly direction along the 1,000-foot contour line to its intersection with the Douglas/Lane County line; thence north along the Douglas/Lane County line approximately .75 mile to the point of beginning.

[T.D. ATF–170, 49 FR 12246, Mar. 29, 1984]

§9.90 Willamette Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Willamette Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Willamette Valley viticultural area are three U.S.G.S. Oregon maps scaled 1:250,000. They are entitled:

(1) ''Vancouver,'' Location Diagram NL 10–8, 1958 (revised 1974).

(2) ''Salem,'' Location Diagram NL 10–11, 1960 (revised 1977).

(3) ''Roseburg,'' Location Diagram NL 10–2, 1958 (revised 1970).

(c) *Boundaries.* The Willamette Valley viticultural area is located in the northwestern part of Oregon, and is bordered on the north by the Columbia River, on the west by the Coast Range Mountains, on the south by the Calapooya Mountains, and on the east by the Cascade Mountains, encompassing approximately 5,200 square miles (3.3 million acres). The exact boundaries of the viticultural area, based on landmarks and points of reference found on the approved maps, are as follows: From the beginning point at the intersection of the Columbia/Multnomah County line and the Oregon/Washington State line;

(1) West along the Columbia/Multnomah County line 8.5 miles to its intersection with the Washington/Multnomah County line;

(2) South along the Washington County line 5 miles to its intersection with the 1,000 foot contour line;

(3) Northwest (15 miles due northwest) along the 1,000 foot contour line to its intersection with State Highway 47, .5 mile north of ''Tophill'';

(4) Then, due west from State Highway 47 one-quarter mile to the 1,000 foot contour line, continuing south and then southwest along the 1,000 foot contour line to its intersection with the Siuslaw National Forest (a point approximately 43 miles south and 26 miles west of ''Tophill''), one mile north of State Highway 22;

(5) Due south 6.5 miles to the 1,000 foot contour line on the Lincoln/Polk County line;

(6) Continue along the 1,000 foot contour line (approximately 23 miles) east, south, and then west, to a point where the Polk County line is intersected by the Lincoln/Benton County line;

(7) South along Lincoln/Benton County line, 11 miles to its intersection with the Siuslaw National Forest line;

(8) East along the Siuslaw National Forest line six miles, and then south along the Siuslaw National Forest line six miles to State Highway 34 and the 1,000 foot contour line;

(9) South along the 1,000 foot contour line to its intersection with Township line T17S/T18S (31 miles southwest, and one mile west of State Highway 126);

(10) East along T17S/T18S 4.5 miles to Range line R6W/R7W, south along this range line 2.5 miles to the 1,000 foot contour line;

(11) Southeast along the 1,000 foot contour line to R5W/R6W (approximately six miles); southeast from this point eight miles to the intersection of R4W/R5W and T19S/T20S;

(12) East along T19S/T20S 1.5 miles to the 1,000 foot contour line;

(13) Following the 1,000 foot contour line north around Spencer Butte, and then south to a point along the Lane/Douglas County line one-half mile north of Interstate Highway 99;

(14) South along the Lane/Douglas County line 1.25 miles to the 1,000 foot contour line;

(15) Following the 1,000 foot contour line around the valleys of Little River, Mosby Creek, Sharps Creek and Lost Creek to the intersection of R1W/R1E and State Highway 58);

(16) North along R1W/R1E, six miles, until it intersects the 1,000 foot contour line just north of Little Fall Creek;

(17) Continuing along the 1,000 foot contour line around Hills Creek, up the southern slope of McKenzie River Valley to Ben and Kay Dorris State Park, crossing over and down the northern slope around Camp Creek, Mohawk River and its tributaries, Calapooia River (three miles southeast of the town of Dollar) to a point where Wiley Creek intersects R1E/R1W approximately one mile south of T14S/T13S;

(18) North along R1E/R1W 7.5 miles to T12S/T13S at Cedar Creek;

(19) West along T12S/T13S four miles to the 1,000 foot contour line;

(20) Continuing in a general northerly direction along the 1,000 foot contour line around Crabtree Creek, Thomas Creek, North Santiam River (to its intersection with Sevenmile Creek), and Little North Santiam River to the intersection of the 1,000 foot contour line with R1E/R2E (approximately one mile north of State Highway 22);

(21) North along R1E/R2E (through a small portion of Silver Falls State Park) 14 miles to T6S/T7S;

(22) East along T6S/T7S six miles to R2E/R3E;

(23) North along R2E/R3E six miles to T5S/T6S;

(24) Due northeast 8.5 miles to the intersection of T4S/T5S and R4E/R3E;

(25) East along T4S/T5S six miles to R4E/R5E;

(26) North along R4E/R5E six miles to T3S/T4S;

(27) East along T3S/T4S six miles to R5E/R6E;

(28) North along R5E/R6E 10.5 miles to a point where it intersects the Mount Hood National Forest boundary (approximately three miles north of Interstate Highway 26);

(29) West four miles and north one mile along the forest boundary to the 1,000 foot contour line (just north of Bull Run River);

(30) North along the 1,000 foot contour line, into Multnomah County, to its intersection with R4E/R5E;

(31) Due north approximately three miles to the Oregon/Washington State line; and

(32) West and then north, 34 miles, along the Oregon/Washington State line to the beginning point.

[T.D. ATF–162, 48 FR 54221, Dec. 1, 1983]

§ 9.91 Walla Walla Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Walla Walla Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Walla Walla Valley viticultural area are two U.S.G.S. maps, in the scale 1:100,000. They are entitled:

(1) ''Walla Walla,'' Washington-Oregon, 1980

(2) ''Pendleton,'' Oregon-Washington, 1983

(c) *Boundaries.* The Walla Walla Valley viticultural area is located within Walla Walla County in Washington State and Umatilla County in Oregon. It is entirely within the Columbia Valley viticultural area. The boundaries are as follows:

(1) The beginning point is on the Walla Walla quadrangle map, in T8N/37E, at the point where the 2,000 foot contour line intersects with an unnamed light duty road approximately 250 feet east of U.S. Highway 12 in Minnick, Washington (on maps measured in metric units, this elevation is between the 600 and 650 meter contour lines),

(2) Then the boundary goes northwest in a straight line for 7 kilometers (km), until it intersects with a power line that runs between T8N and T9N,

(3) Then the boundary follows the power line west for 8 km, where it diverges from the power line and goes west-southwest in a straight line for approximately 33 km to the intersection of 2 unnamed light duty roads in the area marked Ninemile Canyon in the southwest corner of T8N/R33E,

(4) Then the boundary goes south-southwest in a straight line approximately 8 km, until it reaches U.S. Highway 12, about 2.5 km east of Reese, Washington,

(5) Then the boundary goes south in a straight line for approximately 8 km, crossing the Washington-Oregon state line and moving onto the Pendleton U.S.G.S. map, where it meets the 450 m contour line in T6N/R32E, near an unnamed peak with an elevation of 461 m,

(6) Then the boundary follows the 450 m contour line in a generally southeasterly direction until it intersects Dry Creek in T4N/R35E,

(7) Then the boundary goes southeast along Dry Creek (Oregon) until it reaches the 2000 foot contour line,

(8) Then the boundary follows the 2000 foot contour line in a generally northeasterly direction, crossing the Oregon-Washington state line and returning to the Walla Walla U.S.G.S map, until it reaches the point of beginning.

[T.D. ATF–441, 66 FR 11542, Feb. 26, 2001]

§ 9.92 Madera.

(a) *Name.* The name of the viticultural area described in this section is ''Madera.''

(b) *Approved maps.* The approved maps for determining the boundary of the Madera viticultural area are eleven U.S.G.S. maps. They are entitled:

(1) ''Clovis, Cal.,'' 7½ minute series, edition of 1964, photorevised 1972;

(2) ''Fresno North, Cal.,'' 7½ minute series, edition of 1965, photorevised 1972;

(3) ''Friant, Cal.,'' 7½ minute series, edition of 1964;

(4) ''Lanes Bridge, Cal.,'' 7½ minute series, edition of 1964, photoinspected 1973;

(5) ''Gregg, Cal.,'' 7½ minute series, edition of 1965;

(6) ''Madera, Cal.,'' 7½ minute series, edition of 1963;

(7) ''Kismet, Cal.,'' 7½ minute series, edition of 1961;

(8) ''Raynor Creek, Cal.,'' 7½ minute series, edition of 1961;

(9) ''Fresno, Cal.,'' scaled 1:250,000, edition of 1962, revised 1971;

(10) ''Monterey, Cal.,'' scaled 1:250,000, edition of 1974; and

(11) ''San Jose, Cal.,'' scaled 1:250,000, edition of 1962, revised 1969.

(c) *Boundaries.* The Madera viticultural area is located in Madera and Fresno Counties, California. The beginning point is found on the ''Fresno North,'' 7½ minute series U.S.G.S. map at the point where the San Joaquin River intersects the section line

dividing sections 20 and 29, and sections 21 and 28, T. 12 S., R. 20 E.;

(1) Then east approximately 6 miles following the section line and Shepherd Avenue to the intersection with Sunnyside Road;

(2) Then north approximately 7 miles following Sunnyside Road and continuing along the section line to the point of intersection of section 16, 17, 20, and 21, T.11S., R 21E.;

(3) Then west approximately 17.6 miles following the section line and continuing along Avenue 15 to the intersection with the Atchison, Topeka and Santa Fe Railroad;

(4) Then northwest following the Atchison, Topeka and Santa Fe Railroad to Road 26;

(5) Then north following Road 26 and continuing north in a straight line to the Chowchilla River in the ''Raynor Creek'' 7½ minute series U.S.G.S. map, and in the ''San Jose'' scaled 1:250,000 U.S.G.S. map;

(6) Then west following the Chowchilla River to the point where the Madera County-Merced County boundary diverges from the river;

(7) Then southwest following the Madera County-Merced County boundary to the San Joaquin River;

(8) Then following the San Joaquin River south and east returning to the point of beginning.

[T.D. ATF–192, 49 FR 47833, Dec. 12, 1984; 50 FR 2782, Jan. 22, 1985, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987]

§ 9.93 Mendocino.

(a) *Name.* The name of the viticultural area described in this section is ''Mendocino.''

(b) *Approved maps.* The appropriate maps for determining the boundaries for the Mendocino viticultural area are seven U.S.G.S. maps. They are titled:

(1) ''Willits Quadrangle, California—Mendocino Co.,'' 15 minute series (1961);

(2) ''Potter Valley Quadrangle, California,'' 15 minute series (1960);

(3) ''Ukiah Quadrangle, California,'' 15 minute series (1958);

(4) ''Hopland Quadrangle, California,'' 15 minute series (1960);

(5) ''Boonville Quadrangle, California—Mendocino Co.,'' 15 minute series (1959);

(6) ''Navarro Quadrangle, California—Mendocino Co.,'' 15 minute series (1961);

(7) ''Ornbaun Valley Quadrangle, California,'' 15 minute series (1960).

(c) *Boundaries.* The ''Mendocino'' viticultural area is located entirely within Mendocino County, California. The beginning point is the southeast corner of Section 30, Township 12 North (T. 12 N.), Range 10 West (R. 10 W.) located along the Mendocino County/Sonoma County line in the southeast quadrant of U.S.G.S. map ''Hopland Quadrangle.''

(1) From the beginning point, the boundary runs north along the eastern boundary of Sections 30, 19, 18, 7 and 6 to the point labeled Jakes Cr (Jakes Creek) located at the northwest corner of Section 5, T. 12 N., R. 10 W.;

(2) Thence in a straight line in a northwest direction to the point labeled Bedford Rock in Section 3, T. 13 N., R. 11 W.;

(3) Thence in a straight line in a northwest direction to a point labeled Red Mtn in Section 17, T. 14 N., R. 11 W.;

(4) Thence in a straight line in a northwest direction to the southeast corner of Section 25, T. 16 N., R. 11 W.;

(5) Thence in a straight line in a northeast direction to the northeast corner of Section 1, T. 16 N., R. 11 W. located along the Mendocino County/Lake County line;

(6) Thence in a straight line in a northwest direction to the northeast corner of Section 5, T. 17 N., R. 11 W.;

(7) Thence in a westerly direction along the T. 18 N./T. 17 N. township line until it intersects with the R. 13 W./R. 12 W. range line;

(8) Thence in a straight line in a southwest direction to the point labeled Eagle Rock located in Section 16, T. 15 N., R. 13 W.;

(9) Thence in a straight line in a southeast direction to the point labeled Bus McGall Peak located in Section 4, T. 13 N., R. 12 W.;

(10) Thence in a straight line in a westerly direction to an unnamed hilltop, elevation 2,015 feet, in the northeast corner of Section 9, T. 13 N., R. 13 W.;

(11) Thence in a straight line in a northwest direction to the junction of Baily Gulch and the South Branch,

North Fork of the Navarro River, located in Section 8, T.15N., R.15W.;

(12) Thence in a straight line in a southwest direction to Benchmark (BM) 1057 located in Section 28, T. 15 N., R. 16 W.;

(13) Thence due south in a straight line approximately 1.4 miles to Greenwood Creek located in Section 33, T. 15 N., R. 16 W.;

(14) Thence following Greenwood Creek in a generally southeasterly and then a northeasterly direction to where it intersects with the south section line of Section 16, T. 14 N., R. 15 W., approximately .2 miles west of Cold Springs Road;

(15) Thence in an easterly direction along the south section lines of Sections 16, 15, and 14, T. 14 N., R. 15 W., to the intersection of the south section line of Section 14 with an unnamed creek;

(16) Thence in a straight line in a southeasterly direction to Benchmark (BM) 680 located in Section 30, T. 13 N., R. 13 W.;

(17) Thence continuing in a straight line in a southerly direction to the southwest corner of Section 5, T. 12 N., R. 13 W., and the Mendocino County/Sonoma County line;

(18) Thence continuing in a straight line in a southeasterly direction to the intersection of the southwest corner of Section 32, T. 12 N., R. 11 W., and the Mendocino County/Sonoma County line;

(19) Thence following the Mendocino County/Sonoma County line in an easterly, northerly, and then an easterly direction to the beginning point.

[T.D. ATF–178, 49 FR 24714, June 15, 1984, as amended by T.D. ATF–397, 63 FR 16904, Apr. 7, 1998]

§ 9.94 Howell Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Howell Mountain.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Howell Mountain viticultural area are four U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) ''Detert Reservoir, CA.,'' 1959 (photorevised 1980).

(2) ''Aetna Springs, CA.,'' 1958 (photorevised 1981).

(3) ''Calistoga, CA.,'' 1958 (photorevised 1980).

(4) ''St. Helena, CA.,'' 1960 (photorevised 1980).

(c) *Boundaries.* The Howell Mountain viticultural area is located in Napa County, California, and is part of the Napa Valley viticultural area. The exact boundaries of the viticultural area, based on landmarks and points of reference found in the approved maps, as follows:

(1) Beginning at the 1,400 foot contour line at the intersection of Sections 15 and 16 in R6W/T9N of the Detert Reservoir Quadrangle U.S.G.S. map.

(2) Then continuing in an east and southeast direction along the 1,400 foot contour line to the southeast corner of Section 23 in R5W/T8N.

(3) Then in a generally northwest direction along the 1,400 foot contour line until it intersects the line between Sections 21 and 22 in R6W/T9N.

(4) Then north along the Section 21/22 boundary line to the starting point at the 1,400 foot contour line.

[T.D. ATF–163, 48 FR 57487, Dec. 30, 1983, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987]

§ 9.95 Clarksburg.

(a) *Name.* The name of the viticultural area described in this section is ''Clarksburg.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Clarksburg viticultural area are eight U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) Sacramento West, Calif., 1967 (photorevised 1980).

(2) Saxon, Calif., 1952 (photorevised 1968).

(3) Clarksburg, Calif., 1967 (photorevised 1980).

(4) Florin, Calif., 1968 (photorevised 1980).

(5) Liberty Island, Calif., 1978.

(6) Courtland, Calif., 1978.

(7) Bruceville, Calif., 1978 (photorevised 1980).

(8) Isleton, Calif., 1978.

(c) *Boundaries.* Beginning at a point (on the Sacramento West topographic map) in Yolo County in T8N/R4E, at the intersection of Jefferson Blvd. and Burrows Ave.,

(1) Then southwest in a straight line 1.2 miles along Jefferson Blvd. to the eastern bank of the Sacramento River Deep Water Ship Channel.

(2) Then southwest along the Sacramento River Deep Water Ship Channel, approximately 17 miles to T5N/R3E, to the Class 5 trail on the levee connecting the Sacramento River Deep Water Ship Channel and the dredger cut Miner Slough, approximately 2 miles from the Solano/Yolo County line.

(3) Then east along the trail to the Miner Slough.

(4) Then east along Miner Slough to the point where it joins Sutter Slough, then south along Sutter Slough around the tip of Sutter Island to the junction of Sutter Slough and Steamboat Slough; then north around Sutter Island along Steamboat Slough to Section 8 in T5N/R4E where Steamboat Slough joins the Sacramento River.

(5) The southeast following the Sacramento River to the point where the Sacramento River meets the Delta Cross Channel at the Southern Pacific Railroad in Section 35, T5N/R4E.

(6) Then northeast along the Southern Pacific Railroad for 2 miles, to a point ⅓ mile past the intersection of the Southern Pacific Railroad and the eastern branch of Snodgrass Slough.

(7) Then east approximately 2½ miles along the levee to Interstate 5 (under construction).

(8) Then north approximately 8½ miles along Interstate 5 (under construction, proposed, and completed) to Section 18 in T6N/R5E, at the intersection of Interstate 5 and Hood Franklin Road.

(9) Then southwest along Hood Franklin Road to the Southern Pacific Railroad Levee, .1 mile northeast of Hood Junction.

(10) Then north approximately 18 miles along the Southern Pacific Railroad Levee to Section 11 in T7N/R4E, at Freeport Blvd., and then across the Sacramento River at the line between Sections 11 and 14.

(11) Then northwest along the west bank of the Sacramento River to Burrows Ave.

(12) Then northwest along Burrows Ave. to the starting point at the intersection of Jefferson Blvd. and Burrows Ave.

[T.D. ATF–166, 49 FR 2759, Jan. 23, 1984]

§ 9.96 Mississippi Delta.

(a) *Name.* The name of the viticultural area described in this section is ''Mississippi Delta.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Mississippi Delta viticultural area are three U.S.G.S. maps. They are titled:

(1) Helena, scale of 1:250,000, 1955 (revised 1977).

(2) Greenwood, scale of 1:250,000, 1953 (revised 1979).

(3) Jackson, scale of 1:250,000, 1955 (revised 1973).

(c) *Boundary*—(1) *General.* The Mississippi Delta viticultural area is located in Mississippi, Louisiana, and Tennessee. The starting point of the following boundary description is the intersection of the Illinois Central Gulf (I.C.G.) Railroad and the Mississippi River levee system, on the southeast side of Lake Horne, between Lake View, Mississippi, and Walls, Mississippi, on the Helena map.

(2) *Boundary Description.* (i) From the starting point generally southward along the Mississippi River levee system until it again intersects the I.C.G. Railroad, near Twin Lake, Mississippi (about 10 miles north of Vicksburg, on the Jackson map). In any place where there is more than one continuous levee, the one closest to the Mississippi River is the boundary.

(ii) From the intersection described in paragraph (c)(2)(i), the boundary continues southward along the I.C.G. tracks, until they merge with another branch of the I.C.G. Railroad, near Redwood, Mississippi.

(iii) Then generally northeastward along that other branch of the I.C.G. Railroad, to the Leflore County-Holmes County line (on the Greenwood map).

(iv) Then southeastward along that county line to the Leflore County-Carroll County line.

(v) Then generally northward along that county line to Mississippi Route 7.

(vi) Then generally northeastward along Route 7 to the 90°00′ longitude line.

(vii) Then northward along that longitude line to Mississippi Route 8.

(viii) Then eastward along Route 8 to Mississippi Route 35.

(ix) Then northward along Route 35 to Mississippi Route 322 (on the Helena map).

(x) Then generally eastward along Route 322 to the Panola Quitman Floodway.

(xi) Then northward along that floodway to the range line R.9W./R.8W.

(xii) Then northward along that range line to the 200 ft. contour line (north of Ballentine, Mississippi).

(xiii) Then generally northeastward along that contour line to Mississippi Route 3.

(xiv) Then northward along Route 3 to the Tunica County-Tate County line.

(xv) Then northward along that county line to the Tunica County-De Soto County line.

(xvi) Then northward along that county line to the I.C.G. Railroad.

(xvii) Then northward along the I.C.G. tracks to the starting point.

[T.D. ATF–181, 49 FR 34354, Aug. 30, 1984]

§ 9.97 Sonoita.

(a) *Name*. The name of the viticultural area described in this section is ''Sonoita.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of Sonoita viticultural area are seven U.S.G.S. maps. They are titled:

(1) Benson Quadrangle, 15 minute series, 1958.

(2) Fort Huachuca Quadrangle, 15 minute series, 1958.

(3) Elgin Quadrangle, 15 minute series, 1958.

(4) Lochiel Quadrangle, 15 minute series, 1958.

(5) Mount Wrightson Quadrangle, 15 minute series, 1958.

(6) Sunnyside Quadrangle, 15 minute series, 1958.

(7) Empire Mountains Quadrangle, 15 minute series, 1958.

(c) *Bouldary*—(1) *General*. The Sonoita viticultural area is located in Arizona. The starting point of the following boundary description is the summit of Mount Wrightson (9,543 feet) in the Santa Rita Mountains.

(2) *Boundary Description*—(i) From the starting point southeastward in a straight line for approximately 24 miles, to the summit of Lookout Knob (6,171 feet) in the Canelo Hills.

(ii) From there in a straight line eastward for approximately 10 miles, to the summit of Huachuca Peak (8,410 feet) in the Huachuca Mountains.

(iii) From there north-northwestward for approximately 21 miles in a straight line to the summit of Granite Peak (7,413 feet) in the Whetstone Mountains.

(iv) From there west-southwestward in a straight line for approximately 26 miles, to the summit of Mount Wrightson (the point of beginning).

[T.D. ATF–189, 49 FR 43054, Oct. 26, 1984]

§ 9.98 Monterey.

(a) *Name*. The name of the viticultural area described in this section is ''Monterey.''

(b) *Approved maps*. The approved maps for determining the boundary of the Monterey viticultural area are 36 U.S.G.S. quadrangle maps in the 7.5 minute series, as follows:

(1) Sycamore Flat, CA, 1956, photoinspected 1972;

(2) Junipero Serra Peak, CA, 1949, photoinspected 1972;

(3) Reliz Canyon, CA, 1949;

(4) Paraiso Springs, CA, 1956;

(5) Thompson Canyon, CA, 1949, photo-revised 1979;

(6) Cosio Knob, CA, 1948, photoinspected 1976;

(7) Espinosa Canyon, CA, 1948;

(8) San Ardo, CA, 1967;

(9) Hames Valley, CA, 1949;

(10) Tierra Redonda Mtn., CA, 1948;

(11) Bradley, CA, 1949;

(12) Wunpost, CA, 1948;

(13) Pancho Rico Valley, CA, 1967;

(14) Nattras Valley, CA, 1967;

(15) San Lucas, CA, 1949;

(16) Pinalito Canyon, CA, 1969;

(17) North Chalone Peak, CA, 1969;

(18) Soledad, CA, 1955;

(19) Mount Johnson, CA, 1968;

(20) Gonzales, CA, 1955;

(21) Mt. Harlan Quadrangle, CA, 1968;

(22) Natividad Quadrangle, CA, 1947, photo-revised 1968, photoinspected 1974;

(23) San Juan Bautista Quadrangle, CA, 1955, photo-revised 1980;

(24) Prunedale Quadrangle, CA, 1954, photo-revised 1981;

(25) Watsonville East Quadrangle, CA, 1955, photo-revised 1980;

(26) Watsonville West Quadrangle, CA, 1954, photo-revised 1980;

(27) Moss Landing Quadrangle, CA, 1954, photo-revised 1980;

(28) Marina Quadrangle, CA, 1947, photo-revised 1968 and 1974;

(29) Monterey, CA, 1947, photo-revised 1968, photoinspected 1974;

(30) Mt. Carmel, CA, 1956, photoinspected 1972;

(31) Carmel Valley, CA, 1956, photoinspected 1974;

(32) Spreckels, CA, 1947, photo-revised 1968, photoinspected 1975;

(33) Chualar, CA, 1947, photo-revised 1968, photoinspected 1974;

(34) Rana Creek, CA, 1956, photoinspected 1973; and

(35) Palo Escrito Peak, CA, 1956;

(36) Greenfield, CA, 1956;

(37) Salinas, CA, 1947 (photorevised 1975); and

(38) Seaside, CA, 1947 (photorevised 1968, photoinspected 1974).

(c) *Boundary*. The Monterey viticultural area is located in Monterey County, California. The boundary is as follows:

(1) The beginning point is found on the ''Sycamore Flat'' U.S.G.S. 7.5 minute map at the junction of Arroyo Seco Road and the Jamesburg Road, in the southeast corner of section 21, T(ownship) 19 S., R(ange) 5 E. (This is also the beginning point for the Arroyo Seco viticultural area.)

(2) The boundary proceeds directly west along the southern boundary of section 21 to the southwest corner of section 21, T. 19 S., R. 5 E.

(3) Then southeast in a straight diagonal line across section 28 to the southeast corner of section 28, T. 19 S., R. 5 E.

(4) Then directly east along the southern boundaries of sections 27, 26 and 25 in T. 19 S., R. 5 E., sections 30, 29, 28, 27, 26 and 25 in T. 19 S., R. 6 E., and sections 30, 29, and 28 in T. 19 S., R. 7 E. to the southeast corner of section 28, T. 19 S., R. 7 E.

(5) Then south along the eastern boundary of section 33 to the southeast corner of section 33, T. 19 S., R. 7 E.

(6) Then southeast in a straight diagonal line across section 3 to the southeast corner of section 3, T. 20 S., R. 7 E.

(7) Then south southeast in a straight diagonal line across sections 11 and 14 to the southeast corner of section 14, T. 20 S., R. 7 E.

(8) Then south along the western boundaries of sections 24 and 25 to the southwest corner of section 25, T. 20 S., R. 7 E.

(9) Then east along the southern boundaries of sections 25 and 30 to the southeast corner of section 30, T. 20 S., R. 8 E.

(10) Then southwest in a straight diagonal line across section 31 to the southwest corner of section 31, T. 20 S., R. 8 E.

(11) Then west along the southern boundary of section 36, T. 20 S., R. 7 E., to the northwest corner of section 6, T. 21 S., R. 8 E.

(12) Then south along the western boundaries of sections 6 and 7 to the southwest corner of section 7, T. 21 S., R. 8 E.

(13) Then west along the northern boundary of section 13 to the northwest corner of section 13, T. 21 S., R. 7 E.

(14) Then south along the western boundaries of sections 13 and 24 to the southwest corner of section 24, T. 21 S., R. 7 E.

(15) Then east northeast in a straight diagonal line across section 24, T. 21 S., R. 7 E., and across section 19, T. 21 S., R. 8 E., to the northeast corner of section 19, T. 21 S., R. 8 E.

(16) Then northeast in a straight diagonal line across section 17 to the northeast corner of section 17, T. 21 S., R. 8 E.

(17) Then southeast in a straight diagonal line across sections 16, 22, 26 and 36 in T. 21 S., R. 8 E. and across sections 6, 8, and 16 in T. 22 S., R. 9 E. to the southeast corner of section 16, T. 22 S., R. 9 E.

(18) Then east southeast in a straight diagonal line across sections 22, 23, 24, T. 22 S., R. 9 E., and across section 19, T. 22 S., R. 10 E., to the southeast corner of section 19, T. 22 S., R. 10 E.

(19) Then south southeast in a straight diagonal line across sections 29, 32, and 33, T. 22 S., R. 10 E., to the

southeast corner of section 4, T. 23 S., R. 10 E.

(20) Then south southeast in a straight diagonal line across sections 10, 15, 23, and 26 to the southeast corner of section 26, T. 23 S., R. 10 E.

(21) Then northwest in a straight diagonal line across section 26 to the northwest corner of section 26, T. 23 S., R. 10 E.

(22) Then west northwest in a straight diagonal line across sections 22, 21, 20, and 19, T. 23 S., R. 10 E. to the northwest corner of section 24, T. 23 S., R. 9 E.

(23) Then southeast across sections 24, 25, 30, 31, and 32, to the southeast corner of section 5, T. 24 S., R. 10 E.

(24) Then east southeast in a straight diagonal line across section 9 to the southeast corner of section 10, T. 24 S., R. 10 E.

(25) Then south southeast in a straight diagonal line across section 14 to the southeast corner of section 23, T. 24 S., R. 10 E.

(26) Then southwest in a straight diagonal line to the southwest corner of section 26, T. 24 S., R. 10 E.

(27) Then south along the western boundary of section 35 to the southwest corner of section 35, T. 24 S., R. 10 E.

(28) Then east along the southern boundaries of sections 35 and 36 to the southeast corner of section 36, T. 24 S., R. 10 E.

(29) Then north along the eastern boundaries of sections 36 and 25 to the northeast corner of section 25, T. 24 S., R. 10 E.

(30) Then northeast in a straight diagonal line across sections 19, 18, and 17 to the northeast corner of section 8, T. 24 S., R. 11 E.

(31) Then west northwest in a straight diagonal line across section 5 to the northwest corner of section 6, T. 24 S., R. 11 E.

(32) Then north along the line separating Range 10 E. and Range 11 E. along the eastern boundary lines of sections 36, 25, 24, 13, 12 and 1 in Township 23 S., and along the western boundaries of sections 36, 25, 24, 13, 12 and 1 in Township 22 S., to the northeast corner of section 36, T. 21 S., R. 10 E.

(33) Then west northwest in a straight diagonal line across sections 25, 26, 23, 22, 15, 16 and 9 to the northwest corner of section 8, T. 21 S., R. 10 E.

(34) Then northwest in a straight diagonal line to the northwest corner of section 6, T. 21 S., R. 10 E.

(35) Then west along the northern boundary of section 1, T. 21 S., R. 9 E. to the southeast corner of section 36, T. 20 S., R. 9 E.

(36) Then northwest in a straight diagonal line across sections 36, 26, 22, 16, 8, and 6 in T. 20 S., R. 9 E. to the northwest corner of section 6, T. 20 S., R. 9 E.

(37) Then north along the line separating Range 8 E. and Range 9 E. along the western boundaries of sections 36, 25, 24, 13, 12, and 1, T. 19S., R. 8 E. to the northeast corner of section 1, T. 19 S., R. 9 E.

(38) Then northwest in a straight diagonal line to the point of intersection of the boundary line separating R. 7 E. and R. 8 E. and the boundary line separating T. 17 S. and T. 18 S.

(39) Then west along the northern boundaries of sections 1 and 2 to the northwest corner of section 2, T. 18 S., R. 7 E.

(40) Then northwest in a straight diagonal line across section 34 to the northwest corner of section 34, T. 17 S., R. 7 E.

(41) Then west along the southern boundaries of sections 28 and 29 to the southwest corner of section 29, T. 17 S., R. 7 E.

(42) Then northwest in a straight diagonal line across sections 30, 24, 14, 10 and 4 to the northwest corner of section 4, T. 17 S., R. 6 E.

(43) Then north northeast in a straight line across the easternmost portion of section 32 to the northeast corner of section 32, T. 16 S., R. 6 E.

(44) Then north along the eastern boundary of section 29 to the northeast corner of section 29, T. 16 S., R. 6 E.

(45) Then northwest in a straight diagonal line across section 20 to the northwest corner of section 20, T. 16 S., R. 6 E.

(46) Then west northwest in a straight diagonal line across sections 18 and 13 to the northwest corner of section 13, T. 16 S., R. 5 E.

(47) Then north northwest in a straight diagonal line across sections

11 and 2 to the northwest corner of section 2, T. 16 S., R. 5 E.

(48) Then west along the southern boundaries of section 34 and 33 to the southwest corner of section 33, T. 15 S., R. 5 E.

(49) Then north along the western boundary of section 33, T. 15 S., R. 5 E., in a straight line for approximately 0.5 mile to the intersection with the Chualar Land Grant boundary at the northwestern corner of section 33, T. 15 S., R. 5 E.

(50) Then northeast in a straight diagonal line across the Chualar Land Grant and section 27 to the northeast corner of section 27, T. 15 S., R. 5 E.

(51) Then northwest in a straight diagonal line across section 22 to the northwest corner of section 22, T. 15 S., R. 5 E.

(52) Then west in a straight line along the southern boundaries of sections 16 and 17, T. 15 S., R. 5 E., to the southwest corner of section 17 where it intersects with the Encinal Y Buena Esperanza Land Grant boundary.

(53) Then north and then west along the eastern boundary of the Encinal Y Buena Esperanza Land Grant and the western boundaries of sections 21, 17, 8, and 7, T. 15 S., R. 5 E.

(54) Then in a straight line from the northwest corner of the Encinal Y Buena Esperanza Land Grant boundary and section 7, T. 15 S., R. 5 E. in a west northwest direction to the point where the power transmission line (with located metal tower) intersects at the western boundary of the Cienega del Gabilan Land Grant and the eastern boundary of the El Alisal Land Grant, T. 14 S., R. 4 E.

(55) Then north and then northwest along the boundary line between the Cienega del Gabilan Land Grant and El Alisal Land Grant to the westernmost corner of the Cienega del Gabilan Land Grant, T. 14 S., R. 4 E.

(56) Then west along the boundary line between the Sausal Land Grant and La Natividad Land Grant to the point where the boundary line intersects Old Stage Road.

(57) Then north along Old Stage Road to the point where Old Stage Road intersects the Monterey County—San Benito County line, T. 13 S., R. 4 E.

(58) Then northwest along the Monterey County—San Benito County line to the point near the Town of Aromas where the boundary lines of the counties of Monterey, Santa Cruz, and San Benito meet, T. 12 S., R. 3 E.

(59) Then in a meandering line along the Monterey County—Santa Cruz County line east then southeast to the Pacific Ocean, T. 12 S., R. 1 E.

(60) Then south along the coastline of Monterey Bay to its intersection with the northwesternmost boundary of Fort Ord Military Reservation, T. 14 S., R. 1 E.

(61) Then following the boundry line of the Fort Ord Military Reservation in an irregular line generally east, then south, then west to the point where the boundary line of the military reservation meets the Pacific Ocean, T. 15 S., R. 1 E.

(62) Then following the coastline of the Monterey Peninsula south along the coastline of Carmel Bay to Carmel Point, the northwesternmost point of Point Lobos State Reserve on the Carmel Peninsula.

(63) Then southeast in a straight diagonal line to the southwestern corner of section 25, T. 16 S., R. 1 W.

(64) Then east along the southern boundaries of section 25, T. 16 S., R. 1 W., and sections 30 and 29, T. 16 S., R. 1 E., to the southeastern corner of section 29 where it intersects with the southwestern boundary of the El Potrero de San Carlos Land Grant.

(65) Then southeast along the southwestern boundary line of the El Potrero de San Carlos Land Grant to the southeastern corner of section 33, T. 16 S., R. 1 E.

(66) Then east along the line separating Township 16 S. and Township 17 S. and across Pinyon Peak to the southeast corner of section 32, T. 16 S., R. 2 E. (This is the beginning and ending point of the boundary of Carmel Valley viticultural area.)

(67) Then continuing east along the line separating Township 16 S. from Township 17 S. to its point of intersection with the line separating Range 2 E. and Range 3 E.

(68) Then north along the western boundaries of sections 31, 30, 19, 18, 7

and 6 in T. 16 S., R. 3 E. to the southwestern corner of section 31, T. 15 S., R. 3 E.

(69) Then in a straight diagonal line east northeast across sections 31, 32 and 33, T. 15 S., R. 3 E. to the southeast corner of section 28, T. 15 S., R. 3 E.

(70) Then southeast in a straight diagonal line along the eastern boundaries of sections 33 and 34, T. 15 S., R. 3 E., and sections 3, 2, 12, 16, 20, 21, and 28, T. 16 S., R. 4 E., to the point where the eastern boundary line of section 28 intersects the boundary line of the Guadalupe Y Llanitos de Los Correos Land Grant.

(71) Then south to the southwest corner of section 34, T. 16 S., R. 4 E.

(72) Then east to the northwest corner of section 2, T. 17 S., R. 4 E.

(73) Then south along the eastern boundary of section 3 to the southeast corner of section 3, T. 17 S., R. 4 E.

(74) Then southeast in a straight diagonal line across sections 11, 13, 19, and 29, to the southeast corner of section 29, T. 17 S., R. 5 E.

(75) Then south along the western boundary of section 33 to the southwest corner of section 33, T. 17 S., R. 5 E.

(76) Then east along the southern boundary of section 33 to the northeast corner of section 4, T. 18 S., R. 5 E.

(77) Then southeast in a diagonal line acros sections 3 and 11 to the southeast corner of section 11, T. 18 S., R. 5 E.

(78) Then south along the western boundary of section 13 to the southwest corner of section 13, T. 18 S., R. 5 E.

(79) Then southeast in a diagonal line across section 24 to the southeast corner of section 24, T. 18 S., R. 5 E.

(80) Then south along the western boundaries of section 30 and 31 to the southwest corner of section 31, T. 18 S., R. 6 E.

(81) Then east along the southern boundaries of sections 31 and 32 to the southeast corner of section 32, T. 18 S., R. 6 E. (From this point, the Monterey and Arroyo Seco viticultural areas share the same boundary lines.)

(82) Then south along the eastern boundaries of sections 5, 8, and 17 to Arroyo Seco Road, T. 19 S., R. 6 E.

(83) Then southwest in a straight line for approximately 1.0 mile to Benchmark 673, T. 19 S., R. 6 E.

(84) Then west in a straight line for approximately 1.8 miles to Bench Mark 649.

(85) Then northwest in a straight line for approximately 0.2 mile to the northeast corner of section 23, T. 19 S., R. 5 E.

(86) Then west following the northern boundaries of sections 23 and 22 to the northwest corner of section 22, T. 19 S., R. 5 E.

(87) Then south in a straight line along the western boundary of section 22 to the point of beginning.

[T.D. ATF–178, 49 FR 24718, June 15, 1984, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987]

§9.99 Clear Lake.

(a) *Name.* The name of the viticultural area described in this section is ''Clear Lake.''

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Clear Lake viticultural area are four U.S.G.S. maps. The maps are titled as follows:

(1) ''Lower Lake Quadrangle, California,'' 15 minute series, 1958;

(2) ''Clearlake Oaks Quadrangle, California,'' 15 minute series, 1960;

(3) ''Lakeport Quadrangle, California,'' 15 minute series, 1958;

(4) ''Kelseyville Quadrangle, California,'' 15 minute series, 1959.

(c) *Boundaries.* The Clear Lake viticultural area is located in southwestern Lake County, California. The descriptive boundaries of the viticultural area, using landmarks and points of reference on the applicable U.S.G.S. maps, are as follows:

Lower Lake Quadrangle Map (15 minute series); From the beginning point on Mt. Hannah in Section 16, Township 12 North (T12N), Range 8 West (R8W), identified as having an elevation of 3,978 feet, the boundary runs—

(1) East-southeasterly in a straight line to the point on Seigler Mountain in Section 23, T12N/R8W, identified as having an elevation of 3,692 feet;

(2) Then east-southeasterly in a straight line to the point on Childers Peak in Section 34, T12N/R7W, identified as having an elevation of 2,188 feet;

(3) Then east-northeasterly in a straight line to the point on the southeast corner of Section 25, T12N/R7W;

(4) Then northeasterly in a straight line to the point in Section 16, T12N/R6W, identified as being the ''Baker Mine;''

(5) Then northwesterly in a straight line to the point at the southeast corner of Section 23, T13N/R7W;

(6) Then northerly along the east line of Sections 23, 14, 11, and 2, to the point at the northeast corner of Section 2, T13N/R7W, on the Clearlake Oaks Quadrangle map;

Clearlake Oaks Quadrangle Map (15 minute series); Continuing from the northeast corner of Section 2, T13N/R7W—

(7) Then northwesterly in a straight line to the point in Section 21, T14N/R7W, at the top of Round Mountain

(8) Then northwesterly in a straight line to the southeast corner of Section 4, T14N/R8W;

Lakeport Quadrangle Map (15 minute series); Continuing from the southeast corner of Section 4, T14N/R8W, on the Clearlake Oaks Quadrangle Map—

(9) Then northwesterly on the Lakeport Quadrangle in a straight line to a point on Charlie Alley Peak in Section 28, T16N/R9W, identified as having an elevation of 3,482 feet;

(10) Then westerly in a straight line to a point on Hells Peak in Section 29, T16N/R10W, identified as having an elevation of 2,325 feet;

(11) The southeasterly in a straight line to a point on Griner Peak in Section 23, T15N/R10W, identified as having an elevation of 2,132 feet;

(12) Then southwesterly in a straight line to a point on Scotts Mountain in Section 8, T14N/R10W, identified as having an elevation of 2,380 feet;

(13) Then southeasterly in a straight line to a point on Lakeport Peak in Section 35, T14N/R10W, identified as having an elevation of 2,180 feet;

Kelseyville Quadrangle Map (15 minute series); Continuing from Lakeport Peak in Section 35, T14N/R10W, on the Lakeport Quadrangle Map—

(14) Then southeasterly in a straight line to the point at the southwest corner of Section 1, T13N/R10W;

(15) Then south by southeast in a straight line to the point at the southeast corner of Section 36, T13N/R10W;

(16) Then south by southeasterly in a straight line to the point at the southwest corner of Section 18, T12N/R8W;

(17) Then east by northeast in a straight line to the beginning point at Mount Hannah, Section 16, T12N/R8W, on the Lower Lake Quadrangle Map.

[T.D. ATF–174, 49 FR 19468, May 8, 1984]

§ 9.100 Mesilla Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Mesilla Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of Mesilla Valley viticultural area are 15 U.S.G.S. quadrangle 7.5 minute series maps. They are entitled:

(1) ''Anthony, N. Mex.-Tex.,'' 7.5 minute series, edition of 1955;

(2) ''Bishop Cap, N. Mex.,'' 7.5 minute series, edition of 1955;

(3) ''Black Mesa, N. Mex.,'' 7.5 minute series, edition of 1978;

(4) ''Canutillo, Tex.-N. Mex.,'' 7.5 minute series, edition of 1955 (photorevised 1967);

(5) ''Dona Ana, N. Mex.,'' 7.5 minute series, edition of 1978;

(6) ''La Mesa, N. Mex.,'' 7.5 minute series, edition of 1955;

(7) ''La Union, N. Mex.-Tex.'' 7.5 minute series, edition of 1955;

(8) ''Las Cruces, N. Mex.,'' 7.5 minute series, edition of 1978;

(9) ''Leasburg, N. Mex.,'' 7.5 minute series, edition of 1978;

(10) ''Little Black Mountain, N. Mex.,'' 7.5 minute series, edition of 1978;

(11) ''Picacho Mountain, N. Mex.,'' 7.5 minute series, edition of 1978;

(12) ''San Miguel, N. Mex.,'' 7.5 minute series, edition of 1955;

(13) ''Smeltertown, Tex.-N. Mex.,'' 7.5 minute series, edition of 1955 (photorevised 1967 and 1973);

(14) ''Strauss, N. Mex.-Tex.,'' 7.5 minute series, edition of 1955; and

(15) ''Tortugas Mountain, N. Mex.,'' 7.5 minute series, edition of 1955.

(c) *Boundaries.* The Mesilla Valley viticultural area is located within Dona Ana County, New Mexico, and El Paso County, Texas. The boundaries are as follows: The beginning point is at the Faulkner Canyon on the ''Leasburg, N. Mex.'' U.S.G.S. map at the northwest corner of Section 15, Township 21 South (T21S), Range 1 West (R1W).

(1) From the beginning point, the boundary runs east 3.7 miles along the north section line until it converges with the 4,200 foot elevation contour line at Section 18, T21S/R1E;

(2) Then it runs southeasterly 31 miles along the 4,200 foot elevation contour line to a point approximately 3.5 miles south of Bishop Cap where it intersects the Fort Bliss Military Reservation boundary at the northeast portion of Section 13, T25S/R3E on the ''Bishop Cap, N. Mex.'' U.S.G.S. map;

(3) Then it follows the Fort Bliss Military Reservation boundary south for approximately 3.7 miles and east approximately .8 mile to the intersection with the 4,200 foot elevation contour line at the southeast portion of Section 6, T26S/R4E on the ''Anthony, N. Mex.-Tex.'' U.S.G.S. map;

(4) Then it runs south along the 4,200 foot elevation contour line for approximately 20 miles until it intersects the La Mesa Road (Mesa Avenue) in the city limits of El Paso, Texas, on the ''Smeltertown, Tex.-N. Mex.'' U.S.G.S. map;

(5) Then it heads south on the La Mesa Road (Mesa Avenue) for 1.2 miles until it meets Executive Center Boulevard that goes to La Guna/Smeltertown;

(6) Then it travels in a southwesterly direction for 1.1 miles on Executive Center Boulevard to La Guna/Smeltertown until it crosses the Southern Pacific Railroad tracks at Smeltertown, Texas;

(7) Then it proceeds back into New Mexico northwesterly along the Southern Pacific Railroad tracks approximately 12.5 miles to a point near the switch yards at Strauss, New Mexico, where it intersects the 4,100 foot elevation contour line at the center of Section 24, T28S/R2E on the ''Strauss, N. Mex.-Tex.'' U.S.G.S. map;

(8) Then it follows the 4,100 foot elevation contour line in a northwesterly direction for 17 miles until it intersects with the south section line of Section 29, T25S/R2E, on the ''Little Black Mountain, N. Mex.'' U.S.G.S. map;

(9) Then it runs westerly approximately .5 mile along the south section line until it meets the 4,150 foot elevation contour line at Section 29, T25S/R2E;

(10) Then it follows the 4,150 foot elevation contour line northward for 15 miles until it meets with Interstate Highway 70/80/180 at the southeast corner of Section 19, T23S/R1E, on the ''Las Cruces, N. Mex.'' U.S.G.S. map;

(11) Then it runs southwest along Interstate Highway 70/80/180 for approximately .9 mile until it reaches the 4,200 foot elevation contour line at the northwest corner of Section 30, T23S/R1E, on the ''Picacho Mt., N. Mex.'' U.S.G.S. map;

(12) Then it meanders in a northerly direction on the 4,200 foot elevation contour line for 15 miles until it reaches the section line at the southwest corner of Section 15, T21S/R1W on the ''Leasburg, N. Mex.'' U.S.G.S. map;

(13) Then finally it goes north along the section line to Faulkner Canyon until it meets with the northwest corner of Section 15, T21S/R1W, which is the beginning point.

[T.D. ATF–197, 50 FR 6163, Feb. 14, 1985]

§9.101 The Hamptons, Long Island.

(a) *Name.* The name of the viticultural area described in this section is ''The Hamptons, Long Island.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of ''The Hamptons, Long Island'' viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) ''Riverhead, N.Y.,'' 7.5 minute series, scaled at 1:24,000, edition of 1956;

(2) ''Eastport, N.Y.,'' 7.5 minute series, scaled at 1:24,000, edition of 1956;

(3) ''New York, N.Y.; N.J.; Conn., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979;

(4) ''Providence, R.I.; Mass.; Conn.; N.Y., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969, and

(5) ''Hartford, Conn.; N.Y.; N.J.; Mass., U.S. 1:250,000 series, scaled at 1:250,000, edition of 1962, revised 1975.

(c) *Boundaries.* The boundaries of the viticultural area are as follows: ''The Hamptons, Long Island'' viticultural area is located entirely within eastern Suffolk County, Long Island, New York. The viticultural area boundaries consist of all of the land areas of the South Fork of Long Island, New York, including all of the beaches, shorelines, islands and mainland areas in the Townships of Southampton and East Hampton (including Gardiners Island). The beginning point is found on the ''Riverhead, N.Y.'' U.S.G.S. map on the Peconic River about 2 miles east of Calverton where the Townships of Riverhead, Brookhaven and Southampton meet:

(1) The boundary travels south approximately 10 miles along the Southampton/Brookhaven Township line

until it reaches the dunes on the Atlantic Ocean near Cupsogue Beach on the ''Eastport, N.Y.'' U.S.G.S. map.

(2) Then the boundary proceeds east and west along the beaches, shorelines, islands and mainland areas of the entire South Fork of Long Island described on the ''New York,'' ''Providence,'' and ''Hartford'' U.S.G.S. maps until it reaches the Peconic River near Calverton at the beginning point. These boundaries consist of all of the land found in the Townships of Southampton and East Hampton (including Gardiners Island).

[T.D. ATF–205, 50 FR 20413, May 16, 1985, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 9.102 Sonoma Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Sonoma Mountain.''

(b) *Approved maps.* The approved maps for determining the boundary of the Sonoma Mountain viticultural area are 2 U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) Glen Ellen, Calif., dated 1954, photorevised 1980; and

(2) Kenwood, Calif., dated 1954, photorevised 1980.

(c) *Boundary.* The Sonoma Mountain viticultural area is located in Sonoma County, California. The boundary is as follows:

(1) The beginning point is the northern most point at which the 1600-foot contour line crosses the section line dividing section 22 from section 23, in Township 6 North, Range 7 West.

(2) The boundary follows this section line north to the 800-foot contour line.

(3) The boundary follows the 800-foot contour line westerly, easterly, and northerly to Bennett Valley Road.

(4) The boundary follows Bennett Valley Road easterly to Enterprise Road.

(5) The boundary follows Enterprise Road southeasterly to an unnamed stream, in Section 7, Township 6 North, Range 7 West, which crosses Enterprise Road near the point at which the road turns from an easterly to a southerly direction.

(6) The boundary follows this stream easterly to the 400-foot contour line.

(7) The boundary follows the 400-foot contour line southerly to the township line dividing Township 6 North from Township 5 North.

(8) The boundary follows a straight line extension of this township line west to the 1200-foot contour line.

(9) The boundary follows the 1200-foot contour line northwesterly to the range line dividing Range 6 West from Range 7 West.

(10) The boundary follows this range line south to the 1600-foot contour line.

(11) The boundary follows this contour line westerly to the beginning point.

[T.D. ATF–196, 50 FR 2979, Jan. 23, 1985, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987]

§ 9.103 Mimbres Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Mimbres Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Mimbres Valley viticultural area are 28 U.S.G.S. quadrangle maps (26–7.5 minute series and 2–15 minute series). They are entitled:

(1) ''Akela, N. Mex.,'' 7.5 minute series, edition of 1972;

(2) ''Antelope Hill, N. Mex.,'' 7.5 minute series, edition of 1963 (photoinspected 1974);

(3) ''Bisbee Hills, N. Mex.,'' 7.5 minute series, edition of 1965;

(4) ''Bowlin Ranch, N. Mex.,'' 7.5 minute series, edition of 1965;

(5) ''Capital Dome, N. Mex.,'' 7.5 minute series, edition of 1965;

(6) ''Carne, N. Mex.,'' 7.5 minute series, edition of 1965;

(7) ''Columbus, N. Mex.,'' 7.5 minute series, edition of 1965;

(8) ''Columbus NE, N. Mex.,'' 7.5 minute series, edition of 1966;

(9) ''Columbus SE, N. Mex.,'' 7.5 minute series, edition of 1966;

(10) ''Deming East, N. Mex.,'' 7.5 minute series, edition of 1965;

(11) ''Deming West, N. Mex.,'' 7.5 minute series, edition of 1964 (photoinspected 1972);

(12) ''Dwyer, N. Mex.,'' 15 minute series, edition of 1956;

(13) ''Faywood Station, N. Mex.,'' 7.5 minute series, edition of 1947;

(14) ''Florida Gap, N. Mex.,'' 7.5 mintue series, edition of 1964;

(15) ''Goat Ridge, N. Mex.,'' 7.5 minute series, edition of 1964;

(16) ''Gym Peak, N. Mex.,'' 7.5 minute series, edition of 1964;

(17) ''Hermanas, N. Mex.,'' 7.5 minute series, edition of 1964;

(18) ''Malpais Hill, N. Mex.,'' 7.5 minute series, edition of 1965;

(19) ''Midway Butte, N. Mex.,'' 7.5 minute series, edition of 1965;

(20) ''Myndus, N. Mex.,'' 7.5 minute series, edition of 1972;

(21) ''North Peak, N. Mex.,'' 7.5 minute series, edition of 1965;

(22) ''Red Mountain, N. Mex.,'' 7.5 minute series, edition of 1965;

(23) ''San Lorenzo, N. Mex.,'' 15 minute series, edition of 1956;

(24) ''Sibley Hole, N. Mex.,'' 7.5 minute series, edition of 1972;

(25) ''South Peak, N. Mex.,'' 7.5 minute series, edition of 1965;

(26) ''Spalding, N. Mex.,'' 7.5 minute series, edition of 1964;

(27) ''West Lime Hills, N. Mex.,'' 7.5 minute series, edition of 1965; and

(28) ''Williams Ranch, N. Mex.,'' 7.5 minute series, edition of 1964.

(c) *Boundaries*. The Mimbres Valley viticultural area is located within Grant and Luna Counties, New Mexico. The boundaries are as follows: The beginning point is located at Faywood Station on an unimproved dirt road at benchmark 4911 in Luna County, New Mexico on the northern part of Section 2, Township 21 South (T21S), Range 12 West (R12W) on the Faywood Station Quadrangle U.S.G.S. map;

(1) From the beginning point the boundary runs northeast 2.25 miles along an unimproved dirt road until it intersects U.S. Routh 180 (indicated on map as U.S. Rte. 260) at New Mexico Highway 61 (indicated on map as an unnumbered secondary highway) at the south portion of Sec. 30, T20S/R11W;

(2) The boundary proceeds in a generally northerly direction on N.M. Hwy. 61 for 34.5 miles crossing over U.S. Rte. 90 (indicated on map as U.S. Rte. 180) west of San Lorenzo, N.M. until it meets an unimproved dirt road near Bear Canyon Dam at the west line of Sec. 28, T16S/R11W on the San Lorenzo, N. Mex. U.S.G.S. map;

(3) It then heads east on the unimproved dirt road for .2 mile until it meets the Mimbres River at Sec. 28, T16S/R11W;

(4) It then goes south on the Mimbres River for .25 mile until it intersects the 6,000 foot elevation contour line at Sec. 28, T16S/R11W;

(5) From there the boundary runs south along the 6,000 foot elevation contour line until it meets the east line of Sec. 11, T17S/R11W;

(6) Then it proceeds south on the section line for .6 mile until it hits the south line of Sec. 12, T17S/R11W;

(7) Then it travels east on the section line for 1.8 miles until it intersects an unimproved dirt road in Noonday Canyon on the north line of Sec. 18, T17S/R10W;

(8) It then heads south on the unimproved dirt road for 2.2 miles until it intersects a medium duty road at the northern part of Sec. 30, T17S/R10W;

(9) The boundary goes south on the medium duty road for .8 mile until it reaches the north line of Sec. 31, T17S/R10W;

(10) The boundary goes east 5 miles on the section line to the east line of Sec. 36, T17S/R10W;

(11) The boundary proceeds south on the section line for 13 miles to the south line of Sec. 36 (also indicated on map as Luna/Grant Country line), T19S/R10W on the Dwyer, N. Mex. U.S.G.S. map;

(12) The boundary travels west on the Luna/Grant County line for three miles to the east line of Sec. 4, T20S/R10W;

(13) The boundary goes south on the section line for three miles to the south line of Sec. 16, T20S/R10W;

(14) Then it goes west on the section line for approximately .6 mile to a light duty road located 500 feet south of Benchmark 5119 on the south line of Sec. 16, T20S/R10W;

(15) The boundary heads south on the light duty road for approximately 10.25 miles until it meets Hwy. 180 at Benchmark 4672 near the west line of Sec. 9, T22S/R10W on the Spalding, N. Mex. U.S.G.S. map;

(16) Then it proceeds southeasterly on Hwy. 180 for approximately 5 miles to the north line of Sec. 6, T23S/R9W on the Deming West, N. Mex. U.S.G.S. map;

(17) It then goes east on the section line approximately 11.75 miles to the east line of Sec. 1, T23S/R8W on the Carne, N. Mex. U.S.G.S. map;

(18) It then travels south on the section line for 1.5 miles until it meets an unimproved dirt road at Sec. 12, T23S/R8W;

(19) It follows the unimproved dirt road in a easterly direction for 3 miles to Carne Windmill at the northeast part of Sec. 17, T23S/R7W;

(20) From there it follows an unimproved dirt road in a southeasterly direction for .75 mile until it meets the south line of Sec. 16, T23S/R7W;

(21) Then it proceeds east along the section line for 9 miles until it arrives at the east line of Sec. 24, T23S/R6W on the Myndus, N. Mex. U.S.G.S. map;

(22) Then it goes south on the section line for 15 miles until it meets the south line of Sec. 36, T25S/R6W on the Sibley Hole, N. Mex. U.S.G.S. map;

(23) Then it heads west on the section line for 8 miles until it intersects the 4,200 foot elevation contour line at the southeast corner of Sec. 34, T25S/R7W on the Gym Peak, N. Mex. U.S.G.S. map;

(24) Then it heads north on the 4,200 foot elevation contour line for 11 miles until it meets N.M. Hwy. 549 (indicated on map as U.S. Rte. 70/80/180) at the southwest corner of Sec. 5, T24S/R7W on the Florida Gap, N. Mex. U.S.G.S. map;

(25) The boundary heads west on M.M. Hwy. 549 (indicated on map as U.S. Rte. 70/80/180) for 4.5 miles until it meets the light duty road at the east line of Sec. 3, T24S/R8W on the Capital Dome, N. Mex. U.S.G.S. map;

(26) It then goes south on the light duty road/section line for 4 miles until it meets another light duty road at the south line of Sec. 22, T24S/R8W;

(27) Then the boundary heads west for 2 miles on the light duty road/section line until it intersects an unimproved dirt road at the east line of Sec. 29, T24S/R8W;

(28) Then it travels south on the unimproved dirt road/section line for 2 miles until it meets another unimproved dirt road at the south line of Sec. 32, T24S/R8W;

(29) It then moves west .25 mile on the unimproved dirt road until it reaches the east line of Sec. 5, T25S/R8W;

(30) Then it goes south on the section line for 6 miles until it reaches an unimproved dirt road near Crawford Ranch at the north line of Sec. 5, T25S/R8W on the South Peak, N. Mex. U.S.G.S. map;

(31) Then it follows the unimproved dirt road in a southwest then southern direction for approximately 3 miles until it hits the north line of Sec. 19, T26S/R8W;

(32) It then travels east for 1.1 mile along the section line until it hits the east line of Sec. 20, T26S/R8W;

(33) From there it proceeds south for 2 miles on the section line until it intersects the north line of Sec. 33, T26S/R8W;

(34) It then heads east for 5 miles on the section line until it intersects the east line of Sec. 31, T26S/R7W on the Gym Peak, N. Mex. U.S.G.S. map;

(35) The boundary goes south on the section line for 7 miles until it meets the north line of Sec. 5 (which also is a light duty road), T28S/R7W on the Columbus NE, N. Mex. U.S.G.S. map;

(36) Then it goes east for 4 miles on the section line until it meets the east line of Sec. 2 near Oney Tank T28S/R7W;

(37) Then it goes south on the section line for 8.7 miles until it meets the New Mexico, U.S.A./Mexico International border at the east line of Sec. 17, T29S/R7W on the Columbus SE, N. Mex. U.S.G.S. map;

(38) The boundary follows in a westerly direction along the International border for 23 miles to the west line of Sec. 18, T29S/R10W on the Hermanas, N. Mex. U.S.G.S. map;

(39) It then heads north on the western section for 3.5 miles to the north line of Sec. 31, T28S/R10W;

(40) It then moves east for 13 miles on the section line until it intersects the east line of Sec. 32, T28S/R8W on the Columbus, N. Mex. U.S.G.S. map;

(41) Then it follows the section line north for 8 miles until it meets the south line of Sec. 18, T27S/R8W on the North Peak, N. Mex. U.S.G.S. map;

(42) Then it proceeds west on the section line for 11 miles to the west part of Sec. 16 identified as longitude point 107 degrees, 52 minutes, 30 seconds,

T27S/R10W on the West Lime Hills, N. Mex. U.S.G.S. map;

(43) Then it moves north on the 107 degrees, 52 minutes, 30 seconds longitude point for 9 miles until it intersects the north line of Sec. 4, T26S/R10W on the Midway Butte, N. Mex. U.S.G.S. map;

(44) Then it goes west on the section line for 6.5 miles until it meets the west line of Sec. 33, T25S/R11W on the Bisbee Hills, N. Mex. U.S.G.S. map;

(45) The boundary then travels north on the section line for 26.5 miles (crossing the Southern Pacific Railroad tracks) until it intersects with the Atchison, Topeka and Santa Fe Railroad tracks on the west line of Sec. 21, T21S/R11W on the Spalding, N. Mex. U.S.G.S. map;

(46) Finally it follows the Atchison, Topeka and Santa Fe Railroad tracks in a northwesterly direction for 5 miles until it reaches the beginning point at benchmark 4911 on an unimproved dirt road in Faywood Station at Sec. 2, T21S/R12W on the Faywood Station, N. Mex. U.S.G.S. map.

[T.D. ATF–217, 50 FR 48081, Nov. 21, 1985]

§9.104 South Coast.

(a) *Name*. The name of the viticultural area described in this section is ''South Coast.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of South Coast viticultural area are four U.S.G.S. maps. They are titled:

(1) San Diego, 1:250,000 series, 1958 (revised 1978).

(2) Santa Ana, 1:250,000 series, 1959 (revised 1979).

(3) Long Beach, 1:250,000 series, 1957 (revised 1978).

(4) Wildomar Quadrangle, 7.5 minute series, 1953 (photorevised 1973).

(c) *Boundary*—(1) *General*. The South Coast viticultural area is located in California. The starting point of the following boundary description is the northern intersection of the Orange County line with the Pacific Ocean (on the Long Beach map).

(2) *Boundary Description*. (i) From the starting point generally northeastward, eastward, and southeastward along the Orange County line, to the intersection of that county line with the township line on the northern border of Township 7 South (in Range 6 West; on the Santa Ana map).

(ii) From there eastward along that township line to its intersection with the northern boundary of the Temecula viticultural area described in §9.50; at this point, the Temecula viticultural area boundary coincides with the boundary of the Cleveland National Forest (on the Wildomar Quadrangle map).

(iii) From there following the northern boundary of the Temecula viticultural area, at and near its northernmost point, generally northeastward, eastward, and southeastward until the Temecula viticultural area boundary again intersects the township line on the northern border of Township 7 South (in Range 4 West; thus all of the Temecula viticultural area is included inside of South Coast viticultural area).

(iv) Then eastward, along the township line on the northern border of Township 7 South, to the San Bernardino Meridian (on the Santa Ana map).

(v) Then southward along the San Bernardino Meridian to the Riverside County-San Diego County line.

(vi) Then westward along that county line for about 7½ miles, to the western boundary of the Cleveland National Forest (near the Pechanga Indian Reservation).

(vii) Then generally southeastward along the Cleveland National Forest boundary to where it joins California Highway 76.

(viii) From there generally southeastward along Highway 76 to California Highway 79.

(ix) Then southeastward along Highway 79 to the township line on the northern border of Township 12 South (in Range 3 East).

(x) Then eastward along that township line to its intersection with the range line on the eastern border of Range 3 East.

(xi) From there southward along that range line to the U.S.-Mexico international border.

(xii) Then westward along that international border to the Pacific Ocean.

(xiii) Then generally northwestward along the shore of the Pacific Ocean to the starting point.

[T.D. ATF–218, 50 FR 48084, Nov. 21, 1985]

§ 9.105 Cumberland Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Cumberland Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Cumberland Valley viticultural area are the following 32 U.S.G.S. topographical maps of the 7.5 minute series:

(1) ''Williamsport Quadrangle'', edition of 1969.

(2) ''Shepherdstown Quadrangle'', edition of 1978.

(3) ''Keedysville Quadrangle'', edition of 1978.

(4) ''Middletown Quadrangle'', edition of 1953, photo-revised 1979.

(5) ''Myersville Quadrangle'', edition of 1953, photo-revised 1971.

(6) ''Smithsburg Quadrangle'', edition of 1953, photo-revised 1971.

(7) ''Waynesboro Quadrangle'', edition of 1944, photo-revised 1968 and 1973.

(8) ''Iron Springs Quadrangle'', edition of 1953, photo-revised 1968 and 1973.

(9) ''Scotland Quadrangle'', edition of 1944, photo-revised 1968 and 1973.

(10) ''Caledonia Park Quadrangle'', edition of 1944, photo-revised 1968 and 1973.

(11) ''Walnut Botton Quadrangle'', edition of 1952, photo-revised 1969 and 1977.

(12) ''Dickinson Quadrangle'', edition of 1952, photo-revised 1969 and 1977.

(13) ''Mount Holly Springs Quadrangle'', edition of 1952, photo-revised 1968 and 1973.

(14) ''Mechanicsburg Quadrangle'', edition of 1952, photo-revised 1968 and 1973.

(15) ''LeMoyne Quadrangle'', edition of 1963, photo-revised 1972.

(16) ''Steelton Quadrangle'', edition of 1963, photo-revised 1972.

(17) ''Harrisburg West Quadrangle'', edition of 1969, photo-revised 1974.

(18) ''Wertzville Quadrangle'', edition of 1952, photo-revised 1968 and 1973.

(19) ''Sherman's Dale Quadrangle'', edition of 1952, photo-revised 1968 and 1973.

(20) ''Landisburg Quadrangle'', edition of 1952, photo-revised 1969 and 1977.

(21) ''Andersonburg Quadrangle'', edition of 1952, photo-revised 1969 and 1977.

(22) ''Newville Quadrangle'', edition of 1952, photo-revised 1969 and 1975.

(23) ''Newburg Quadrangle'', edition of 1966, photo-revised 1973.

(24) ''Doylesburg Quadrangle'', edition of 1966, photo-revised 1973.

(25) ''Roxbury Quadrangle'', edition of 1966, photo-revised 1973.

(26) ''Fannettsburg Quadrangle'', edition of 1966, photo-revised 1973.

(27) ''St. Thomas Quadrangle'' edition of 1944, photo-revised 1968 and 1973.

(28) ''McConnellsburg Quadrangle'', edition of 1944, photo-revised 1968 and 1973.

(29) ''Mercersburg Quadrangle'', edition of 1943, photo-revised 1968 and 1973.

(30) ''Clear Spring Quadrangle'', edition of 1955, photo-revised 1971.

(31) ''Hedgesville Quadrangle'', edition of 1979.

(32) ''Mason Dixon Quadrangle'', edition of 1943–53 (photorevised 1971).

(33) ''Hagerstown Quadrangle'', edition of 1943–53 (photorevised 1971, photoinspected 1977).

(34) ''Funkstown Quadrangle'', edition of 1943–53 (photorevised 1971, photoinspected 1977).

(35) ''Plainfield Quadrangle'', edition of 1975.

(36) ''Shippensburg Quadrangle'', edition of 1973.

(37) ''Chambersburg Quadrangle'', edition of 1973.

(38) ''Williamson Quadrangle'', edition of 1973.

(39) ''Greencastle Quadrangle'', edition of 1973.

(40) ''Dillsburg Quadrangle'', edition of 1973.

(c) *Boundary.* The Cumberland Valley viticultural area is located in Washington County in west-central Maryland and Franklin and Cumberland counties in south-central Pennsylvania. The boundary is as follows:

(1) Starting immediately west of the Town of Williamsport in Washington County, Maryland, at Lock 45 of the Chesapeake & Ohio (C&O) Canal National Historical Park and the confluence of the Potomac River and Conococheague Creek (see Williamsport Quadrangle), the boundary proceeds in a southeasternly direction along the perimeter of the park on the

northeastern bank of the Potomac River to the confluence of Antitam Creek and the Potomac River;

(2) Then southeast of Limekiln Road which runs along the perimeter of the park from Antietam Creek to the intersection of Limekiln Road and Harpers Ferry Road;

(3) Then northeasterly a straight line approximately two miles to the 952-foot summit of Hawk's Hill;

(4) Then northerly on a straight line approximately 2.5 miles to the intersection of Red Hill Road and Porterstown Road;

(5) Then southeasterly along Porterstown Road to its intersection with Mount Briar—Trego Road;

(6) Then southerly along Mount Briar—Trego Road to its intersection with Millbrook Road;

(7) Then east along Millbrook Road to its intersection with State Route 67, approximately 0.5 mile north of Rohersville, Maryland;

(8) Then directly east approximately 1.25 miles in a straight line to the 1,000-foot contour line of South Mountain;

(9) Then in a north northeasterly direction along the 1,000-foot contour line of South Mountain in Washington County, Maryland, and Franklin and Cumberland counties in Pennsylvania to the point on South Mountain where the 1,000-foot contour line crosses State Hollow Road (Rt. 233);

(10) Then north along Rt. 233 to the point where it crosses the 750-foot contour of South Mountain;

(11) Then east along the 750-foot contour line of South Mountain to the point southwest of the Mount Holly Springs Reservoir where Cold Spring Run, a tributary of Yellow Breeches Creek, crosses the 750-foot contour line, approximately 3 miles southwest of the town of Mount Holly Springs, Pennsylvania;

(12) Then east northeast in a straight line approximately seven miles to Center Point Knob, elev. 1050 feet, approximately two miles southeast of Boiling Springs, Pennsylvania (see Mechanicsburg Quadrangle);

(13) Then continuing east northeast in a straight line approximately six miles to the point where U.S. Rt. 15 crosses Yellow Breeches Creek, approximately one mile east of Williams Grove, Pennsylvania;

(14) Then east and northeast in a meandering line along the north bank of Yellow Breeches Creek to its confluence with the Susquehanna River;

(15) Then north along the west bank of the Susquehanna River, which forms the western portion of the corporate boundary line of the City of Harrisburg, Pennsylvania, to the point where the 300-foot contour line and the west bank of the Susquehanna River meet;

(16) Then directly west to the 700-foot contour line of Blue Mountain overlooking the Susquehanna River;

(17) Then along the 700-foot contour line of Blue Mountain as it meanders west and around McClures Gap;

(18) Then along the 700-foot contour line of Blue Mountain to the point where the 700-foot contour line crosses State Rt. 233;

(19) Then northeast along Rt. 233 through Doubling Gap to the 1,000-foot contour line of Blue Mountain;

(20) Then in a generally southwesterly direction along the 1,000-foot contour line of Blue Mountain into Franklin County to the point where the 1,000-foot contour line meets the roadbed of the Pennsylvania Turnpike, Interstate 76;

(21) Then along the roadbed of the Pennsylvania Turnpike to the east entrance of the Blue Mountain Tunnel;

(22) Then in a straight line approximately 6.5 miles to the intersection of State Rt. 533 and the 1,000-foot contour line of Blue Mountain, approximately one mile west northwest of Upper Strasburg, Pennsylvania;

(23) Then southwest along the 1,000-foot contour line of Blue Mountain to and along the 1,000-foot contour line of Broad Mountain;

(24) Then along the 1,000-foot contour line as it meanders along and around Broad Mountain and Front Mountain to the point where the 1,000-foot contour line crosses Wilson Run near Franklin Furnace, Pennsylvania;

(25) Then southwest in a straight line approximately 3.5 miles to Parnell Knob, elev. 2060 feet;

(26) Then west northwest in a straight line approximately four miles to the point where the 1,000-foot contour line crosses Township Run near

Cape Horn on Cove Mountain, approximately two miles north northwest of Fort Loudon, Pennsylvania;

(27) Then southwest along the 1,000-foot contour line of Cove Mountain into and out of Cove Gap;

(28) Then along the 1,000-foot contour line of Cove Mountain and Two Top Mountain in Franklin County, Pennsylvania, and Sword Mountain and Fairview Mountain in Washington County, Maryland, to the point on Fairview Mountain where the 1,000-foot contour line intersects the National Road (U.S. Rt. 40);

(29) Then west along U.S. Rt. 40 approximately 0.5 mile to the intersection of U.S. Rt. 40 and Cove Road;

(30) Then south in a straight line from the intersection of U.S. Rt. 40 and Cove Road approximately 1.25 miles to the intersection of McCoys Ferry Road and State Rt. 56;

(31) Then south along McCoys Ferry Road to the perimeter of the C&O Canal National Historical Park along the Potomac River;

(32) Then southeast along the perimeter of the C&O National Historical Park to the point of beginning.

[T.D. ATF–210, 50 FR 29971, July 23, 1985, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987]

§ 9.106 North Yuba.

(a) *Name*. The name of the viticultural area described in this section is ''North Yuba.''

(b) *Approved maps*. The appropriate maps for determining the boundary of North Yuba viticultural area are the following four U.S.G.S. topographical maps of the 7.5 minute series:

(1) ''Oregon House Quadrangle,'' edition of 1948, photo-revised 1969.

(2) ''Rackerby Quadrangle,'' edition of 1948, photo-revised 1969.

(3) ''Challenge Quadrangle,'' edition of 1948 photo-revised 1969.

(4) ''French Corral Quadrangle,'' edition of 1948, photo-revised 1969.

(c) *Boundary*. The North Yuba viticultural area is located in Yuba County in the State of California. The boundary is as follows:

(1) Beginning on the ''Oregon House Quadrangle'' map at the point where the Browns Valley Ditch crosses Woods Creek in the southwest corner of section 25, T. 17 N., R. 6 E., the boundary proceeds northeasterly in a meandering line approximately 1.5 miles along the east bank of Woods Creek to the point near Richards Ranch where the paved light duty road crosses said creek;

(2) Then west and north, approximately 0.33 mile to the point where the paved light duty road meets the unimproved dirt road accessing Dixon Hill and Texas Hill;

(3) Then northwest continuing along the paved light duty road approximately 2.75 miles to the intersection at Oregon House of said light duty road with the medium duty road which travels east and west between Virginia Ranch Reservoir of Dry Creek and the Yuba County Forestry Headquarters near Dobbins;

(4) Then northeasterly, 0.7 mile, along same light duty road to its intersection with the unimproved dirt road to Lake Mildred, located in the northwest corner of section 2, T. 17 N., R. 6 E.;

(5) Then northwesterly, 1.0 miles, along the unimproved dirt road to the end of said road at the shoreline of Lake Mildred;

(6) Then southwest along the shoreline of Lake Mildred to the Los Verjeles Dam at the westernmost end of said lake;

(7) Then across the face of said dam and continuing northeast along the shoreline of Lake Mildred to the point where the stream running through Smokey Ravine flows into Lake Mildred;

(8) Then north and west along said stream to the point where the stream crosses the 1,900-foot contour line in the northeast corner of section 27, T. 18 N., R. 6 E.;

(9) Then southwest in a meandering line along the 1.900-foot contour line of Lamb Hill;

(10) Then northwest along the 1,900-foot contour line of High Spring Ridge to the point where the medium duty paved road running north and south along Willow Glen Creek crosses the 1,900-foot contour line, approximately 0.75 mile north of Finley Ranch;

(11) Then north along said road, approximately 1 mile, to its intersection at Willow Glen Ranch near the west boundary line of section 15, T. 18 N., R.

6 E., with the light duty road which crosses Critterden Ridge;

(12) Then in a generally easterly direction along said road, approximately 2.0 miles, to its point of intersection with the light duty paved road named Frenchtown Road which runs north and south between Brownsville and Frenchtown;

(13) Then south along the Frenchtown Road to the point where the road crosses the 1,600-foot contour line in the northwest corner of section 24, T. 18 N., R. 6 E.;

(14) Then east along the 1,600-foot contour line to the point where Dry Creek crosses the 1,600-foot contour line near the south boundary line of section 13, T. 18 N., R. 6 E.;

(15) Then south along Dry Creek, approximately 0.16 mile, to the confluence of Indiana Creek with Dry Creek;

(16) Then in a generally easterly direction, approximately 1 mile, along Indiana Creek to the confluence of Keystone Creek with Indiana Creek;

(17) Then north along indiana Creek, approximately 0.87 mile, to the point where Indiana Creek meets the 2,000-foot contour line of Oregon Hills;

(18) Then in a generally southeasterly direction along the 2,000-foot contour line of Oregon Hills, approximately 6 miles, to the point near the east boundary line of section 9, T. 17 N., R. 7 E., where the power transmission line on Red Bluff crosses the 2,000-foot contour line;

(19) Then southwest along the right of way of said power transmission line to the point near the south boundary of section 9, T. 17 N., R. 7 E., where it meets the power transmission line running northwest and southeast between Dobbins and the Colgate Power House;

(20) Then southeast along the power transmission line between Dobbins and Colgate Power House to the Colgate Power House;

(21) Then in a generally westerly direction from the Colgate Power House along the power transmission line which crosses over Dobbins Creek to the point west of Dobbins Creek where the power transmission line intersects the 1,000-foot contour line;

(22) Then in a generally southwesterly direction along the 1,000-foot contour line above the north bank of the Yuba River and Harry L. Englebright lake of the Yuba River to the intersection of the 1,000-foot contour line with Woods Creek in the northeast corner of section 36, T. 17 N., R. 6 E.;

(23) Then east and north along the east bank of Woods Creek, approximately 0.5 miles, to the point of beginning.

[T.D. ATF–211, 50 FR 30820, July 30, 1985]

§9.107 Lodi.

(a) *Name.* The name of the viticultural area described in this section is ''Lodi.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 20 U.S.G.S. 7.5 minute series maps, and are titled as follows:

(1) ''Valley Springs SW, Calif.'' (1962, photoinspected 1973);

(2) ''Linden, Calif.'' (1968);

(3) ''Waterloo, Calif.'' (1968, photoinspected 1978);

(4) ''Lodi South, Calif.'' (1968, photorevised 1976);

(5) ''Terminous, Calif.'' (1978);

(6) ''Thornton, Calif.'' (1978);

(7) ''Bruceville, Calif.'' (1968, photorevised 1980);

(8) ''Florin, Calif.'' (1968, photorevised 1980);

(9) ''Elk Grove, Calif.'' (1968, photorevised 1979);

(10) ''Sloughouse, Calif.'' (1968, photorevised 1980);

(11) ''Buffalo Creek, Calif.'' (1967, photorevised 1980);

(12) ''Folsom SE, Calif.'' (1954, photorevised 1980);

(13) ''Carbondale, Calif.'' (1968, photorevised 1980);

(14) ''Goose Creek, Calif.'' (1968, photorevised 1980);

(15) ''Clements, Calif.'' (1968);

(16) ''Wallace, Calif.'' (1962);

(17) ''Lodi North, Calif.'' (1968);

(18) ''Galt, Calif.'' (1968, photoinspected 1978);

(19) ''Clay, Calif.'' (1968); and

(20) ''Lockeford, Calif.'' (1968, photoinspected 1973);

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located in the southeast corner of the viticultural

area where the Calaveras River intersects the eastern boundary of San Joaquin County (''Valley Springs, SW'' U.S.G.S. map).

(1) The boundary proceeds west along the Calaveras River to the point of intersection with Eightmile Road (Beginning in the ''Valley Springs, SW'' map, passing through the ''Linden'' map and ending in the ''Waterloo'' map);

(2) Thence west along Eightmile Road to the point of intersection with Interstate Highway 5 (beginning in the ''Waterloo map and ending in the ''Lodi South'' map);

(3) Thence north and then northwest along Interstate Highway 5 to its intersection with an unnamed road (known locally as Hood-Franklin Road) (beginning on the ''Lodi South'' map passing through the ''Terminous,'' and ''Thornton,'' maps and ending in the ''Bruceville'' map);

(4) Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard (beginning in the ''Bruceville'' map and ending to the ''Florin'' map);

(5) Thence northeast along Franklin Boulevard to its meeting point with the section line running due east and connecting to the western end of Sheldon Road (''Florin'' map);

(6) Thence due east along the section line connecting to the western end of Sheldon Road (''Florin'' map);

(7) Thence east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning in the ''Florin'' map and ending in the ''Elk Grove'' map);

(8) Thence southeast along the Central California Traction Co. Railroad to its point of intersection with Grant Line Road (''Elk Grove'' map);

(9) Thence northeast along Grant Line Road to the point of intersection with California State Highway 16 (beginning in the ''Elk Grove'' map, passing through the ''Sloughhouse'' map and ending in the ''Buffalo Creek'' map);

(10) Thence southeast along California State Highway 16 to the point of intersection with Deer Creek (beginning in the ''Buffalo Creek'' map and ending in the ''Folsom, SE'' map);

(11) Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County (''Folsom, SE'' map);

(12) Thence southeast along the eastern boundary of Sacramento County and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, the point of beginning (beginning in the ''Folsom, SE'' map, passing through the ''Carbondale,'' ''Goose Creek,'' ''Clements,'' and ''Wallace'' maps and ending in the ''Valley Springs, SW map).

[T.D. ATF–223, 51 FR 5324, Feb. 13, 1986]

§ 9.108 Ozark Mountain.

(a) *Name*. The name of the viticultural area described in this section is ''Ozark Mountain.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of Ozark Mountain viticultural area are 11 U.S.G.S. maps in the scale of 1:250,000. They are titled—

(1) St. Louis, Missouri (1963, revised 1969);

(2) Jefferson City, Missouri (1955, revised 1970);

(3) Springfield, Missouri (1954, revised 1969);

(4) Joplin, Missouri; Kansas (1954, revised 1974);

(5) Tulsa, Oklahoma; Arkansas; Missouri; Kansas (1958, revised 1973);

(6) Fort Smith, Arkansas-Oklahoma (1978);

(7) Russellville, Arkansas (compiled in 1954);

(8) Memphis, Tennessee; Arkansas; Missouri (1953, revised 1978);

(9) Poplar Bluff, Missouri; Arkansas (1957, revised 1978);

(10) Paducah, Kentucky; Illinois; Missouri; Indiana (1949, revised 1969); and

(11) Rolla, Missouri; Illinois (1954, revised 1969).

(c) *Boundary*—(1) *General*. The Ozark Mountain viticultural area is located in Missouri, Oklahoma, and Arkansas. The starting point of the following boundary description is the point at which the Missouri River joins the Mississippi River north of St. Louis, Missouri (on the St. Louis map).

(2) *Boundary Description*. (i) The boundary proceeds from the starting

point westward along the Missouri River until it meets the Osage River;

(ii) Then further westward along the Osage River (flowing through Lake of the Ozarks and the Harry S. Truman Reservoir) until it passes adjacent to Missouri Highway 82 in Osceola, Missouri (on the Jefferson City map);

(iii) Then southwestward along Missouri Highway 82 until it intersects U.S. Highway 54 in Eldorado Springs, Missouri (on the Joplin map);

(iv) Then westward along U.S. Highway 54 until it intersects U.S. Highway 71 near Nevada, Missouri;

(v) Then southward along U.S. Highway 71 until it intersects Interstate Highway 44, approximately 5 miles south of Carthage, Missouri;

(vi) Then westward and southwestward along Interstate Highway 44 into the State of Oklahoma, and continuing southwestward until Interstate Highway 44 crosses the Neosho River near Miami, Oklahoma (on the Tulsa map);

(vii) Then southward along the Neosho River (flowing through the Lake of the Cherokees, Lake Hudson, and Fort Gibson Lake) until it flows into the Arkansas River, approximately 2 miles west of Fort Gibson, Oklahoma (on the Fort Smith map);

(viii) Then southward and eastward along the Arkansas River (flowing through the Robert S. Kerr Lake) into the State of Arkansas, and continuing eastward until the Arkansas River is joined by Vache Grasse Creek, approximately 4 miles east of Barling, Arkansas;

(ix) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas;

(x) Then westward along Highway 10 to U.S. Highway 71. Note: Highway 10 is the primary highway leading from Greenwood to Hackett, Arkansas;

(xi) Then southward and eastward along Highway 71 until it crosses Rock Creek;

(xii) Then northeastward along Rock Creek to Petit Jean Creek;

(xiii) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map);

(xiv) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River;

(xv) Then generally eastward along the Arkansas River to Cadron Creek;

(xvi) Then northeastward and eastward along Cadron Creek, for about 2½ miles, until it pases under U.S. Highway 64, approximately 3½ miles west of Conway, Arkansas;

(xvii) Then eastward along U.S. Highway 64 until it intersects U.S. Highway 67, near Beebe, Arkansas (on the Memphis map);

(xviii) Then northeastward along U.S. Highway 67 into the state of Missouri, then northward until U.S. Highway 67 intersects U.S. Highway 60, in Poplar Bluff, Missouri (on the Poplar Bluff map);

(xix) Then eastward along U.S. Highway 60 until it crosses the western boundary of Stoddard County. Note: Here that boundary is the St. Francis River;

(xx) Then northward, northeastward, and eastward along the boundary of Stoddard County until it joins the southern boundary of Cape Girardeau County (on the Cape Girardeau map);

(xxi) Then northeastward along the Cape Girardeau County boundary until it meets the Mississippi River south of Cape Girardeau, Missouri;

(xxii) Then northward along the Mississippi River to the starting point.

[T.D. ATF–231, 51 FR 24144, July 2, 1986; 51 FR 25366, July 14, 1986]

§9.109 Northern Neck George Washington Birthplace.

(a) *Name.* The name of the viticultural area described in this section is ''Northern Neck George Washington Birthplace.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Northern Neck George Washington Birthplace viticultural area are 2 U.S.G.S. 1:250,000 scale maps. They are entitled:

(1) Washington, DC; Maryland; Virginia, 1957 (Revised 1979); and

(2) Richmond, VA; MD., 1973.

(c) *Boundaries.* The Northern Neck George Washington Birthplace viticultural area consists of all of the lands in the Counties of Westmoreland,

King George, Northumberland, Lancaster and Richmond, in the Commonwealth of Virginia. The boundaries of the Northern Neck George Washington Birthplace viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning on the Washington, DC; Maryland; Virginia U.S.G.S. map at a point on Potomac Creek where the King George County western boundary line at its northermost point intersects Potomac Creek the boundary proceeds easterly and southeasterly on the Richmond, VA; MD. U.S.G.S. map, along the Virginia shoreline of the Potomac River for approximately 66 miles to Smith Point on the Chesapeake Bay;

(2) Thence southerly along the shoreline of the Chesapeake Bay for approximately 20 miles to Windmill Point at the mouth of the Rappahannock River;

(3) Thence northwesterly along the banks of the Rappahannock River for approximately 72 air miles to Muddy Creek at the point where the western boundary line of King George County at its southernmost point begins;

(4) Thence northward along the King George County/Stafford County line approximately 7 miles to the point of the beginning.

[T.D. ATF–250, 52 FR 13082, Apr. 21, 1987]

§ 9.110 San Benito.

(a) *Name.* The name of the viticultural area described in this section is ''San Benito.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of San Benito viticultural area are six U.S.G.S. maps. They are titled:

(1) Hollister Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(2) Tres Pinos Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(3) Quien Sabe Valley Quadrangle, 7.5 minute series, 1968.

(4) Mt. Harlan Quadrangle, 7.5 minute series, 1968.

(5) Paicines Quadrangle, 7.5 minute series, 1968.

(6) Cherry Peak Quadrangle, 7.5 minute series, 1968.

(c) *Boundary*—(1) *General.* The San Benito viticultural area is located in San Benito County, California. The starting point of the following boundary description is the point where the eastern border of Section 17 of Township 15 South, Range 7 East, crosses the latitude 36°37′30″ (on the Cherry Peak map).

(2) *Boundary Description.* (i) From the starting point, westward along latitude 36°37′30″ to the Range Line R.6E./R.7E. (on the Paicines map).

(ii) Then northward along that range line to the southern border of Section 1, Township 15 South, Range 6 East.

(iii) Then westward along that southern border to the western border of the same section.

(iv) Then northward along that western border to the 800-foot contour line.

(v) Then northwestward along that contour line to the Township Line T.14S./T.15S.

(vi) Then westward along that township line to the southern border of Section 34, Township 15 South, Range 6 East.

(vii) Then continuing westward along that southern border to the 1200-foot contour line.

(viii) Then generally northwestward along that contour line until it crosses for the second time the southern border of Section 28, Township 14 South, Range 6 East.

(ix) Then westward along that southern border to the 1400-foot contour line.

(x) Then following the 1400-foot contour line through the folloowing sections: Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East; to the point where the 1400-foot contour line intersects the section line between Sections 19 and 18, Township 14 South, Range 6 East.

(xi) From there in a straight line due northward to the 1200-foot contour line in Section 18, Township 14 South, Range 6 East.

(xii) Then following the 1200-foot contour line generally northwestward to the northern border of Section 10, Township 14 South, Range 5 East (on the Mt. Harlan map).

(xiii) Then following that northern border northwestward to the 1600-foot contour line.

(xiv) Then following the 1600-foot contour line generally northward to an unimproved road.

(xv) Then looping southward along the unimproved road and continuing eastward past the designated ''Spring'' and then northward parallel with Bonanza Gulch to the Vineyard School on Cienega Road (on the Hollister map).

(xvi) From there in a straight line northeastward, crossing Bird Creek and the San Benito River, to the northwestern corner of Section 19, Township 13 South, Range 6 East (on the Tres Pinos map).

(xvii) From there following the northern border of Sections 19 and 20, Township 13 South, Range 6 East, to the northeastern corner of Section 20.

(xviii) From there in a straight line due eastward to the Range line R.6E./R7E.

(xix) Then southward along that Range line to the Township line T.13S./T.14S.

(xx) Then eastward along that Township line to the eastern border of Section 6, Township 14 South, Range 7 East (on the Quien Sabe Valley map).

(xxi) Then southward along the eastern border of Sections 6, 7, and 18, Township 14 South, Range 7 East, to the northern border of Section 20, Township 14 South, Range 7 East (on the Cherry Peak map).

(xxii) Then eastward along that northern border to the eastern border of Section 20.

(xxiii) Then southward along the eastern border of Sections 20, 29, and 32, Township 14 South, Range 7 East, and continuing southward along the eastern border of Sections 5, 8, and 17, Township 15 South, Range 7 East, to the starting point.

[T.D. ATF–258, 52 FR 37137, Oct. 5, 1987]

§9.111 Kanawha River Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Kanawha River Valley''.

(b) *Approved maps*. The approved maps for determining the boundary of the Kanawha River Valley viticultural area are 20 U.S.G.S. topographic maps in the 7.5-Minute series as follows:

(1) Addison, Ohio—W. Va., dated 1960;

(2) Gallipolis, Ohio—W. Va., dated 1958;

(3) Apple Grove, Ohio—W. Va., dated 1968, photorevised 1975;

(4) Glenwood, W. Va.—Ohio, dated 1968;

(5) Milton, W. Va., dated 1972;

(6) West Hamlin, W. Va., dated 1957;

(7) Hamlin, W. Va., dated 1958;

(8) Garrets Bend, W. Va., dated 1958;

(9) Scott Depot, W. Va., dated 1958;

(10) Saint Albans, W. Va., dated 1958;

(11) Pocatalico, W. Va., dated 1958;

(12) Sissonville, W. Va., dated 1958;

(13) Romance, W. Va.,—Ky., dated 1957;

(14) Kentuck, W. Va., dated 1957;

(15) Kenna, W. Va., dated 1957;

(16) Ripley, W. Va., dated 1960;

(17) Cottageville, W. Va., dated 1960;

(18) Mount Alto, W. Va.—Ohio, dated 1958, photorevised 1972;

(19) Beech Hill, W. Va.—Ohio, dated 1957, photorevised 1975;

(20) Cheshire, W. Va.—Ohio, dated 1968;

(c) *Boundary description*. The boundary description of the Kanawha River Valley viticultural area includes (in parentheses) the name of the map on which each described point is found. The boundary description is as follows:

(1) The beginning point is the West Virginia-Ohio State Line at the confluence of Champaign Creek and the Ohio River. (Addison quadrangle)

(2) The boundary follows the West Virginia-Ohio State Line, in the Ohio River (across the Gallipolis and Apple Grove quadrangles) southwesterly to the point at which the Mason County-Cabell County Line intersects the State Line. (Glenwood quadrangle)

(3) The boundary proceeds in a straight line southerly to the benchmark at 583 ft. elevation in the town of Yates Crossing in Cabell County, WV. (Milton quadrangle)

(4) The boundary proceeds in a straight line southeasterly to the benchmark at 640 ft. elevation in the town of Balls Gap, in Lincoln County, WV. (West Hamlin quadrangle)

(5) The boundary proceeds in a straight line easterly (across the Hamlin, Garrett Bend, and Scott Depot quadrangles) to the benchmark at 590 ft. elevation in the town of Institute in Kanawha County, WV. (Saint Albans quadrangle)

(6) The boundary proceeds in a straight line northeasterly to the benchmark at 654 ft. elevation in the town of Pocatalico, in Kanawha County, WV. (Pocatalico quadrangle)

(7) The boundary proceeds in a straight line northeasterly (across the Sissonville quadrangle) to the confluence of Johns Branch and Sugar Creek in the town of Romance, in Jackson County, WV. (Romance quadrangle)

(8) The boundary proceeds in a straight line northwesterly (across the Kentuck quadrangle) to the confluence of Plum Orchard Run and Stonelick Creek in the town of Plum Orchard, in Jackson County, WV. (Kenna quadrangle)

(9) The boundary proceeds in a straight line northwesterly (across the Ripley quadrangle) to the Baltimore and Ohio Railroad crossing of State Highway 87 in the town of Evans, in Jackson County, WV. (Cottageville quadrangle)

(10) The boundary proceeds in a straight line northwesterly (across the Mount Alto quadrangle) to the benchmark at 674 ft. elevation in the town of Flatrock, in Mason County, WV. (Beech Hill quadrangle)

(11) The boundary proceeds northwesterly in a straight line (across the Cheshire quadrangle) to the beginning point.

[T.D. ATF–226, 51 FR 11913, Apr. 8, 1986]

§ 9.112 Arkansas Mountain.

(a) *Name*. The name of the viticultural area described in this section is ''Arkansas Mountain.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Arkansas Mountain viticultural area are two U.S.G.S. maps, titled:

(1) Russellville, Arkansas, 1:250,000 series compiled in 1954.

(2) Fort Smith, Arkansas-Oklahoma, 1:250,000 series, 1978.

(c) *Boundary*—(1) *General*. The Arkansas Mountain viticultural area is located in northwestern Arkansas. Starting at the point where Frog Bayou converges with the Arkansas River, near Yoestown, Arkansas (or the Fort Smith map), the boundary proceeds:

(2) *Boundary Description*. (i) Southwestward along the Arkansas River to Vache Grasse Creek.

(ii) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas.

(iii) From there westward along Highway 10 to U.S. Highway 71. (Note: Highway 10 is the primary highway leading to Greenwood to Hackett, Arkansas.)

(iv) Then southward and eastward along Highway 71 until it crosses Rock Creek.

(v) Then northeastward along Rock Creek to Petit Jean Creek.

(vi) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map).

(vii) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River.

(viii) Then generally eastward along the Arkansas River to Cadron Creek.

(ix) Then generally northward and northeastward along Cadron Creek to the place where it is crossed by U.S. Highway 65.

(x) From there northward along Highway 65 to its intersection with Arkansas Highway 16 near Clinton, Arkansas.

(xi) From there following Highway 16 generally westward to its intersection with Arkansas Highway 23 in Brashears, Arkansas.

(xii) From there southward along Highway 23 to the Madison County-Franklin County line.

(xiii) Then westward and southward along that county line to the Madison County-Crawford County line.

(xiv) Then westward along that county line to the Washington County-Crawford County line.

(xv) Then westward along that county line to Jones Fork (on the Fort Smith map).

(xvi) Then southward along Jones Fork until it joins Frog Bayou near Winfrey, Arkansas.

(xvii) Then generally southward along Frog Bayou, flowing through

Lake Shepherd Springs and Lake Fort Smith, to the starting point.

[T.D. ATF–235, 51 FR 34205, Sept. 26, 1986]

§9.113 North Fork of Long Island.

(a) *Name*. The name of the viticultural area described in this section is ''North Fork of Long Island.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the ''North Fork of Long Island'' viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) Wading River, N.Y., 7.5 minute series, scaled at 1:24,000 edition of 1967.

(2) Riverhead, N.Y., 7.5 minute series, scaled at 1:24,000, edition of 1956.

(3) New York, N.Y.; N.J.; Conn., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979.

(4) Providence, R.I.; Mass.; Conn., N.Y., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969.

(5) Hartford, Conn.; N.Y.; N.J.; Mass., U.S., 1:250,000 series, scaled at 1,250,000, edition of 1962, revised 1975.

(c) *Boundaries*. The boundaries of the proposed viticultural area are as follows: The North Fork of Long Island viticultural area is located entirely within eastern Suffolk County, Long Island, New York. The viticultural area boundaries consist of all of the land areas of the North Fork of Long Island, New York, including all of the mainland, shorelines and islands in the Townships of Riverhead, Shelter Island, and Southold.

(1) The point of beginning is on the Wading River, N.Y., 7.5 minute series, U.S.G.S. map at the northern boundary of the Brookhaven/Riverhead Township line on the Long Island Sound (approximately 500 feet east of the mouth of the Wading River);

(2) The boundary goes south on the Brookhaven/Riverhead Town line for approximately 6.5 miles until it meets the Peconic River approximately 1 mile east of U.S. Reservation Brookhaven National Laboratory;

(3) Then the boundary travels east on the Peconic River (Brookhaven/Riverhead Town line) for 2.7 miles until it meets the Riverhead/Southampton Township line on the Riverhead, N.Y., U.S.G.S. map;

(4) It then goes east on the Riverhead/Southampton Township line for 4.2 miles until it reaches an area where the Peconic River widens north of Flanders;

(5) Then the boundary proceeds east to Orient Point then west along the shoreline, beaches, islands, and mainland areas of the North Fork of Long Island, described on the ''New York'', ''Providence'' and ''Hartford'' U.S.G.S. maps until it reaches the Brookhaven/Riverhead Township line at the point of beginning. These boundaries consist of all the land (and isolated islands including without limitation, Wicopesset Island, Robins Island, Fishers Island, Great Gull Island, Plum Island, and Shelter Island) in the Townships of Riverhead, Shelter Island, and Southold.

[T.D. ATF–240, 51 FR 36398, Oct. 10, 1986]

§9.114 Old Mission Peninsula.

(a) *Name*. The name of the viticultural area described in this section is ''Old Mission Peninsula.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the ''Old Mission Peninsula'' viticultural area are 2 U.S.G.S. Quadrangle (15 Minute Series) maps, scaled at 1:62,500. They are entitled:

(1) Elk Rapids, Mich. (1957); and

(2) Traverse City, Mich. (1957).

(c) *Boundary*. The boundary in Grand Traverse County, Michigan, consists of all of Peninsula Township, excluding Marion and Bassett Islands. In addition, the viticultural area takes in a small portion of Traverse City Township.

(1) The beginning point is on the Traverse City, Mich., U.S.G.S. map at the shoreline of the West Arm of Grand Traverse Bay at Section 1, Township 27 North, Range 11 West (T27N, R11W), approximately 500 feet due west of the intersection of two unmarked light-duty roads (approx. 750 feet north of Bryant Park);

(2) The boundary proceeds north 19 miles along the western shoreline of the Old Mission Peninsula until it reaches the lighthouse near Old Mission Point at the north side of the Peninsula on the Elk Rapids, Mich., U.S.G.S. map, Sec. 23, T30N, R10W;

(3) It then proceeds south for approximately 19 miles along the eastern

shoreline of the peninsula to the southeast portion of an unmarked light-duty road (known locally as Eastern Avenue) at Sec. 6, T27N, R10W on the Traverse City, Mich., U.S.G.S. map. The unmarked light-duty road is located immediately north of Northwestern Michigan College on the shoreline of the East Arm of the Grand Traverse Bay;

(4) The boundary travels west along the unmarked light-duty road (known locally as Eastern Avenue) for approximately one mile until it meets an unmarked north/south light-duty road at Sec. 1, T27N, R11W; and

(5) Finally, the boundary proceeds due east 500 feet to the beginning point on the shoreline of the West Arm of the Grand Traverse Bay at Sec. 1, T27N, R11W.

[T.D. ATF–252, 52 FR 21515, June 8, 1987]

§ 9.115 Ozark Highlands.

(a) *Name*. The name of the viticultural area described in this section is ''Ozark Highlands.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

(1) Rolla, Missouri; Illinois, 1954 (revised 1969).

(2) St. Louis, Missouri; Illinois, 1963 (revised 1969).

(3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General*. The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The beginning point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary Description*. (i) From the beginning point, the boundary goes northward along the Gasconade River to the latitude line 38°00′ (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) The southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxi) Then northward and westward along Little Piney Creek to the beginning point.

[T.D. ATF–256, 52 FR 32785, Aug. 31, 1987]

§ 9.116 Sonoma Coast.

(a) *Name*. The name of the viticultural area described in this section is ''Sonoma Coast''.

(b) *Approved map*. The approved maps for determining the boundary of the Sonoma Coast viticultural area are the following six U.S.G.S. topographic maps:

(1) Sonoma County, California, scale 1:100,000, dated 1970;

(2) Mark West Springs, California, 7.5-minute series, dated 1958, photoinspected 1978;

(3) Healdsburg, California, 7.5-minute series, dated 1955, photorevised 1980;

(4) Jimtown, California, 7.5-minute series, dated 1955, photorevised 1975;

(5) Guerneville, California, 7.5-minute series, dated 1955; and

(6) Cazadero, California, 7.5-minute series, dated 1978.

(c) *Boundary description*. In general, the boundary description of the Sonoma Coast viticultural area is found on the U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970. When a point of the boundary description is found on one of the 7.5-minute quadrangles, the boundary description indicates this in parentheses. The boundary description is as follows:

(1) The beginning point is the point at which the Sonoma County-Mendocino County line meets the shoreline of the Pacific Ocean.

(2) The boundary follows the shoreline of the Pacific Ocean southerly to the Sonoma County-Marin County line.

(3) The boundary follows the Sonoma County-Marin County line southeasterly to San Pablo Bay.

(4) The boundary follows the shoreline of San Pablo Bay easterly to the Sonoma County-Napa County line.

(5) The boundary follows the Sonoma County-Napa County line northerly to the peak of Arrowhead Mountain.

(6) From the peak of Arrowhead Mountain, the boundary proceeds in a straight line westerly to the peak of Sonoma Mountain.

(7) From the peak of Sonoma Mountain, the boundary proceeds in a straight line northwesterly to the peak of Taylor Mountain.

(8) From the peak of Taylor Mountain, the boundary proceeds in a straight line northwesterly to the point, near the benchmark at 184 ft. elevation in Section 34, Township 8 North, Range 8 West, at which Mark West Road crosses an unnamed stream which flows northwesterly into Mark West Creek. (Mark West Springs map)

(9) From this point, the boundary proceeds northerly in a straight line to the headwaters of Brooks Creek, in Section 4, Township 8 North, Range 8 West. (Mark West Springs map)

(10) The boundary follows Brooks Creek northwesterly to its confluence with the Russian River. (Healdsburg map)

(11) The boundary proceeds southwesterly in a straight line to an unidentified peak at elevation 672 ft. (Healdsburg map)

(12) The boundary proceeds northwesterly in a straight line to the peak identified as Black Peak. (Healdsburg map)

(13) The boundary proceeds westerly in a straight line to an unidentified peak at elevation 857 ft. (Healdsburg map)

(14) The boundary proceeds westerly in a straight line to the peak of Fitch Mountain at elevation 991 ft. (Healdsburg map)

(15) The boundary proceeds northwesterly in a straight line to the intersection, near a benchmark at elevation

154 ft. in the town of Chiquita, of a light-duty road (known locally as Chiquita Road) and a southbound primary highway, hard surface road (known locally as Healdsburg Avenue). (Jimtown map)

(16) The boundary follows that road (known locally as Healdsburg Avenue) southerly through the city of Healdsburg to the point at which it is a light-duty, hard or improved surface road, identified on the map as Redwood Highway, which crosses the Russian River, immediately south of the city of Healdsburg at a bridge (known locally as the Healdsburg Avenue Bridge). (Healdsburg map)

(17) The boundary follows the Russian River southerly to a point, near the confluence with Dry Creek, opposite a straight line extension of a light-duty, hard or improved surface road (known locally as Foreman Lane) located west of the Russian River. (Healdsburg map)

(18) The boundary proceeds in a straight line to that road and follows it westerly, then south, then westerly, onto the Guerneville map, across a secondary highway, hard surface road (known locally as Westside Road), and continues westerly, then northwesterly to the point at which it crosses Felta Creek. (Guerneville map)

(19) The boundary follows Felta Creek approximately 18,000 ft. westerly to its headwaters, at the confluence of three springs, located approximately 5,800 feet northwesterly of Wild Hog Hill. (Guerneville map)

(20) The boundary proceeds in a straight line southwesterly to the southwest corner of Section 9, Township 8 North, Range 10 West. (Guerneville map)

(21) The boundary proceeds in a straight line southwesterly to the point in, Section 24, Township 8 North, Range 11 West, at which Hulbert Creek crosses the 160 ft. contour line. (Cazadero map)

(22) The boundary follows Hulbert Creek southerly to its confluence with the Russian River.

(23) The boundary follows the Russian River southwesterly to its confluence with Austin Creek.

(24) From this point, the boundary proceeds in a straight line northwesterly to the peak of Pole Mountain.

(25) From the peak of Pole Mountain, the boundary proceeds in a straight line northwesterly to the peak of Big Oat Mountain.

(26) From the peak of Big Oat Mountain, the boundary proceeds in a straight line northwesterly to the peak of Oak Mountain.

(27) From the peak of Oak Mountain, the boundary proceeds in a straight line northwesterly approximately 14.5 miles to the Sonoma County-Mendocino County line at the northeast corner of Section 25, Township 11 North, Range 14 West.

(28) The boundary follows the Sonoma County-Mendocino County line west, then southwesterly to the beginning point.

[T.D. ATF–253, 52 FR 22304, June 11, 1987]

§ 9.117 Stags Leap District.

(a) *Name.* The name of the viticultural area described in this section is ''Stags Leap District.''

(b) *Approved map.* The appropriate map for determining the boundaries of the Stags Leap District viticultural area is one U.S.G.S. topographic map in the 7.5 minute series, scaled 1:24000, titled ''Yountville, Calif.,'' 1951 (photorevised 1968).

(c) *Boundaries.* The Stags Leap District viticultural area is located in Napa County, California, within the Napa Valley viticultural area. The boundaries are as follows:

(1) Commencing at the intersection of the intermittent stream (drainage creek) with the Silverado Trail at the 60 foot contour line in T6N/R4W, approximately 7 miles north of the city of Napa.

(2) Then southwest in a straight line, approximately 900 feet, to the main channel of the Napa River.

(3) Then following the main branch of the Napa River (not the southern branch by the levee) in a northwesterly then northerly direction, until it intersects the medium-duty road (Grant Bdy) in T7N/R4W, known locally as the Yountville Cross Road.

(4) Then northeast along the Yountville Cross Road until it intersects the medium-duty road, the Silverado Trail.

(5) Then north along the Silverado Trail approximately 590 feet to a gully entering the Silverado Trail from the east.

(6) Then northeast along the center line of that gully, approximately 800 feet, until it intersects the 400 foor contour line in Section 30 of T7N/R4W.

(7) Then in a generally southeast direction, following the 400 foot contour line through Sections 29, 32, 33, 4, and 3, until it intersects the intermittent stream in the southwest corner of Section 3 in T6N/R4W.

(8) Then in a generally southwest direction along that intermittent stream to the beginning point, at the intersection with the Silverado Trail.

[T.D. ATF–281, 54 FR 4018, Jan. 27, 1989]

§9.118 Ben Lomond Mountain.

(a) *Name.* The name of the viticultural area described in this section is ''Ben Lomond Mountain.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ben Lomond Mountain viticultural area are four 7.5 minute series U.S.G.S. maps. They are titled:

(1) Davenport Quadrangle (1955, photorevised 1968);

(2) Big Basin Quadrangle (1955, photorevised 1973);

(3) Felton Quadrangle (1955, photorevised 1980); and

(4) Santa Cruz Quadrangle (1954, photorevised 1981).

(c) *Boundaries.* The Ben Lomond Mountain viticultural area is located entirely within Santa Cruz County, California, which is in the central part of the State near the coast. The beginning point is the intersection of sections 25, 26, 35 and 36 (Davenport Quadrangle, T. 10S., R. 3W.) which coincides with the 800-foot contour line and is approximately .6 mile northwest of the top of Bald Mountain.

(1) From the beginning point, the boundary follows the 800-foot contour line in a meandering manner in a generally northwesterly direction across section 26 into section 27 (T. 10S., R. 3W.).

(2) Thence along the 800-foot contour line in an easterly and then generally a northeasterly direction through section 27 and then back across the northwest corner of section 26 and thence in a generally northwesterly direction along the 800-foot contour line across sections 23, 22 and into section 15.

(3) Thence along the 800-foot contour line in a northerly and then a southerly direction across section 22 and eventually in a generally northwesterly direction into section 20.

(4) Thence continuing along the 800-foot contour line in a generally northwesterly direction through sections 20, 17, 16, 17, 16, 9, 8, 5, 8, 7 and 6 (T. 10S., R. 3W.).

(5) Thence continuing in a northerly direction across sections 5 and 32 and thence in a southwesterly direction across sections 31 and 6.

(6) Thence continuing in a generally northerly direction across sections 1, 6, 31, 36, 31, 36 and 30 (T. 9S., R. 3W.) to the intersection of the 800-foot contour line and Scott Creek in section 19 (T. 9S., R. 3W.).

(7) Thence in a northeasterly direction along the south bank of Scott Creek through sections 19, 20 and 17 to the intersection of Scott Creek with the 1600-foot contour line in section 16 (T. 9S., R. 3W.).

(8) Thence in a generally northeasterly and then southerly direction along the 1600-foot contour line through section 16 and then through the southeast and southwest corners of sections 9 and 10 respectively to the intersection of the 1600-foot contour line with Jamison Creek in section 16 (T. 9S., R. 3W.).

(9) Thence in an easterly direction along the south bank of Jamison Creek across sections 15 and 14 (T. 9S., R. 3W.) to the intersection of Jamison Creek and the 800-foot contour line in the southeast corner of section 14 (T. 9S., R. 3W.).

(10) Thence in a southeasterly direction in a meandering manner along the 800-foot contour line across sections 14, 23, 24, 25 (T. 9S., R. 3W.), sections 30 and 31 (T. 9S., R. 2W.), and sections 32, 5, 8, 9, 16, 17 and 21 (T. 10S., R. 2W.).

(11) Thence in a southwesterly, then generally a southeasterly and then a northwesterly direction along the 800-

foot contour line in a meandering manner to section 31 and then continuing on through sections 31 and 30 (T. 10S., R. 2W.).

(12) Thence continuing along the 800-foot contour line in a generally southerly and then a generally northwesterly direction through sections 25, 36, 31 and 36 to the point of beginning at the intersection of sections 25, 26, 35 and 36 (T. 10S., R. 3W.).

[T.D. ATF–264, 52 FR 46591, Dec. 9, 1987]

§ 9.119 Middle Rio Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Middle Rio Grande Valley.''

(b) *Approved maps.* The approved maps for determining the boundaries of the ''Middle Rio Grande Valley'' viticultural area are 24 U.S.G.S. Quadrangle (7.5 Minute Series) maps and 1 (15 Minute Series) U.S.G.S. map. They are titled:

(1) Abeytas, N. Mex. (1952), revised 1979.

(2) Alameda, N. Mex. (1960), revised 1967 and 1972.

(3) Alburquerque East, N. Mex. (1960), revised 1967 and 1972.

(4) Albuquerque West, N. Mex. (1960), revised 1967 and 1972.

(5) Belen, N. Mex. (1952), revised 1971.

(6) Bernalillo, N. Mex. (1954), revised 1972.

(7) Dalies, N. Mex. (1952), revised 1971.

(8) Isleta, N. Mex. (1952), revised 1967 and 1974.

(9) La Joya, N. Mex. (1952), revised 1971.

(10) Lemitar, N. Mex. (1952), revised 1971.

(11) Loma De Las Canas, N. Mex. (1959), revised 1979.

(12) Loma Machete, N. Mex. (1954), revised 1972.

(13) Los Griegos, N. Mex. (1960), revised 1967 and 1972.

(14) Los Lunas, N. Mex. (1952), revised 1971 and 1974.

(15) Mesa Del Yeso, N. Mex. (1959).

(16) Placitas, N. Mex. (1954).

(17) San Acacia, N. Mex. (1952), revised 1971.

(18) San Antonio, N. Mex. (1948)—15 minute series.

(19) San Felipe Pueblo, N. Mex. (1954), revised 1978.

(20) Santa Ana Pueblo, N. Mex. (1954), revised 1978.

(21) Socorro, N. Mex. (1959), revised 1971.

(22) Tome, N. Mex. (1952), revised 1979.

(23) Turn, N. Mex. (1952), revised 1979.

(24) Veguita, N. Mex. (1952), revised 1979.

(25) Wind Mesa, N. Mex. (1952), revised 1967.

(c) *Boundary description.* The boundary of the proposed Middle Rio Grande Valley viticultural area is as follows:

(1) The beginning point is at the transmission line tower in the middle of Section 34, T14N, R4E of the Santa Ana Pueblo, N. Mex. U.S.G.S. map;

(2) The boundary follows the power transmission line east for 2.5 miles until it converges with New Mexico State Route 25/Interstate 85 (now known as Interstate 25) at Sec. 1, T13N, R4E on the San Felipe Pueblo, M. Mex. U.S.G.S. map;

(3) It follows I–25 southwest for 1.2 miles until it arrives at an unimproved dirt road approx. .2 mile east of Algodones Cemetery, at Sec. 11, T13N, R4E on the Placitas, N. Mex. U.S.G.S. map;

(4) The boundary follows the unimproved dirt road southeast for 5.5 miles until it meets another unimproved dirt road at Tecolote, NM, south of Sec. 27 and 28, T13N, R5E;

(5) It travels southwest on the unimproved dirt road .7 mile until it meets NM–44 approx. 100 feet northwest of BM 6,075 in Placitas, NM, at T13N, R5E;

(6) It then goes southeast on NM–44 for approx. 250 feet until it intersects the 6,100 foot elevation contour line approx. 250 feet southeast of BM 6,075, at T13N, R5E;

(7) It then travels west for 3.5 miles on the 6,100 feet elevation contour line until it reaches a light-duty road on the Huertas Grant/Cibola National Forest Boundary at Sec. 6, T12N, R5E;

(8) The boundary runs north to northwest on the light-duty road for approx. .9 mile until it meets NM–44 next to BM 5,875 in Sec. 31, T13N, R5E;

(9) It travels west 5.2 miles on NM–44 until it arrives at I–25 (southbound interchange) near the Bernalillo Cemetery at T13N, R4E on the Bernalillo, N. Mex. U.S.G.S. map;

(10) It proceeds south on I–25 for approx. 8.6 miles until it intersects with NM–556 at the east bound interchange at Sec. 1, T11N, R3E on the Alameda, N. Mex. U.S.G.S. map;

(11) The boundary goes east approx. 5 miles on NM–556 until it intersects the 106°30′ longitude meridian, T11N, R4E;

(12) Then it goes south on the 106°30′ longitude meridian for approx. 4.5 miles until it arrives at Montgomery Blvd. at Sec. 34, T10/11N, R4E;

(13) The boundary travels west on Montgomery Blvd. for approx. 6.1 miles until it meets the south exit ramp of 1–25 in Sec. 34, T11N, R3E;

(14) Then it travels south on I–25 for approx. 13.3 miles (through Albuquerque, NM) until it intersects with NM–47 at Sec. 6, T8N, R3E on the Isleta, N. Mex. U.S.G.S. map;

(15) It heads south on NM–47 for approx. 3.2 miles until it converges with the 4,900 foot elevation contour line at Isleta Pueblo, NM, in Sec. 24, T8N, R2E;

(16) The boundary follows the 4,900 foot elevation contour line south for approx. 25 miles until it arrives at a point north on Madron, NM, at the Atchison, Topeka and Santa Fe Railroad (AT&SF RR) tracks, approx. 250 feet east of elevation mark 4,889 feet on the Turn, N. Mex. U.S.G.S. map;

(17) It then travels north on the AT&SF RR tracks for approx. 350 feet until it intersects NM–47 approx. 350 feet north of elevation mark 4,889 feet;

(18) The boundary goes southwest on NM–47 (through Turn, N.M.) for approx. 2.4 miles until it reaches the 106°45′ longitude meridian between the Turn, N. Mex. & Vequita, N. Mex. U.S.G.S. maps;

(19) Then it travels south on the 106°45′ longitude meridian for approx. 4.7 miles until it meets the 34°30′ latitude parallel on the Veguita, N. Mex. U.S.G.S. map;

(20) It then proceeds west on the 34°30′ latitude parallel for approx. 1 mile until it arrives at NM-47 approx. .75 mile south of San Juan Church;

(21) Then it moves south on NM-47 for approx. 13.2 miles until it reaches an improved light-duty road at La Joya, NM, approx. 500 feet west of La Joya Cemetery on the La Joya, N. Mex. U.S.G.S. map;

(22) It then travels south on the improved light-duty road for approx. 450 feet until it intersects another improved light-duty road;

(23) Then it goes 500 feet west on the improved light-duty road until it reaches a north-south unimproved road at a point approx. .9 mile east of the AT&SF RR tracks;

(24) The boundary heads south on the unimproved road for approx. 7.9 miles until it reaches the 34°15′ latitude parallel on the La Joya, N. Mex. U.S.G.S. map;

(25) It travels west on the 34°15′ latitude parallel for approx. .9 mile until it intersects the 106°52′30′ longitude meridian on the Mesa Del Yeso, N. Mex. U.S.G.S. map;

(26) It then goes south on the 106°52′30″ longitude meridian for approx. 3.3 miles until it intersects the south section line of Sec. 19, T1S, R1E;

(27) It then runs east for approx. 1.25 miles until it reaches the east section line (marked altitude 5,058 feet) of Sec. 20, T1S, R1E;

(28) It travels south on the section line for approx. 7.1 miles, until it meets the Grant Boundary at altitude mark 4,734 feet at Sec. 32/33, T2S, R1E on the Loma De Las Canas, N. Mex. U.S.G.S. map;

(29) It proceeds east on the Grant Boundary for .25 mile until it arrives at the section line (Grant Boundary at Sec. 32/33, T2S, R1E;

(30) The boundary moves south on the Grant Boundary for approx. 5.2 miles until it meets the (Grant Boundary) section line near altitude spot 4,702 feet at Sec. 28/29, T3S, R1E;

(31) The boundary goes west on the section line (Grant Boundary) for approx. .25 mile until it arrives at the section line at Sec. 28/29, T3S, R1E;

(32) Then it moves south on the section line for approx. 5.7 miles until it meets an unimproved dirt road at Bosquecito, N.M. on the west section line of Sec. 9, T4S, R1E on the San Antonio, N. Mex. (15 minute series) U.S.G.S. map;

(33) It heads south on the unimproved dirt road for approx. 2 miles until it changes to a light-duty road at Padilla Ranch in Sec. 21, T4S, R1E;

(34) It follows the light-duty road for 2.25 miles until it intersects US-380/85, in Sec. 33, T4S, R1E;

(35) Then it follows US-380/85, first west then it loops north for approx. 8 miles until it meets the 34°00′ latitude parallel;

(36) The boundary moves west on the 34°00′ latitude parallel of the Socorro, N. Mex. U.S.G.S. map for approx. .75 mile until it meets the 4,800 foot elevation contour line in Sec. 35;

(37) It meanders north on the 4,800 foot elevation contour line for approx. 9 miles until it meets the 34°07′30″ latitude parallel;

(38) It travels east for approx. .2 mile on the 34°07′30″ latitude parallel until it meets I-25 (US-60/85);

(39) It goes north on I-25 (US-60/85) for approx 27.8 miles until it meets the Belen Highline Canal levee approx. 1.6 mile south of San Antonio Church on the Veguita, N. Mex. U.S.G.S. map;

(40) Then the boundary follows the Belen Highline Canal north for approx. 9.4 miles until it intersects I-25, approx. .5 mile west of Bacaville, NM, on the Belen, N. Mex. U.S.G.S. map;

(41) Then it travels north on I-25 for approx. 16 miles until it meets the 34°52′30″ latitude parallel on the Isleta, N. Mex. U.S.G.S. map;

(42) The boundary goes west on the 34°52 30″ latitude parallel for approx. 1 mile until it arrives at the 106°45′ longitude meridian;

(43) Then it moves north on the 106°45′ longitude meridian for approx. 16.5 miles until it reaches the 35°07′30″ longitude meridian on the Albuquerque West, N. Mex. U.S.G.S. map;

(44) At this point it heads east for approx. 1.2 miles along the 35°07′ 30″ latitude parallel until it reaches the power transmission line towers at Sec. 3/4, T10N, R2E of the Los Griegos, N. Mex. U.S.G.S. map; and finally

(45) From there it follows the power transmission line towers (and for 1 mile along a connecting unimproved road) north and northeast for a total of approx. 24.4 miles to the point of beginning at Sec. 34, T14N, R4E, of the Santa Ana Pueblo, N. Mex. U.S.G.S. map.

[T.D. ATF–266, 52 FR 2836, Feb. 2, 1988]

§ 9.120 Sierra Foothills.

(a) *Name.* The name of the viticultural area described in this section is ''Sierra Foothills.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Sierra Foothills viticultural area are four U.S.G.S. topographical maps of the 1:250,000 scale:

(1) ''Chico'' (NJ 10–3), edition of 1958, revised 1970.

(2) ''Sacramento'' (NJ 10–6), edition of 1957 revised 1970.

(3) ''San Jose'' (NJ 10–9), edition of 1962, revised 1969.

(4) ''Mariposa'' (NJ 11–7), edition of 1957, revised 1970.

(c) *Boundary.* The Sierra Foothills viticultural area is located in portions of the counties of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa, in the State of California. The boundary is as follows:

(1) Beginning on the ''Chico'' map at the point of intersection of the north border of T(ownship) 18 N(orth), R(ange) 6 E(ast), with S. Honcut Creek the boundary proceeds approximately 3.5 miles, in a generally south and southwesterly direction, along the eastern bank of S. Honcut Creek to the point where S. Honcut Creek meets the western border of T. 18 N., R. 6 E.;

(2) Then south, approximately 15 miles, along the western borders of T. 18 N., T. 17 N., and T. 16 N. in R. 6 E., to the point where the western border of T. 16 N., R. 6 E. meets the northernmost perimeter of Beale Air Force Base in the southwestern corner of T. 16 N., R. 6 E.;

(3) Then east, south and west along the perimeter of Beale Air Force Base to the point where the perimeter of Beale Air Force Base intersects the western border of R. 7 E. in T. 14 N.;

(4) Then south, approximately 24 miles, along the western borders of T. 14 N., T. 13 N., T. 12 N., and T. 11 N. in R. 7 E., to the southwestern corner of T. 11 N., R. 7 E. (see ''Sacramento'' map);

(5) Then east, approximately six miles, along the south border of T. 11 N., R. 7 E., to the southeastern corner of T. 11 N., R. 7 E.;

(6) Then in a south southeasterly direction, in a straight line, approximately three miles, to the northeasternmost corner of Sacramento County in T. 10 N., R. 8 E.;

(7) Then continuing in a south southeasterly direction, in a straight line, along the Sacramento County—El Dorado County line, approximately 15 miles, to the point where the county line meets the Cosumnes River in the southwestern corner of T. 8 N., R. 9 E.;

(8) Then south, in a straight line, approximately 14.1 miles, along the Sacramento County—Amador County line, to the point where the county line meets Dry Creek in the northwestern corner of T. 5 N., R. 9 E.;

(9) Then in a south southeasterly direction, in a stright line, approximately 5.4 miles. along the San Joaquin County—Amador County line, to the point where the Mokelumne River forms the Amador County—Calaveras County line in T. 4 N., R. 9 E.;

(10) Then continuing in a south southeasterly direction, in a straight line, approximately 10.4 miles, along the San Joaquin County-Calaveras County line, to the point where the power line meets the western border of T. 3 N., R. 10 E.;

(11) Then in a southeasterly direction, in a straight line, approximately 22.4 miles, along the Calaveras County-Stanislaus County line to the point where the county line meets the Stanislaus River in T. 1 S., R. 12 E. (see ''San Jose'' map);

(12) Then in a southeasterly direction, in a straight line, approximately 20 miles, along the Tuolumne County-Stanislaus County line to the point where the county lines of Tuolumne, Mariposa, Stanislaus and Merced counties meet in the southeast corner of T. 3 S., R. 14 E.;

(13) Then continuing along the Mariposa County-Merced County line in a generally southeasterly direction, approximately 37 miles, to the point where the county lines of Mariposa, Merced and Madera counties meet in the northwestern corner of T. 9 S, R. 18 E.;

(14) Then northeasterly in a straight line, approximately 23 miles, along the Mariposa County-Merced County line to the point, approximately one mile west of Miami Mountain, where the Mariposa County-Merced County line meets the western border of the boundary of the Sierra National Forest in T. 6S, R. 20 E. (see ''Mariposa'' map);

(15) Then in a generally northerly and westerly direction, along the western borders of the Sierra and Stanislaus National Forests in Mariposa County (see ''San Jose'' map);

(16) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Tuolumne County (see ''Sacramento'' map);

(17) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Calaveras and Amador counties;

(18) Then in a generally northerly and westerly direction, along the western border of the El Dorado National Forest in Amador, El Dorado and Placer counties (see ''Chico'' map);

(19) Then in a generally northerly and westerly direction, along the western border of the Tahoe National Forest in Placer, Nevada and Yuba counties to the point south of Ruef Hill where the western border of the Tahoe National Forest intersects the northeast corner of T. 18 N., R. 6 E.;

(20) Then west, approximately five miles, along the north border of T. 18 N., R. 6 E., to the point of beginning.

[T.D. ATF–261, 52 FR 44105, Nov. 18, 1987]

§9.121 Warren Hills.

(a) *Name*. The name of the viticultural area described in this section is ''Warren Hills.''

(b) *Approved maps*. The appropriate maps for determining the boundaries of the Warren Hills viticultural area are thirteen U.S.G.S. maps of the 7.5 minute series. They are titled:

(1) Riegelsville Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(2) Bloomsbury Quadrangle, New Jersey, 1955 (photorevised 1970).

(3) High Bridge Quadrangle, New Jersey, 1954 (photorevised 1970).

(4) Washington Quadrangle, New Jersey, 1954 (photorevised 1971).

(5) Hackettstown Quadrangle, New Jersey, 1953 (photorevised 1971, photoinspected 1976).

(6) Tranquility Quadrangle, New Jersey, 1954 (photorevised 1971).

(7) Newton West Quadrangle, New Jersey, 1954 (photorevised 1971).

(8) Flatbrookville Quadrangle, New Jersey—Pennsylvania, 1954 (photorevised 1971).

(9) Blairstown Quadrangle, New Jersey—Warren Co., 1954 (photorevised 1971).

(10) Portland Quadrangle, Pennsylvania—New Jersey, 1955 (photorevised 1984).

(11) Belvidere Quadrangle, New Jersey—Pennsylvania, 1955 (photorevised 1984).

(12) Bangor Quadrangle, Pennsylvania—New Jersey, 1956 (photorevised 1968 and 1973).

(13) Easton Quadrangle, New Jersey—Pennsylvania, 1956 (photorevised 1968 and 1973).

(c) *Boundary*—(1) *General*. The Warren Hills viticultural area is located in Warren County, New Jersey. The beginning point of the following boundary description is the junction of the Delaware River and the Musconetcong River, at the southern tip of Warren County (on the Riegelsville map).

(2) *Boundary Description*. (i) From the beginning point, the boundary goes northeastward along the Musconetcong River about 32 miles (on the Riegelsville, Bloomsbury, High Bridge, Washington, Hackettstown, and Tranquaility maps) to the point where it intersects the Warren County-Sessex County line;

(ii) Then northwestward along that county line for about 10 miles (on the Tranquility, Newton West, and Flatbrookville maps) to Paulins Kill;

(iii) Then generally southwestward along Paulins Kill (on the Flatbrookville, Blairstown and Portland maps) to the Delaware River;

(iv) Then generally south-southwestward along the Delaware River (on the Portland, Belvidere, Bangor, Easton, and Reigelsville maps) to the beginning point.

[T.D. ATF–276, 53 FR 29676, Aug. 8, 1988]

§ 9.122 Western Connecticut Highlands.

(a) *Name*. The name of the viticultural area described in this section is ''Western Connecticut Highlands.''

(b) *Approved map*. The approved map for determining the boundaries of the ''Western Connecticut Highlands'' viticultural area is 1 U.S.G.S. 1:125,000 series map. It is titled State of Connecticut, Compiled in 1965, Edition of 1966.

(c) *Boundary description*. The boundaries of the proposed Western Connecticut Highlands viticultural area are as follows:

(1) The beginning point is where Connecticut Route #15 (Merritt Parkway) meets the Connecticut-New York State line near Glenville, CT, in the Town of Greenwich.

(2) The boundary goes approximately 80 miles northerly along the Connecticut-New York State line to the northwest corner of Connecticut at the Town of Salisbury (Connecticut-New York-Massachusetts State line);

(3) The boundary proceeds approximately 32 miles east along the Connecticut-Massachusetts State line to the northeast border of the Town of Hartland;

(4) The boundary runs approximately 5 miles south along the eastern boundary of the Town of Hartland to the northeast corner of the Town of Barkhamstead (Litchfield-Hartford County line);

(5) The boundary then goes south approximately 25 miles along the Litchfield-Hartford County line to the southeast corner of the Town of Plymouth (Litchfield-Hartford-New Haven County line);

(6) The boundary then travels approximately 7 miles west along the Litchfield-New Haven County line to Connecticut Route #8 at Waterville in the Town of Waterbury;

(7) The boundary proceeds approximately 25 miles south along Connecticut Route #8 to the intersection of Connecticut Route 15 (Merritt Parkway) near Nichols in the Town of Trumbull;

(8) The boundary travels approximately 32 miles west along Connecticut

Route 15 (Merritt Parkway) to the beginning point.

[T.D. ATF–267, 53 FR 3747, Feb. 9, 1988]

§9.123 Mt. Veeder.

(a) *Name*. The name of the viticultural area described in this section is ''Mt. Veeder.''

(b) *Approved Maps*. The appropriate maps for determining the boundaries of the ''Mt. Veeder'' viticultural area are three U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Napa, California (1951 (Photorevised (1980))

(2) Rutherford, California (1951 (Photorevised (1968))

(3) Sonoma, California (1951 (Photorevised (1980))

(c) *Boundaries*.

(1) Beginning at unnamed peak, elevation 1,820, on the common boundary between Napa County and Sonoma County in section 23, Township 7 North, Range 6 West, Mount Diablo Base and Meridian on the Rutherford, Calif. U.S.G.S. map;

(2) Thence south along common boundary between Napa County and Sonoma County to unnamed peak, elevation 1,135 feet on the Sonoma, Calif. U.S.G.S. map;

(3) Thence continuing south along the ridge line approximately ½ mile to unnamed peak, elevation 948 feet;

(4) Thence due east in a straight line approximately 2/10 mile to the 400 foot contour;

(5) Thence following the 400 foot contour line north around Carneros Valley and then to the west of Congress Valley and Browns Valley on the Napa, Calif. U.S.G.S. map;

(6) Thence paralleling Redwood Road to its intersection with the line dividing Range 5 West and Range 4 West, east of the unnamed 837 foot peak;

(7) Thence north along the line dividing Range 5 West and Range 4 West approximately 4/10 mile to the 400 foot contour;

(8) Thence briefly southeast, then northwest along the 400 foot contour to the point where that contour intersects the northern border of Section 10, Township 6 North, Range 5 West immediately adjacent to Dry Creek on the Rutherford Calif. U.S.G.S. map;

(9) Thence northwesterly along Dry Creek through Sections 3 and 4 of Township 6 North, Range 5 West, and Sections 32 and 31 of Township 7 North, Range 5 West, to the fork of Dry Creek near the center of Section 25 of Township 7 North, Range 6 West;

(10) Continuing along the northern fork of Dry Creek through Sections 25 and 24 of Township 7 North, Range 6 West, to the point at which the main channel of Dry Creek ends and divides into three tributaries;

(11) Thence following the middle tributary of Dry Creek through Sections 24 and 23 of Township 7 North, Range 6 West, to its source at the intersection with a trail indicated on the map;

(12) Thence following a straight line west approximately 1/10 mile to the top of unnamed peak, elevation 1,820, the beginning point.

[T.D. ATF–295, 55 FR 5844, Feb. 20, 1990, as amended by T.D. ATF–351, 58 FR 65126, Dec. 13, 1993]

§9.124 Wild Horse Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Wild Horse Valley.''

(b) *Approved Map*. The appropriate map for determining the boundaries of the ''Wild Horse Valley'' viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries*. The boundaries of the Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between Section 33, Range 3 West, Township 6 North and Section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner of the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the summit of an unnamed hill having a marked elevation of 1,804 feet;

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between Sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,686 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 miles to the point of beginning.

[T.D. ATF–278, 53 FR 48247, Nov. 30, 1988]

§ 9.125 Fredericksburg in the Texas Hill Country.

(a) *Name.* The name of the viticultural area described in this section is ''Fredericksburg in the Texas Hill Country.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fredericksburg in the Texas Hill Country viticultural area are six U.S.G.S. topographical maps of the 1:24,000 scale. They are titled:

(1) Stonewall Quadrangle (1961);

(2) Cain City Quadrangle (1963);

(3) Fredericksburg East Quadrangle (1967, photorevised 1982);

(4) Cave Creek School Quadrangle (1961);

(5) Fredericksburg West Quadrangle (1967, photorevised 1982); and

(6) Lady Bird Johnson Park Quadrangle (1964, photoinspected 1979).

(c) *Boundaries.* The Fredericksburg in the Texas Hill Country viticultural area is located entirely in Gillespie County, Texas, in the central part of the State approximately 80 miles west of Austin. The beginning point is on the Stonewall Quadrangle map near Blumenthal at a point on U.S. Route 290 approximately .1 mile east of bench mark (BM) 1504, at the junction of a light-duty road known locally as Jung Road.

(1) From the beginning point, the boundary proceeds on Jung Road in a northwesterly direction across the Pedernales River.

(2) Then northwesterly approximately 1 mile along Jung Road as it parallels the Pedernales River.

(3) Then north along Jung Road approximately 3.9 miles to a point where Jung Road meets a medium-duty road known locally as Texas Ranch Road 2721.

(4) Then westerly approximately .1 mile on Texas Ranch Road 2721 to a point where it meets a medium-duty road known locally as Texas Ranch Road 1631.

(5) Then northeasterly along Texas Ranch Road 1631 approximately 1 mile to a point where Texas Ranch Road 1631 crosses the 1,800 foot contour line.

(6) Then northwesterly in a meandering manner along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 16.

(7) Then in a generally westerly direction along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 965.

(8) Then in a northwesterly and then generally a southeasterly direction along the 1,800-foot contour line to a point where the 1,800-foot contour line goes just south of the Kordzik Hills approximately 1 mile due east of the city of Fredericksburg.

(9) Then continuing on the 1,800-foot contour line in a generally northwesterly, southerly, and again northwesterly direction to the point where the

1,800-foot contour line crosses Loudon Road approximately 4 miles northwest of Fredericksburg.

(10) Then continuing on the 1,800-foot contour line in a northwesterly, then generally a southeasterly, westerly and finally a southerly direction to a point where the 1,800-foot contour line crosses a light-duty road known locally as Hayden Ranch Road about 50 yards north of Texas Ranch Road 2093.

(11) Then 50 yards south on Hayden Ranch Road to Texas Ranch Road 2093 and then east on Texas Ranch Road 2093 approximately .15 mile to an unimproved, southbound, gravel and dirt county road known locally as Beverly Gold's Road.

(12) Then approximately 2.6 miles south on Beverly Gold's Road to a point where it joins Texas State Route 16.

(13) Then approximately 1.5 miles northeast on State Route 16 to a light-duty county road known locally as Bear Creek Road.

(14) Then approximately 1 mile in a southeasterly, northeasterly, and then a southerly direction along Bear Creek Road to the point where the road crosses the 1,700-foot contour line.

(15) Then in a generally easterly direction for approximately 10 miles along the 1,700-foot contour line to a point where the 1,700-foot contour line crosses Texas Ranch Road 1376.

(16) Then approximately 3.1 miles southeast along Texas Ranch Road 1376 to a light-duty road at Luckenbach known locally both as Kunz-Klien Road and Luckenbach Road.

(17) Then approximately 1.3 miles in a generally northeasterly and then an easterly direction along Luckenbach Road and continuing along Luckenbach Road in a northerly direction about 2.5 miles to the point where Luckenbach Road joins U.S. Route 290.

(18) Then west approximately .2 mile on U.S. Route 290 to the intersection with Jung Road, the point of beginning.

[T.D. ATF–279, 53 FR 51541, Dec. 22, 1988]

§9.126 Santa Clara Valley.

(a) Name. The name of the viticultural area described in this section is ''Santa Clara Valley.''

(b) Approved Maps. The appropriate maps for determining the boundaries of the ''Santa Clara Valley'' viticultural area are 25 U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Calaveras Reservoir, Calif., 1961 (photorevised 1980);

(2) Castle Rock Ridge, Calif., 1955 (photorevised 1968), photoinspected 1973;

(3) Chittenden, Calif., 1955 (photorevised 1980);

(4) Cupertino, Calif., 1961 (photorevised 1980);

(5) Gilroy, Calif., 1955 (photorevised 1981);

(6) Gilroy Hot Springs, Calif., 1955 (photorevised 1971), photoinspected 1973;

(7) Lick Observatory, Calif., 1955 (photorevised 1968), photoinspected 1973;

(8) Loma Prieta, Calif., 1955 (photorevised 1968);

(9) Los Gatos, Calif., 1953 (photorevised 1980);

(10) Milpitas, Calif., 1961 (photorevised 1980);

(11) Mindego Hill, Calif., 1961 (photorevised 1980);

(12) Morgan Hill, Calif., 1955 (photorevised 1980);

(13) Mt. Madonna, Calif., 1955 (photorevised 1980);

(14) Mt. Sizer, Calif., 1955 (photorevised 1971), photoinspected 1978;

(15) Mountain View, Calif., 1961 (photorevised 1981);

(16) Newark, Calif., 1959 (photorevised 1980);

(17) Niles, Calif., 1961 (photorevised 1980);

(18) Pacheco Peak, Calif., 1955 (photorevised 1971);

(19) Palo Alto, Calif., 1961 (photorevised 1973);

(20) San Felipe, Calif., 1955 (photorevised 1971);

(21) San Jose East, Calif., 1961 (photorevised 1980);

(22) San Jose West, Calif., 1961 (photorevised 1980);

(23) Santa Teresa Hills, Calif., 1953 (photorevised 1980);

(24) Three Sisters, Calif., 1954 (photorevised 1980);

(25) Watsonville East, Calif., 1955 (photorevised 1980); and

(c) The boundaries of the proposed Santa Clara Valley viticultural area are as follows:

(1) The beginning point is at the junction of Elephant Head Creek and Pacheco Creek (approx. .75 mile southwest of the Pacheco Ranger Station) on the Pacheco Peak, Calif. U.S.G.S. map.

(2) From the beginning point the boundary moves in a northerly direction up Elephant Head Creek approx. 1.2 miles until it intersects the 600 foot elevation contour line;

(3) Then it meanders in a northwesterly direction along the 600 foot contour line approx. 55 miles until it intersects Vargas Road in the northwest portion of Sec. 25, T4S/R1W on the Niles, Calif. U.S.G.S. map;

(4) Then it travels in a northwesterly direction approx. .6 mile to the intersection of Morrison Canyon Road in the eastern portion of Sec. 23, T4S/R1W;

(5) Then it follows Morrison Canyon Road west approx. 1.5 miles to Mission Boulevard (Highway 238) at Sec. 22, T4S/R1W;

(6) Then it moves northwest on Mission Boulevard (Highway 238) approx. .6 mile to the intersection of Mowry Avenue just past the Sanatorium at Sec. 22, T4S/R1W;

(7) It then goes in a southwesterly direction on Mowry Avenue approx. 3.6 miles to the intersection of Nimitz Freeway (Highway 880) (depicted on the map as Route 17) at Sec. 5, T5S/R1W, on the Newark, Calif. U.S.G.S. map;

(8) It then moves along the Nimitz Freeway (Highway 880) in a southeasterly direction for approx. 9 miles to the intersection of Calaveras Boulevard (Highway 237) at Milpitas on the Milpitas, Calif. U.S.G.S. map;

(9) Then it follows Highway 237 in a westerly direction approx. 7.2 miles to intersection of Bay Shore Freeway (Highway 101) at Moffett Field on the Mt. View, Calif. U.S.G.S. map;

(10) Then in a northwest direction follow Bay Shore Freeway (Highway 101) for approx. 6.5 miles to the intersection of the San Francisquito Creek (Santa Clara County/San Mateo County boundary) at Palo Alto T5S/R2W, on the Palo Alto, Calif. U.S.G.S. map;

(11) Then it heads west on San Francisquito Creek (Santa Clara County/San Mateo County boundary) approx. 7 miles until it converges with Los Trancos Creek (Santa Clara County/San Mateo County boundary) near Bench Mark 172, approx. 100 feet east of Alpine Road;

(12) It travels south approx. 4 miles along Los Trancos Creek (Santa Clara County/San Mateo County boundary) until it intersects the 600 foot elevation contour line at El Corte De Madera, approx. .5 mile north of Trancos Woods on the Mindego Hill, Calif. U.S.G.S. map;

(13) It moves along the 600 foot elevation contour line in a southeasterly direction approx. 10 miles to Regnart Road at Regnart Creek on the Cupertino, Calif. U.S.G.S. map;

(14) It goes northeast along Regnart Road, approx. .7 mile to the 400 foot elevation contour line (.3 mile southwest of Regnart School);

(15) It travels along the 400 foot elevation contour line southeast approx. 1.4 miles to the north section line of Section 36, T7S/R2W at Blue Hills, CA;

(16) The boundary goes east on the section line approx. .4 mile to Saratoga Sunnyvale Road (Highway 85);

(17) It travels south on Saratoga Sunnyvale Road (Highway 85) approx. 1 mile to the south section line of Section 36, T7/8S R2W;

(18) Then it goes west on the section line approx. .75 mile to the first intersection of the 600 foot elevation contour line;

(19) It follows the 600 foot elevation contour line southeast approx. .75 mile to Pierce Road south of Calabazas Creek;

(20) It then travels south on Pierce Road approx. .4 mile to the first intersection of the 800 foot elevation contour line;

(21) Then it runs southeast approx. 28 miles on the 800 foot elevation contour line to the east section line of Sec. 25, T10S/R2E/R3E approx. .5 mile north of Little Arthur Creek on the Mt. Madonna, Calif. U.S.G.S. map;

(22) Then it goes south on the section line approx. .5 mile to the 800 foot elevation contour line approx. .2 mile south of Little Arthur Creek;

(23) Then it goes southeast along the 800 foot elevation contour line approx. 2.7 miles to Hecker Pass Road (Highway 152) approx. 1.25 miles east of

Hecker Pass on the Watsonville East, Calif. U.S.G.S. map;

(24) The boundary goes northeast on Hecker Pass Road (Highway 152) approx. .75 mile to the intersection of the 600 foot elevation contour line just west of Bodfish Creek;

(25) It travels southeast along the 600 foot elevation contour line approx. 7.3 miles to the first intersection of the western section line of Sec. 30, T11S/R3E/R4E on the Chittenden, Calif. U.S.G.S. map;

(26) Then it follows south along the section line approx. 1.9 miles to the south township line at Sec. 31, T11S/T12S, R3E/R4E;

(27) It moves in an easterly direction along the township line approx. 12.4 miles to the intersection of T11S/T12S and R5E/R6E on the Three Sisters, Calif. U.S.G.S. map;

(28) Then it goes north along R5E/R6E range line approx. 5.3 miles to Pacheco Creek on the Pacheco Creek, Calif. U.S.G.S. map;

(29) Then it moves northeast along Pacheco Creek approx. .5 mile to Elephant Head Creek at the point of beginning.

[T.D. ATF–286, 54 FR 12606, Mar. 28, 1989]

§9.127 Cayuga Lake.

(a) *Name*. The name of the viticultural area described in this section is ''Cayuga Lake.''

(b) *Approved maps*. The appropriate map for determining the boundaries of the Cayuga Lake viticultural area is one U.S.G.S. map scaled 1:250,000, titled ''Elmira, New York; Pennsylvania,'' 1962 (revised 1978).

(c) *Boundaries*. The Cayuga Lake viticultural area is located within the counties of Seneca, Tompkins, and Cayuga, in the State of New York, within the Finger Lakes viticultural area. The boundaries are as follows:

(1) Commencing at the intersection of State Route 90 with State Route 5 in Cayuga County, north of Cayuga Lake.

(2) Then south along State Route 90 to a point approximately one mile past the intersection of State Route 90 with State Route 326.

(3) Then south along the primary, all-weather, hard surface road, approximately ¾ mile, until it becomes State Route 90 again at Union Springs.

(4) Then south/southeast along State Route 90 until it intersects the light-duty, all-weather, hard or improved surface road, approximately 1.5 miles west of King Ferry.

(5) Then south along another light-duty, all-weather, hard or improved surface road, approximately 4 miles, until it intersects State Route 34B, just south of Lake Ridge.

(6) Then follow State Route 34B in a generally southeast direction until it intersects State Route 34, at South Lansing.

(7) Then south along State Route 34, until it meets State Route 13 in Ithaca.

(8) Then southwest along State Routes 34/13, approximately 1.5 miles, until it intersects State Route 79, in Ithaca.

(9) Then west along State Route 79, approximately ½ mile, until it intersects State Route 96.

(10) Then along State Route 96, in a generally northwest direction, until it intersects State Routes 414 and 96A in Ovid.

(11) Then north along State Routes 96/414, until they divide, approximately 2.5 miles north of Ovid.

(12) Then along State Route 414, in a generally northeast direction, until it meets U.S. Route 20 in the town of Seneca Falls.

(13) Then along U.S. Route 20, in a northeast direction, until it intersects State Routes 318, 89, and 5.

(14) Then along U.S. Route 20/State Route 5, in a northeast direction, to the beginning point, at the intersection with State Route 90.

[T.D. ATF–269, 53 FR 9769, Mar. 25, 1988]

§9.129 Arroyo Grande Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Arroyo Grande Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundary of Arroyo Grande Valley viticultural area are four U.S.G.S. topographical maps of the 1:24,000 scale:

(1) ''Arroyo Grande, NE, California,'' edition of 1965, photorevised 1978.

(2) ''Tar Spring Ridge, California,'' edition of 1967.

(3) ''Nipomo, California,'' edition of 1965.

(4) ''Oceano, California,'' edition of 1965, photorevised 1979.

(c) *Boundary:* The Arroyo Grande Valley viticultural area is located in San Luis Obispo County in the State of California. The boundary is as follows:

(1) Beginning on the ''Arroyo Grande'' map at the point of intersection of State Route 227 and Corbit Canyon Road in Arroyo Grande Township, the boundary proceeds approximately 0.1 mile, in a northwesterly direction, along the roadway of State Route 227 to the point where State Route 227 intersects with Printz Road in Poorman Canyon in the Santa Manuela land grant;

(2) Then northwesterly, approximately 1.5 miles, along Printz Road to its intersection with Noyes Road in the Santa Manuela land grant;

(3) Then northerly, approximately 1.5 miles, along Noyes Road to its intersection with State Route 227 (at vertical control station ''BM 452'') in the Santa Manuela land grant;

(4) Then in a northeasterly direction in a straight line approximately 1.4 miles to the intersection of Corbit Canyon Road with an unnamed, unimproved road at Verde in the Santa Manuela land grant;

(5) Then approximately 1.9 miles in a generally northeasterly direction, along the meanders of said unimproved road to its easternmost point, prior to the road turning back in a northwesterly direction to its eventual intersection with Biddle Ranch Road;

(6) Then in a northwesterly direction approximately 1.13 miles in a straight line to the summit of an unnamed peak identified as having an elevation of 626 feet in the Santa Manuela land grant;

(7) Then easterly, approximately 0.46 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 635 feet, in the Santa Manuela land grant;

(8) Then east northeasterly, approximately 0.27 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 799 feet, in the Santa Manuela land grant;

(9) Then easterly, approximately 0.78 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 952 feet, in the Santa Manuela land grant;

(10) Then easterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,188 feet, in the southwest corner of section 29, T. 31 S., R. 14 E.;

(11) Then east southeasterly, approximately 0.9 mile in a straight line, to the point at which Upper Arroyo Grande Road crosses the spillway of Lopez Dam in section 32, T. 31 S., R. 14 E. (see ''Tar Spring Ridge'' map);

(12) Then, in a generally easterly direction, approximately 3.64 miles along Upper Arroyo Grande Road (under construction) to the point where the broken red line for the proposed location of said road diverges in a northerly direction from the light duty roadbed of said road in the Arroyo Grande land grant (north of section 35, T. 31 S., R. 14 E.);

(13) Then, in a generally northerly direction, approximately 2.5 miles, along the broken red line for the proposed location of Upper Arroyo Grande Road to its point of intersection with an unnamed unimproved road (this intersection being 1.2 miles northwest of Ranchita Ranch) in the Arroyo Grande land grant;

(14) From the point of intersection of the proposed location of Upper Arroyo Grande Road and the unnamed unimproved road, the boundary proceeds in a straight line, east northeasterly, approximately 1.8 miles, to the summit of an unnamed peak identified as having an elevation of 1,182 feet, in the northwest corner of section 19, T. 31 S., R. 15 E.;

(15) Then southeasterly, approximately 1.8 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,022 feet, in the northeast corner of section 29, T. 31 S., R. 15 E.;

(16) Then west southwesterly, approximately 0.84 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,310 feet, in the northeast corner of section 30, T. 31 S., R. 15 E.;

(17) Then south southeasterly, approximately 1.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,261 feet, in section 32, T. 31 S., R. 15 E.;

(18) Then southeasterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,436 feet, in the northwest corner of section 4, T. 32 S., R. 15 E.;

(19) Then southwesterly, approximately 1.07 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,308 feet, in the Huasna land grant;

(20) Then west northwesterly, approximately 1.50 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,070 feet, along the east border of section 1, T. 32 S., R. 14 E.;

(21) Then south southeasterly, approximately 1.38 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,251 feet, in the Hausna land grant;

(22) Then southwesterly, approximately 0.95 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,458 feet, in the Santa Manuela land grant;

(23) Then southeasterly, approximately 0.8 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,377 feet, in the Huasna land grant;

(24) Then southwesterly, approximately 1.4 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,593 feet, in the Santa Manuela land grant (See ''Nipomo'' map);

(25) Then southwesterly, approximately 1.1 miles in a straight line, to the jeep trail immediately north of the summit of an unnamed peak identified as having an elevation of 1,549 feet, just north of section 35, T. 32 S., R. 14 E.;

(26) Then north northwesterly, approximately 2.73 miles along the jeep trail on Newsom Ridge to the point of intersection of said jeep trail and an unnamed unimproved road (immediately north of section 28, T. 32 S., R. 14 E.);

(27) Then southerly, approximately 1.63 miles along said unimproved road to its intersection with Upper Los Berros No. 2 Road in section 33, T. 32 S., R. 14 E.;

(28) Then southwesterly, approximately 3.27 miles along the stream in Los Berros Canyon (of which approximately 2.0 miles are along Upper Los Berros No. 2 Road) to the point at which U.S. Highway 101 crosses said stream in section 35, T. 12 N., R. 35 W. (See ''Oceano'' map);

(29) Then across U.S. Highway 101 and continuing in a southwesterly direction approximately 0.1 mile to Los Berros Arroyo Grande Road;

(30) Then following Los Berros Arroyo Grande Road in generally a northwesterly direction approximately 4 miles until it intersects with Valley Road;

(31) Then following Valley Road in generally a northerly direction approximately 1.2 miles until it intersects with U.S. Highway 101;

(32) Then in a northwesterly direction along U.S. Highway 101 approximately .35 mile until it intersects with State Highway 227;

(33) Then in a northeasterly and then a northerly direction along State Highway 227 approximately 1.4 miles to the point of beginning.

[T.D. ATF–291, 55 FR 287, Jan. 4, 1990]

§9.130 San Ysidro District.

(a) *Name.* The name of the viticultural area described in this section is ''San Ysidro District.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the San Ysidro District viticultural area are four U.S.G.S. Quadrangle (7.5 minute series) maps. They are titled:

(1) Gilroy, Calif., 1955 (photorevised 1981);

(2) Chittenden, Calif., 1955 (photorevised 1980);

(3) San Felipe, Calif., 1955 (photorevised 1971);

(4) Gilroy Hot Springs, Calif., 1955 (photorevised 1971, photoinspected 1978.)

(c) *Boundary.* The San Ysidro District viticultural area is located in Santa Clara County, California, within the Santa Clara Valley viticultural area. The boundary is as follows:

(1) The beginning point is the intersection of California State Highway 152 and Ferguson Road with an un-named wash, or intermittent stream, on the Gilroy, Calif., U.S.G.S. map;

(2) From the beginning point, the boundary follows the wash northeast as

it runs co-incident with the old Grant boundary for approximately 3,800 feet;

(3) The boundary then follows the wash when it diverges from the old Grant boundary and continues approximately 2,300 feet in a northeasterly direction, crosses and recrosses Crews Road, then follows the wash southeast until the wash turns northeast in section 35, T.10S., R.4E., on the Gilroy Hot Springs, Calif., map;

(4) The boundary then diverges from the wash, continuing in a straight line in a southeasterly direction, across an unimproved road, until it intersects with the 600 foot contour line.

(5) The boundary then proceeds in a straight line at about the 600 foot elevation in a southeasterly direction until it meets the minor northerly drainage of the San Ysidro Creek;

(6) The boundary then follows the minor northerly drainage of San Ysidro Creek southeast for approximately 2,000 feet to the seasonal pond adjacent to Canada Road;

(7) From the seasonal pond, the boundary follows the southerly drainage of San Ysidro Creek for about 1,300 feet until it reaches the southwest corner of section 36, T.10S., R.4E.;

(8) The boundary then continues in a straight line in a southerly direction across Canada Road for approximately 900 feet until it intersects with the 600 foot contour line;

(9) The boundary follows the 600 foot contour line for approximately 6,000 feet in a generally southeasterly direction, diverges from the contour line and continues southeast another 1,200 feet until it meets an unimproved road near the north end of a seasonal pond on the San Felipe, Calif., U.S.G.S. map;

(10) The boundary follows the unimproved road to Bench Mark 160 at Highway 152.

(11) The boundary then follows Highway 152 in a northwesterly direction across the northeast corner of the Chittenden, Calif., U.S.G.S. map, and back to the beginning point at the junction of Ferguson Road and Highway 152.

[T.D. ATF–305, 55 FR 47749, Nov. 15, 1990]

§ 9.131 Mt. Harlan.

(a) *Name.* The name of the viticultural area described in this section is ''Mt. Harlan.''

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the ''Mt. Harlan'' viticultural area are two U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Mt. Harlan, California (Photorevised (1984)).

(2) Paicines, California (Photorevised (1984)).

(c) *Boundaries.* (1) The point of beginning is the unnamed 3,063′ peak on the county line between San Benito and Monterey Counties in Township 14 S., Range 5 E., Section 34 of the ''Mt. Harlan,'' California Quadrangle map.

(2) From the point of beginning on the Mt. Harlan Quadrangle map proceed in a generally northwesterly direction along the county line through Sections 34 and 33, briefly into Section 28 and back through Section 33, and then through Sections 32, 29, and 30 all in Township 14 S., Range 5 E., to the point at which the county line intersects the line between Sections 30 and 19 of said Township and Range.

(3) Thence proceed in a straight line northeast approximately 750 feet to the commencement of the westernmost stream leading into Pescadero Creek. The stream commences in the southwest corner of Section 19 in Township 14 S., Range 5 E.

(4) Thence following the stream in a northeasterly direction to its intersection with the 1,800-foot contour line near the center of Section 19 in Township 14 S., Range 5 E.

(5) Thence following the 1,800′ contour line in a southeasterly and then northeasterly direction through Sections 19, 20, 17, 16, 15, 14, then through the area north of Section 14, then southerly through Section 13 on the Mt. Harlan Quadrangle map and continuing on the ''Paicines,'' California Quadrangle map to the point at which the 1800-foot contour line intersects the line between Sections 13 and 24 of Township 14 S., Range 5 E.

(6) Thence along the 1,800′ contour line through Section 24, back up through Section 13, and then in a southerly direction through Sections

18, 19, and 30 (all on the Paicines Quadrangle map), then westerly through Section 25 on the Paicines Quadrangle map and continuing on the Mt. Harlan Quadrangle map, and then through Section 26 to the point of intersection of said 1,800′ contour and Thompson Creek near the center of Section 26 in Township 14 S., Range 5 E., on the Mt. Harlan Quadrangle map.

(7) Thence southwesterly along Thompson Creek to its commencement in the northwest corner of Section 34, Township 14 S., Range 5 E.

(8) Thence in a straight line to the beginning point.

[T.D. ATF–304, 55 FR 47747, Nov. 15, 1990]

§9.132 Rogue Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Rouge Valley.''

(b) *Approved map.* The appropriate map for determining the boundaries of the Rogue Valley viticultural area is one U.S.G.S. map titled ''Medford,'' scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Rogue Valey viticultural area is located entirely within Jackson and Josephine Counties in southwestern Oregon. The boundaries are as follows:

(1) Beginning at the point of intersection of Interstate 5 and the Josephine County/Douglas County line approximately 20 miles north of Grants Pass, the boundary proceeds southerly and southwesterly along U.S. Interstate 5 to and including the town of Wolf Creek;

(2) Then westerly and southerly out of the town of Wolf Creek along the Southern Pacific Railway Line to and including the town of Hugo;

(3) Then southwesterly along the secondary, hard surface road known as Hugo Road to the point where the Hugo Road crosses Jumpoff Joe Creek;

(4) Then westerly and down stream along Jumpoff Joe Creek to the intersection of Jumpoff Joe Creek and the Rogue River;

(5) Then northwesterly and down stream along the Rogue River to the first point where the Wild and Scenic Rogue River designated area touches the easterly boundary of the Siskiyou National Forest just south of Galice;

(6) Then in a generally southwesterly direction (with many diversions) along the easterly border of the Siskiyou National Forest to the 42 degree 0 minute latitude line;

(7) Then easterly along the 42 degree 0 minute latitude line to the point where the Siskiyou National Forest again crosses into Oregon approximately 1 mile east of U.S. Highway 199;

(8) Then in a generally northeasterly direction and then a southeasterly direction (with many diversions) along the northern boundary of the Siskiyou National Forest to the point where the Siskiyou National Forest touches the Rogue River National Forest at Big Sugarloaf Peak;

(9) Then in a generally easterly direction (with many diversions) along the northern border of the Rogue River National Forest to the point where the Rogue River National Forest intersects with Slide Creek approximately 6 miles southeast of Ashland;

(10) Then southeasterly and northeasterly along Slide Creek to the point where it intersects State Highway 273;

(11) Then northwesterly along State Highway 273 to the point where it intersects State Highway 66;

(12) Then in an easterly direction approximately 5 miles along State Highway 66 to the east line of Township 39 South, Range 2 East (T39S, R2E);

(13) Then following the east line of T39S, R2E, in a northerly direction to the northeast corner of T39S, R2E;

(14) Then westerly approximately 5 miles along the north line of T39S, R2E, to the 2,600 foot contour line;

(15) Then in a northerly direction following the 2,600 foot contour line across Walker Creek and then in a southwesterly direction to the point where the 2,600 foot contour line touches the east line of T38S, R1E;

(16) Then northerly along the east line of T38S, R1E, to the northeast corner of T38S, R1E;

(17) Then westerly along the north line of T38S, R1E, to the northwest corner of T38S, R1E;

(18) Then northerly along the west line of T37S, R1E, to the northwest corner of T37S, R1E.

(19) Then easterly along the north lines of T37S, R1E, and T37S, R2E, to the southeast corner of T36S, R2E;

(20) Then northerly along the east line of T36S, R2E, to the northeast corner of T36S, R2E;

(21) Then westerly along the north line of T36S, R2E, to the northwest corner of T36S, R2E;

(22) Then northerly along the east line of T35S, R1E, to the northeast corner of T35S, R1E;

(23) Then westerly along the north line of T35S, R1E, to the northwest corner of T35S, R1E;

(24) Then northerly along the east line of T34S, R1W, to the northeast corner of T34S, R1W;

(25) Then westerly along the north lines of T34S, R1E; T34S, R2W; T34S, R3W; T34S, R4W; and T34S, R5W, to the northwest corner of T34S, R5W;

(26) Then northerly along the west line of T33S, R5W, to the Josephine County/Douglas County line;

(27) Then westerly along the Josephine County/Douglas County line to U.S. Interstate 5, the point of beginning.

[T.D. ATF–310, 56 FR 2435, Jan. 23, 1991]

§ 9.133 Rutherford.

(a) *Name.* The name of the viticultural area described in this section is ''Rutherford.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Rutherford viticultural area are two U.S.G.S. topographical maps of the 1:24,000 scale:

(1) ''Yountville Quadrangle, California,'' edition of 1951, photorevised 1968.

(2) ''Rutherford Quadrangle, California,'' edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The Rutherford viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the ''Rutherford'' map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55°06′28″ W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40°31′42″ W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51°00′ W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally northwesterly direction in T.7 N., R.5 W. through Sections 21, 20, 17, 18, 17, and 18 to the northwest portion of Section 7 where the 500-foot contour line intersects a southwestward straight line extension of the light-duty road known as Inglewood Avenue;

(9) Thence in a straight line in a northeasterly direction along this extension of Inglewood Avenue to its intersection with the north fork of Bale Slough;

(10) Thence in a southeasterly direction along the north fork of Bale Slough approximately 2,750 feet to its intersection with the end of the county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, near the 201-foot elevation marker;

(11) Then in a northeasterly direction along Zinfandel Avenue (Zinfandel Lane) approximately 2.12 miles to the intersection of that road and Silverado

Trail, then continuing northeasterly in a straight line to the 380-foot contour line;

(12) Then following the 380-foot contour line southeasterly through Section 33 to the western border of Section 34, T.8 N., R.5 W., then following that section line north to the 500-foot contour line;

(13) Then following the 500-foot contour line southeasterly to the western border of Section 2, T.7 N., R.5 W., then south along that section line past Conn Creek to its intersection with the 500-foot contour line northwest of the unnamed 832-foot peak;

(14) Then continuing in a westerly direction and then a generally southeasterly direction along the 500-foot contour line through Sections 3, 2, 11 and 12 to the intersection of that contour line with the southern border of Section 12 (on Yountville map);

(15) Then proceeding in a straight line in a westerly direction to the intersection of the Silverado Trail with Skellenger Lane, the point of beginning.

[T.D. ATF–342, 58 FR 35876, July 2, 1993]

§9.134 Oakville.

(a) *Name*. The name of the viticultural area described in this section is ''Oakville.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Oakville viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale:

(1) ''Yountville Quadrangle, California,'' edition of 1951, photorevised 1968.

(2) ''Rutherford Quadrangle, California,'' edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary*. The Oakville viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the Rutherford quadrangle map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55°06′28″ W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40°31′42″ W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51°00′ W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally southeasterly direction through Sections 28, 29, 20, 29, 28, 29, 28, 33 and 34 of T.7 N., R.5 W. and Section 3 of T.6 N., R.5 W. to its intersection with the unnamed stream known locally as Hopper Creek near the middle of Section 3;

(9) Then along the unnamed stream (Hopper Creek) southeasterly and, at the fork in Section 3, northeasterly along the stream to the point where the stream intersects with the unnamed dirt road in the northwest corner of Section 2, T.6 N., R.5 W;

(10) Then proceed in a straight line to the light duty road to the immediate northeast in Section 2, then along the light duty road in a northeasterly direction to the point at which the road turns 90 degrees to the left;

(11) Then proceed along the light duty road 625 feet, then proceed northeasterly (N 40°43′ E) in a straight line

1,350 feet, along the northern property line of Assessor's Parcel Number 27–380–08 (not shown on the map), to State Highway 29, then continuing in a straight line approximately .1 mile to the peak of the 320+ foot hill along the western edge of the Yountville Hills;

(12) Then proceed due east to the second 300-foot contour line, then follow that contour line around the Yountville Hills to the north to the point at which the 300-foot contour line exits the Rutherford quadrangle map for the second time;

(13) Then proceed (on the Yountville quadrangle map) in a straight line in a northeasterly direction approximately N 34°30′ E approximately 1,000 feet to the 90 degree bend in the unimproved dirt road shown on the map, then along that road, which coincides with a fence line (not shown on the map) to the intersection of Conn Creek and Rector Creek;

(14) Then along Rector Creek to the northeast past the Silverado Trail to the Rector Reservoir spillway entrance, then proceed due north along the spillway of Rector Reservoir, then east and northeast along the shoreline of Rector Reservoir to the point where the first unnamed stream enters the Reservoir;

(15) Thence follow the unnamed stream north and northeast to where it intersects an unimproved dirt road at the 1006-foot benchmark;

(16) Then proceed in a straight line approximately .6 mile due west to the intersection of an unnamed stream, then follow said stream downslope to the 500-foot contour line, and along that contour line northwesterly through sections 18 and 13 to the intersection of the contour line with the southern border of Section 12 in T.7 N, R.5 W.;

(17) Then proceed in a straight line in a westerly direction to the intersection of Skellenger Lane with the Silverado Trail, the point of beginning.

[T.D. ATF–343, 58 FR 35884, July 2, 1993]

§ 9.135 Virginia's Eastern Shore.

(a) *Name.* The name of the viticultural area described in this section is ''Virginia's Eastern Shore.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the ''Virginia's Eastern Shore'' viticultural area are 3 U.S.G.S. Quadrangle (1:250,000 Series) maps. They are titled:

(1) Eastville, VA.; N.C.; MD., 1946 (revised 1969).

(2) Salisbury, MD.; DEL.; N.J.; VA., 1946 (revised 1969).

(3) Richmond VA.; MD., 1973.

(c) *Boundary.* The Virginia's Eastern Shore viticultural area is located in Accomack and Northampton counties, Virginia. The boundary is as follows:

(1) The beginning point is the intersection of the Virginia/Maryland border and Chincoteague Bay, near Greenbackville on the Salisbury, MD., U.S.G.S. map;

(2) From the beginning point, the boundary follows the coastline in a southwesterly direction. Where there are marshes indicated on the U.S.G.S. maps, the boundry is the inland side of these marshes;

(3) When the boundary reaches the southernmost point of the peninsula, on the Eastville, VA., U.S.G.S. map, the boundary turns and proceeds in a northwesterly direction, again following the coastline around Cherrystone Inlet on the Richmond, VA., U.S.G.S. map;

(4) The boundary continues to follow the coastline and the inland side of any marshes indicated on the U.S.G.S. maps in a northeasterly direction, until it reaches the Virginia/Maryland border on the Eastville, VA., U.S.G.S. map;

(5) The boundary then follows the Virginia/Maryland border back to the beginning point at Chincoteague Bay on the Salisbury, MD., U.S.G.S. map.

[T.D. ATF–309, 56 FR 24, Jan. 2, 1991]

§ 9.136 Texas Hill Country.

(a) *Name.* The name of the viticultural area described in this section is ''Texas Hill Country.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the ''Texas Hill Country'' viticultural area are 7 U.S.G.S. (scale 1:250,000) maps. They are titled:

(1) Brownwood, Texas, 1954 (revised 1974);

(2) Sonora, Texas, 1954 (revised 1978);

(3) Llano, Texas, 1954 (revised 1975);

(4) Austin, Texas, 1954 (revised 1974);

(5) Del Rio, Texas, 1958 (revised 1969);

(6) San Antonio, Texas, 1954 (revised 1980);

(7) Seguin, Texas, 1953 (revised 1975).

(c) *Boundary*. The Texas Hill Country viticultural area is located in portions of McCulloch, San Saba, Lampasas, Burnet, Travis, Williamson, Llano, Mason, Menard, Kimble, Gillespie, Blanco, Hays, Kendall, Kerr, Edwards, Real, Bandera, Bexar, Comal, Guadalupe, Medina, and Uvalde counties, in the State of Texas. The boundary is as follows:

(1) The beginning point is the intersection of Interstate Highway 35 and State highway 29 to the north of the city of Austin, on the Austin Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows State highway 29 in a west-northwesterly direction to the intersection with U.S. Highway 183;

(3) The boundary then follows U.S. Highway 183 in a northwesterly direction to the top of the Austin map and across the northeast corner of the Llano, Texas, U.S.G.S. map, to the intersecton with State Highway 190 in Lometa, on the Brownwood, Texas, U.S.G.S. map;

(4) The boundary then follows State Highway 190 in a southwesterly direction through San Saba and Brady on the Brownwood map to the intersection of U.S. Highway 83 at Menard, on the Llano, Texas, U.S.G.S. map;

(5) The boundary follows U.S. highway 83 in a southerly direction to the town of Junction, where it meets U.S. Highway 377 (Llano map);

(6) The boundary then follows U.S. Highway 377 southwest to the town of Rocksprings, on the Sonora, Texas, U.S.G.S. map, where it meets State Highway 55;

(7) The boundary then follows State Highway 55 in a southeasterly direction across the southeast portion of the Del Rio, Texas, U.S.G.S. map, and continues to the town of Uvalde, on the San Antonio, Texas, U.S.G.S. map, where it meets U.S. Highway 83;

(8) The boundary then follows U.S. Highway 83 south for approximately 2 miles, until it meets U.S. Highway 90;

(9) The boundary then follows U.S. Highway 90 east across the San Antonio map to its intersection with Loop 410 in the city of San Antonio;

(10) The boundary then follows Loop 410 to the west of San Antonio, until it meets Interstate Highway 35;

(11) The boundary then follows Interstate Highway 35 in a northeasterly direction across the San Antonio map and then across the northwest corner of the Seguin, Texas, U.S.G.S. map until it reaches the beginning point at the intersection with State highway 29 on the Austin, Texas, U.S.G.S. map.

[T.D. ATF–318, 56 FR 60923, Nov. 29, 1991, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§9.137 Grand Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Grand Valley.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Grand Valley viticultural area are six U.S.G.S. (7.5 minute series) topographical maps of the 1:24,000 scale:

(1) ''Palisade Quadrangle, Colorado,'' edition of 1962.

(2) ''Clifton Quadrangle, Colorado,'' edition of 1962, photorevised 1973.

(3) ''Grand Junction Quadrangle, Colorado,'' edition of 1962, photorevised 1973.

(4) ''Colorado National Monument Quadrangle, Colorado,'' edition of 1962, photorevised 1973.

(5) ''Fruita Quadrangle, Colorado,'' edition of 1962, photorevised 1973.

(6) ''Corcoran Point Quadrangle, Colorado,'' edition of 1962.

(c) *Boundary*. The Grand Valley viticultural area is located entirely within Mesa County, Colorado, in the western part of the State. The boundary is as follows:

(1) The beginning point is located on the Palisade quadrangle map at a point northeast of the city of Palisade where Interstate 70 crosses the Colorado River and intersects with U.S. Highways 6 and 24, adjacent to and immediately west of the Orchard Mesa Canal Aqueduct;

(2) From the beginning point, the boundary proceeds due east to the adjacent Orchard Mesa Canal Aqueduct and then in a southerly direction along the Orchard Mesa Canal Aqueduct to an unnamed creek in the western part of

section 11, Township 11 South, Range 98 West (T. 11 S., R. 98 W.);

(3) Thence in a southeasterly direction along the unnamed creek to its intersection with the 5000-foot contour line in the northeast corner of section 1, T. 1 S., R. 2 E.;

(4) Thence in a northwesterly and then a southerly direction along the 5000-foot contour line to its intersection with Watson Creek in section 12, T. 1 S., R. 2 E.;

(5) Thence in a southeasterly direction along Watson Creek to its intersection with the electrical power lines in the southern part of section 12, T. 1 S., R. 2 E.;

(6) Thence in a southwesterly direction along the electrical power lines along the northern slope of Horse Mountain to that point where the power lines intersect with the Jeep Trail in the central part of section 15, T. 1 S., R. 2 E.;

(7) Thence in a northwesterly direction along the Jeep Trail to its intersection with Orchard Mesa Canal No. 2 on the western border of section 10, T. 1 S., R. 2 E.;

(8) Thence in a generally southwesterly direction along Orchard Mesa Canal No. 2 through the Clifton quadrangle map to the Canal's junction with the Gunnison River on the Grand Junction quadrangle map (western part of section 31, T. 1 S., R. 1 E.);

(9) Thence in a generally northwesterly direction along the Gunnison River to its junction with the Colorado River in section 22, T. 1 S., R. 1 W.;

(10) Thence continuing in a northwesterly direction along the Colorado River to the bridge where County Road 340 crosses the river (Section 15, T. 1 S., R. 1 W.);

(11) Thence in a southwesterly direction along County Road 340 approximately .2 mile to its intersection with a secondary highway, hard surface road, known locally as Monument Road;

(12) Thence in a southwesterly direction along Monument Road to the boundary of the Colorado National Monument, located on the Colorado National Monument quadrangle map (section 30, T. 1 S., R. 1 W.);

(13) Thence in a generally northwesterly direction along the boundary of the Colorado National Monument to its intersection with County Road 340 (known locally as Broadway) on the northern border of section 32, T. 1 N., R. 2 W.;

(14) Thence in a generally northerly direction along County Road 340 to the city of Fruita where County Road 340 (known locally as Cherry Street) intersects K Road on the Fruita quadrangle map;

(15) Thence due east on K Road to the northeast corner of section 17, T. 1 N., R. 1 W., on the Corcoran Point quadrangle map, then extending in the same direction in a straight line along the northern boundary of section 16, T. 1 N., R. 1 W. to the intersection with the Government Highline Canal;

(16) Thence in a southeasterly direction along the Government Highline Canal to its intersection with U.S. Interstate 70 on the Grand Junction quadrangle map;

(17) Thence in an easterly direction along U.S. Interstate 70 through the Clifton quadrangle map to where Interstate 70 crosses the Colorado River and intersects with U.S. Highways 6 and 24 on the Palisade quadrangle map, the point of beginning.

[T.D. ATF–317, 56 FR 59216, Nov. 25, 1991]

§ 9.138 Benmore Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Benmore Valley.''

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Benmore Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) ''Hopland, CA,'' 7.5 Minute Series, edition of 1960, (photoinspected 1975); and

(2) ''Purdys Gardens, CA,'' 7.5 Minute Series, edition of 1958, (photoinspected 1975).

(c) *Boundaries.* The Benmore Valley viticultural area is located in the southwest corner of Lake County, California. It lies entirely within the North Coast viticultural area. The beginning point is an unnamed peak of 2788 feet elevation found in the southeast portion of section 35, T. 14 N., R. 11 W., on the ''Purdys Gardens, CA'' U.S.G.S. map:

(1) Then southwest in a straight line to the point where an unnamed unimproved road crosses the south section line of section 35, T. 14 N., R. 11 W., west of Benmore Creek;

(2) Then following the unnamed unimproved road south to the intersection with the boundary between Lake and Mendocino Counties;

(3) Then following the county boundary between Lake and Mendocino Counties east and south to the intersection with the 2800 foot contour line;

(4) Then following the 2800 foot contour line in a northerly and then southernly direction to its intersection with the boundary between Lake and Mendocino Counties on the southern edge of section 2, T. 13 N., R. 11 W;

(5) Then following the boundary between Lake and Mendocino Counties east to the point of intersection of sections 1, 2, 11, and 12, T. 13 N., R. 11 W;

(6) Then southeasterly in a straight line to an unnamed peak of 2769 feet elevation in the center of section 12, T. 13 N., R. 11 W;

(7) Then south in a straight line to the point where the boundary between Lake and Mendocino Counties changes from an east-west direction to a north-south direction;

(8) Then in a straight line in an easterly direction to an unnamed peak of 2883 feet elevation in the southwestern portion of section 5, T. 13 N., R. 10 W;

(9) Then northeast in a straight line to the easternmost peak of an unnamed ridge with four peaks in the center of section 5, T. 13 N., R. 10 W;

(10) Then northerly in a straight line to an unnamed peak of 2647 feet elevation near the north section line of section 5, T. 13 N., R. 10 W;

(11) Then westerly in a straight line to the point of intersection between section 5, T. 13 N., R 10 W., section 31, T. 14 N., R. 10 W., and section 1, T. 13 N., R. 11 W;

(12) Then northwest in a straight line to an unnamed peak of 2904 feet elevation in the north portion of section 1, T. 13 N., R. 11 W;

(13) Then northwest in a straight line to an unnamed peak of 2788 feet elevation, the point of beginning.

[T.D. ATF–315, 56 FR 52191, Oct. 18, 1991]

§9.139 Santa Lucia Highlands.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Lucia Highlands.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the ''Santa Lucia Highlands'' viticultural area are 7 U.S.G.S. Quadrangle 7.5 minute series topographic maps. They are titled:

(1) Chualar, Calif., 1947 (photorevised 1984)

(2) Gonzales, Calif., 1955 (photorevised 1984)

(3) Rana Creek, Calif., 1956 (photoinspected 1973)

(4) Palo Escrito Peak, Calif., 1956 (photorevised 1984)

(5) Soledad, Calif., 1955 (photorevised 1984)

(6) Sycamore Flat, Calif., 1956 (photorevised 1984)

(7) Paraiso Springs, Calif., 1956 (photorevised 1984)

(c) *Boundaries.* The Santa Lucia Highlands viticultural area is located in Monterey County, California. The beginning point is found on the ''Chualar, California'' U.S.G.S. map, where Limekiln Creek crosses the 360 foot contour interval. This point also coincides with the western boundary of the Guadalupe Y Llanitos de los Correos Land Grant and the eastern boundary of section 28, T. 16S., R. 4E. The boundary is as follows:

(1) From the beginning point the boundary follows Limekiln Creek for approximately 1.25 miles northeast to the 100 foot elevation.

(2) Then following the 100 foot contour in a southeasterly direction for approximately 1 mile, where the boundary intersects the west bank of the Salinas River.

(3) Then following the west bank of the Salinas River in a southeasterly direction on the Gonzales, California U.S.G.S. map for approximately 2.50 miles to the point on the Palo Escrito Peak, California U.S.G.S. map where the river channel crosses the 120 foot elevation.

(4) Then following the 120 foot elevation due south for approximately 2,200 feet where it climbs to the 160 foot elevation.

(5) Then following the 160 foot elevation in a southeasterly direction for

approximately 6.50 miles, to the point where the 160 foot elevation crosses River Road.

(6) Then following River Road in a southeasterly direction for approximately 1 mile to the junction of River, Fort Romie and Foothill Roads.

(7) Then following Foothill Road in a southeasterly direction for approximately 4 miles to the junction of Foothill and Paraiso Roads on the Soledad, California U.S.G.S. map.

(8) Then following Paraiso Road in a southerly direction to the intersection with Clark Road on the Paraiso Springs, California U.S.G.S. map.

(9) Then south for approximately 1.8 miles to the southeast corner of section 32, T. 18S., R. 6E.

(10) Then due west along the southern boundaries of sections 32 and 31, to the southwest corner of section 31, T. 18S., R. 6E.

(11) Then north along the western boundaries of sections 31 and 30, to the northwestern corner of section 30 T. 18S., R. 6E.

(12) Then northwest in a straight diagonal line to the northwest corner of section 24, T. 18S., R. 5E on the Sycamore Flat, California U.S.G.S. map.

(13) Then north along the western boundary of section 13, T. 18S., R. 5E., to the northwestern corner of section 13, T. 18S., R. 5E.

(14) Then northwest in a diagonal line across sections 11 and 3, to the northwest corner of section 3, T. 18S., R. 5E on the Palo Escrito Peak, California U.S.G.S. map.

(15) Then due west along the southern boundary of section 33, T. 17S., R. 5E., to the southwestern corner of section 33, T. 17S., R. 5E.

(16) Then north along the western boundary of section 33 to the southeast corner of section 29, T. 17S., R. 5E.

(17) Then northwest in a diagonal line through sections 29, 19, 13, and 11, to the northwest corner of section 11, T. 17S., R. 4E on the Rana Creek, California U.S.G.S. map.

(18) Then north along the western boundary of section 2, T. 17S., R. 4E., to the northwestern corner of section 2, T. 17S., R. 4E.

(19) Then west along the southern boundary of section 34, T. 16S., R. 4E., to the southwestern corner of section 34, T. 16S., R. 4E.

(20) Then north along the eastern boundary of sections 33 and 28, T. 16S., R. 4E., for approximately 1 mile, to the point where the eastern boundary of section 28 T. 165., R. 4E., coincides with the western boundary of the Guadalupe Y Llanitos de los Correos Land Grant on the Chualar, California U.S.G.S. map.

(21) Then northwest along the grant line for approximately 2,500 feet to the point of beginning on Limekiln Creek.

[T.D. ATF–321, 57 FR 20764, May 15, 1992]

§ 9.140 Atlas Peak.

(a) *Name.* The name of the viticultural area described in this section is ''Atlas Peak.''

(b) *Approved maps.* The appropriate maps of determining the boundaries of the Atlas Peak viticultural area are two U.S.G.S. maps. They are entitled:

(1) ''Yountville, Calif.,'' 7.5 minute series, edition of 1951, (photorevised 1968); and

(2) ''Capell Valley, Calif.,'' 7.5 minute series, edition of 1951, (photorevised 1968).

(c) *Boundaries.* The Atlas Peak viticultural area is located in Napa County, California. It lies entirely within the Napa Valley viticultural area. The beginning point is Haystack (peak) found in section 21, T. 7 N., R. 4 W. on the ''Yountville'' U.S.G.S. map;

(1) From the beginning point, the boundary proceeds south in a straight line approximately 0.5 miles, to the highest point of an unnamed peak of 1443 feet elevation on the boundary of sections 21 and 28, T. 7 N., R. 4 W.;

(2) Then southeast in a straight line approximately one mile to an unnamed pass with an elevation of 1485 feet, located on Soda Canyon Road;

(3) Then easterly in a straight line approximately 0.5 miles to an unnamed peak of 2135 feet elevation;

(4) Then in a generally southeasterly direction, as a series of five straight lines connecting the highest points of unnamed peaks with elevations of 1778, 2102, 1942, 1871 and 1840 feet, ending in the center of section 2, T. 6 N., R. 4 W.;

(5) Then southeast in a straight line approximately 1.8 miles to the highest point of an unnamed peak of 1268 feet

elevation in section 12, T. 6 N., R. 4 W. on the Capell Valley U.S.G.S. map;

(6) Then east-southeast in a straight line approximately 1.1 miles to the point where an unnamed tributary stream enters Milliken Creek, immediately south of the Milliken Reservoir in section 7, T. 6 N., R. 3 W.;

(7) Then following the unnamed stream east-northeast approximately 0.5 miles to its source;

(8) Then northeast in a straight line approximately 0.5 miles, through the highest point of an unnamed peak of 1846 feet elevation, to the 1600 foot contour line in the eastern portion of section 8, T. 6 N., R. 3 W.;

(9) Then following the 1600 foot contour line generally north and west for approximately 10 miles, to the point of intersection with the boundary line between sections 12 and 13, T. 7 N., R. 4 W. on the Yountville U.S.G.S. map;

(10) Then following the section boundary line west approximately 1.1 miles to the intersection with an unnamed, unimproved road;

(11) Then northwest in a straight line approximately 0.7 miles to the highest point of an unnamed peak of 2114 feet elevation, located in section 10, T. N., R. 4 W.;

(12) Then northwest in a straight line approximately 0.7 miles to the highest point of an unnamed peak of 2023 feet elevation, located in section 10, T. N., R. 4 W.;

(13) Then southwest in a straight line approximately 2.2 miles to Haystack (peak), the point of beginning.

[T.D. ATF–320, 57 FR 2681, Jan. 22, 1992]

§9.141 Escondido Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Escondido Valley.''

(b) *Approved map*. The appropriate map for determining the boundaries of the ''Escondido Valley'' viticultural area is 1 U.S.G.S. (scale 1:250,000) map. It is titled Fort Stockton, Texas, 1954 (revised 1973).

(c) *Boundary*. The Escondido Valley viticultural area is located in Pecos County, Texas. The boundary is as follows:

(1) The beginning point is the intersection of Interstate Route 10 (I–10) and an intermittent stream approximately 18 miles east of the city of Fort Stockton (standard reference GE3317 on the Fort Stockton, Texas, U.S.G.S. map);

(2) From the beginning point, the boundary follows I–10 in an easterly direction approximately 9 miles until a southbound trail diverges from I–10 just past the point where it intersects horizontal grid line 2 of square GE on the Fort Stockton, Texas, U.S.G.S. map;

(3) The boundary then follows the trail in a generally southeasterly direction about 5 miles until it intersects the 3000 foot contour line;

(4) The boundary follows the 3000 foot contour line in a generally westerly direction approximately 17 miles;

(5) The boundary continues to follow the 3000 foot contour line as it turns sharply northwest, but diverges from the contour line when the contour line turns south again;

(6) From the point where it diverges from the contour line, the boundary follows a straight north-northwesterly line as it returns to the beginning point at I–10.

[ATF–322, 57 FR 20761, May 15, 1992]

§9.143 Spring Mountain District.

(a) *Name*. The name of the viticultural area described in this section is ''Spring Mountain District.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Spring Mountain District viticultural area are four U.S.G.S. 7.5 minute series topographical maps of the 1:24000 scale. They are titled:

(1) ''Kenwood, Calif.,'' 1954 (photorevised 1980).

(2) ''Rutherford, Calif.,'' 1951 (photorevised 1968).

(3) ''St. Helena, Calif.,'' 1960 (photorevised 1980).

(4) ''Calistoga, Calif.,'' 1958 (photorevised 1980).

(c) *Boundary*. The Spring Mountain District viticultural area is located in Napa County, California, within the Napa Valley viticultural area. The boundary is as follows:

(1) Beginning on the Calistoga quadrangle map at the Napa-Sonoma county line at the boundary line between sections 18 and 19 in T8N/R6W.

(2) Then east along the boundary line between sections 18 and 19 for approximately 3/4 of a mile to its intersection with Ritchie Creek at the boundary line between sections 17 and 20.

(3) Then northeast along Ritchie Creek approximately 2 miles, to the 400 foot contour line in the northeast corner in section 16 of T8N/R6W.

(4) Then along the 400 foot contour line in a northeast then generally southeast direction, through the St. Helena and Rutherford quadrangle maps, approximately 9 miles, past the town of St. Helena to the point where it intersects Sulphur Creek in Sulphur Canyon, in the northwest corner of section 2 in T7N/R6W.

(5) Then west along Sulfur Creek (onto the Kenwood quadrangle map) and south to the point where it first divides into two intermittent streams in section 3 in T7N/R6W.

(6) Then south along the intermittent stream approximately 1.5 miles to the point where it intersects the 2,360 foot contour line in section 10 in T7N/R6W.

(7) Then southwest in a straight line, approximately .10 mile, to the unnamed peak (elevation 2600 feet) at the boundary line between Napa and Sonoma Counties.

(8) Then in a generally northwest direction along the Napa-Sonoma county line, through sections 10, 9, 4, 5, 32, 33, 32, 29, 20, and 19, to the beginning point on the Calistoga quadrangle map at the boundary between sections 18 and 19 in T8N/R6W.

[T.D. ATF–341, 58 FR 28350, May 13, 1993]

§ 9.144 Texas High Plains.

(a) *Name*. The name of the viticultural area described in this section is ''Texas High Plains.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Texas High Plains viticultural area are six U.S.G.S. topographical maps of the 1:250,000 scale. They are titled:

(1) ''Clovis, New Mexico; Texas'' 1954, revised 1973.

(2) ''Brownfield, Texas; New Mexico'' 1954, revised 1973.

(3) ''Hobbs, New Mexico; Texas'' 1954, revised 1973.

(4) ''Plainview, Texas'' 1954, revised 1974.

(5) ''Lubbock, Texas'' 1954, revised 1975.

(6) ''Big Spring, Texas'' 1954, revised 1975.

(c) *Boundary*. The Texas High Plains viticultural area is located in Armstrong, Bailey, Borden, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Randall, Swisher, Terry and Yoakum Counties, Texas. The boundary is as follows:

(1) Beginning on the Hobbs, New Mexico; Texas, map at the intersection of the Texas-New Mexico border and U.S. Route 180 east of Hobbs, New Mexico;

(2) The boundary follows U.S. Route 180 east through Seminole, Texas and onto the Big Spring, Texas, U.S.G.S. map where it intersects with the 3,000 foot contour line in the town of Lamesa, Texas;

(3) The boundary then follows the 3,000 foot contour line in a generally northeasterly direction across the U.S.G.S. maps of Big Spring and Lubbock, Texas;

(4) The boundary continues along the 3,000 foot contour line onto the map of Plainview, Texas, where it follows a generally northwesterly direction until it intersects with State Highway 217 approximately 12 miles east of Canyon, Texas;

(5) The boundary then follows State Highway 217 west to Canyon, Texas, leaves State Highway 217 and proceeds in a straight line in a northwesterly direction until it intersects with U.S. Route 60, still within Canyon, Texas;

(6) The boundary then follows U.S. Route 60 in a southwesterly direction onto the U.S.G.S. map of Clovis, New Mexico; Texas, where it intersects the Texas-New Mexico border;

(7) The boundary then follows the Texas-New Mexico border south, across the U.S.G.S. map of Brownfield, Texas; New Mexico, to the beginning point on the Hobbs, New Mexico; Texas, U.S.G.S. map.

[T.D. ATF–336, 58 FR 11967, Mar. 2, 1993]

§ 9.145 Dunnigan Hills.

(a) *Name*. The name of the viticultural area described in this section is ''Dunnigan Hills.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Dunnigan Hills viticultural area are three U.S.G.S. 15 minute series topographical maps of the 1:62500 scale. They are titled:

(1) ''Guinda, Calif.,'' 1959.

(2) ''Dunnigan, Calif.,'' 1953.

(3) ''Woodland, Calif.,'' 1953.

(c) *Boundary.* The Dunnigan Hills viticultural area is located in Yolo County, California. The boundary is as follows:

(1) The beginning point is on the Dunnigan, Calif., U.S.G.S. map at the intersection of Buckeye Creek and U.S. Route 99W just south of the Colusa-Yolo county line;

(2) From the beginning point, the boundary follows Route 99W in a southeasterly direction until an unnamed westbound light-duty road coincident with a grant boundary (referred to by the petitioner as County Road 17) diverges from Route 99W just north of the town of Yolo, California, on the Woodland, Calif., U.S.G.S. map;

(3) The boundary then follows the County Road 17 for approximately 2 miles to an unnamed southbound light duty road (referred to by the petitioner as County Road 95A);

(4) The boundary then follows County Road 95A south for approximately 1/2 mile to an unnamed westbound light duty road (referred to by the petitioner as County Road 17A);

(5) The boundary then proceeds west along County Road 17A for approximately 3/8 mile to an unnamed southbound light duty road (referred to by the petitioner as County Road 95);

(6) The boundary then proceeds south along County Road 95 for approximately 1 mile to an unnamed light duty road which goes in a southwesterly direction (referred to by the petitioner as County Road 19);

(7) The boundary then proceeds southwest along County Road 19 for approximately 1/4 mile to an unnamed light duty road which travels south-southwest (referred to by the petitioner as County Road 94B);

(8) The boundary then proceeds southwest along County Road 94B approximately 1¼ mile until it intersects Cache Creek;

(9) The boundary then follows Cache Creek in a westerly direction 5.5 miles until it intersects an unnamed north-south light duty road approximately 1 mile north of the city of Madison, California (referred to by the petitioner as County Road 89);

(10) The boundary then follows County Road 89 two miles in a northerly direction back on to the Dunnigan, Calif., U.S.G.S. map where it intersects an unnamed light duty road (referred to by the petitioner as County Road 16);

(11) The boundary follows County Road 16 west for approximately 2 miles onto the Guinda, Calif., U.S.G.S. map, where it turns north onto an unnamed light-duty road between sections 31 and 32 of T10N/R1W (referred to by the petitioner as County Road 87);

(12) The boundary follows County Road 87 north for 2 miles to an unnamed east-west light duty road (referred to by the petitioner as County Road 14);

(13) The boundary follows County Road 14 west for 3 miles, and then leaves the unnamed road and turns north on the dividing line between sections 22 and 23 of T11N/R2W.

(14) The boundary continues due north until it intersects Little Buckeye Creek just south of the Yolo-Colusa county line;

(15) The boundary then follows Little Buckeye Creek in an easterly direction until it joins Buckeye Creek;

(16) The boundary then follows Buckeye Creek in an easterly direction back to the point of beginning on the Dunnigan, Calif., U.S.G.S. map.

[T.D. ATF–340, 58 FR 28352, May 13, 1993]

§9.146 Lake Wisconsin.

(a) *Name.* The name of the viticultural area described in this section is ''Lake Wisconsin.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the ''Lake Wisconsin'' viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) Sauk City, Wis., 1975; and

(2) Lodi, Wis., 1975.

(c) *Boundary*. The Lake Wisconsin viticultural area is located in Columbia and Dane Counties, Wisconsin. The boundary is as follows:

(1) The point of beginning is on the ''Lodi, Wisc.'' U.S.G.S. map in the northeast quarter-section of section 17, Lodi Township, Columbia County, where Spring Creek enters Lake Wisconsin;

(2) From the point of beginning, follow the southern shoreline of Lake Wisconsin northwest to where Lake Wisconsin narrows and becomes the Wisconsin River on the map, in the vicinity of the town of Merrimac, Sauk County;

(3) Then continue along the southern shoreline of the Wisconsin River, west and south past Goose Egg Hill, Columbia County, on the ''Sauk City, Wisc.'' quadrangle map, and then west to a southwest bend in the shoreline opposite Wiegands Bay, Sauk County, where the Wisconsin River becomes Lake Wisconsin again on the map;

(4) Then southwest and south along the eastern shoreline of Lake Wisconsin, to the powerplant that defines where Lake Wisconsin ends and the Wisconsin River begins again;

(5) Then continuing south along the Wisconsin River shoreline to where it intersects with U.S. Highway 12 opposite Sauk City, Sauk County;

(6) Then in a southeasterly direction on U.S. Highway 12 to the intersection at State Highway 188, just over one-half a mile;

(7) Then in a northeasterly direction about 1,000 feet on State Highway 188, to the intersection of Mack Road;

(8) Then east on Mack Road to the intersection of State Highway Y, about 3 miles;

(9) Then follow State Highway Y in a generally northeasterly direction onto the ''Lodi, Wisc.'' quadrangle map and continue in a northeasterly direction to the intersection with State Highway 60;

(10) Then in a northeasterly direction on State Highway 60 to the intersection with State Highway 113 in the town of Lodi;

(11) Then in a northwesterly direction on State Highway 113 to where it crosses Spring Creek the second time just before Chrislaw Road;

(12) Then follow Spring Creek in a northwesterly direction to where it enters Lake Wisconsin, the point of beginning.

[T.D. ATF–352, 59 FR 539, Jan. 5, 1994]

§ 9.147 Hames Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Hames Valley.''

(b) *Approved maps*. The appropriate map for determining the boundary of the Hames Valley viticultural area is one U.S.G.S. 15 minute series topographical map, titled Bradley Quadrangle, California, edition of 1961, with a scale of 1:62,500.

(c) *Boundary*. The Hames Valley viticultural area is located in southern Monterey County in the State of California. The boundary is as follows:

(1) Beginning at the southeast corner of section 26, T. 23 S., R. 10 E., which coincides with the point where the 640 foot contour line crosses the Swain Valley drainage, the boundary proceeds in a straight line across section 26 to the northwest corner of section 26, T. 23 S., R. 10 E.;

(2) Then west northwest in a straight line across sections 22, 21, 20, and 19, T. 23 S., R. 10 E., to the northwest corner of section 24, T. 23 S., R. 9 E.;

(3) Then southeast in a straight line across sections 24, 25, 30, 31, and 32, to the southeast corner of section 5, T. 24 S., R. 10 E.;

(4) Then east southeast in a straight line across section 9 to the southeast corner of section 10, T. 24 S., R. 10 E.;

(5) Then east southeast in a straight line for approximately 2.25 miles to Hill 704, located in section 18, T. 24 S., R. 11 E.;

(6) Then north northwest in a straight line for approximately 1.35 miles to Hill 801, located near the northwest corner of section 7, T. 24 S., R. 11 E., and then continue in a straight line to the northwest corner of section 6, T. 24 S., R. 11 E.;

(7) Then in a generally northwesterly direction along the Salinas River for approximately 1 mile to where the Swain Valley drainage enters the Salinas River about .11 mile south of the northern boundary line of section 36, T. 23 S., R. 10 E.;

(8) Then in a westerly direction for approximately .75 mile along the Swain Valley drainage to the southeast corner of section 26, T. 23 S., R. 10 E., the point of beginning.

[T.D. ATF–356, 59 FR 14100, Mar. 25, 1994]

§9.148 Seiad Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Seiad Valley.''

(b) *Approved map*. The appropriate map for determining the boundary of the Seiad Valley viticultural area is a U.S.G.S. 7.5 minute series topographical map of the 1:24000 scale, titled ''Seiad Valley, Calif.,'' 1980.

(c) *Boundary*. The Seiad Valley viticultural area is located in Siskiyou County, California. The boundary is as follows:

(1) The beginning point is the intersection of the 1600 foot contour line with the power transmission line north of the Klamath River, near Mile 130;

(2) From the beginning point, the boundary follows the 1600′ contour line in a generally northeasterly direction until it reaches the intersection of an unnamed light duty road and an unimproved road just west of Canyon Creek;

(3) The boundary then follows the unimproved road north to its end, then goes east in a straight line until it reaches the 1800′ contour line;

(4) The boundary then follows the 1800′ contour line in a northeasterly direction to the point, near Sawmill Gulch, where the contour line crosses Seiad Creek and turns south and west;

(5) The boundary continues to follow the 1800′ contour line as it proceeds southwest for approximately 4.5 miles, then turns sharply south-southeast for approximately 0.3 miles, until the contour line turns sharply east at a point just north of the Klamath River;

(6) The boundary then diverges from the 1800′ contour line and proceeds south-southeast in a straight line, across the Klamath River and State Route 96, until it intersects with the 1600′ contour line;

(7) The boundary then follows the 1600′ contour line south and west, then north and west, roughly following the course of the Klamath River, until it reaches an unnamed peak 1744 feet high;

(8) The boundary continues along the 1600′ contour line as it diverges from the Klamath River and proceeds south, just to the east of an unnamed light duty road, to the point where that road crosses Grider Creek;

(9) The boundary diverges from the contour line and proceeds west in a straight line across the road and Grider Creek until it intersects with the 1600′ contour line on the west side of Grider Creek;

(10) The boundary then follows the 1600′ contour line north, west and north again until it reaches a point where the contour line turns west, just south of the Klamath River;

(11) The boundary diverges from the 1600′ contour line and proceeds in a straight line in a northeasterly direction, back to the point of beginning.

[T.D. ATF–357, 59 FR 26114, May 19, 1994]

§9.149 St. Helena.

(a) *Name*. The name of the viticultural area described in this section is ''St. Helena.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the St. Helena viticultural area are three U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) St. Helena Quadrangle, California, edition of 1960, revised 1993;

(2) Calistoga Quadrangle, California, edition of 1958, photorevised 1980;

(3) Rutherford Quadrangle, California, edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary*. The St. Helena viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Rutherford Quadrangle map at the point of intersection between State Highway 29 and a county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, the boundary proceeds in a southwest direction along Zinfandel Avenue to its intersection with the north fork of Bale Slough (blueline stream) near the 201 foot elevation marker;

(2) Thence in a northwesterly direction approximately 2,750 feet along the north fork of Bale Slough to a point of intersection with a southwesterly

straight line projection of a light duty road locally known as Inglewood Avenue;

(3) Thence in a straight line in a southwesterly direction along this projected extension of Inglewood Avenue approximately 2,300 feet to its intersection with the 500 foot contour line in Section 7, Township 7 North (T7N), Range 5 West (R5W);

(4) Thence along the 500 foot contour line in a generally northwesterly direction through Sections 7, 1 and 2, to its intersection of the western border of Section 2, T7N, R6W;

(5) Thence northerly along the western border of Section 2 approximately 500 feet to its intersection with Sulphur Creek in Sulphur Canyon in the northwest corner of Section 2, T7N, R6W;

(6) Thence along Sulphur Creek in an easterly direction approximately 350 feet to its intersection with the 400 foot contour line;

(7) Thence along the 400 foot contour line in a generally easterly, then northwesterly, direction past the city of St. Helena (on the St. Helena Quadrangle map) to a point of intersection with a southwesterly straight line projection of the county road shown as Bale Lane in the Carne Humana Rancho on the Calistoga Quadrangle map;

(8) Thence along the projected straight line extension of Bale Lane in a northeasterly direction approximately 700 feet to the intersection of State Highway 29 and Bale Lane and continuing northeasterly along Bale Lane to its intersection with the Silverado Trail;

(9) Thence in a northwesterly direction along the Silverado Trail approximately 1,500 feet to an unmarked driveway on the north side of the Silverado Trail near the 275 foot elevation marker;

(10) Thence approximately 300 feet northeasterly along the driveway to and beyond its point of intersection with another driveway and continuing in a straight line projection to the 400 foot contour line;

(11) Thence in a northerly and then generally southeasterly direction along the 400 foot contour line through Sections 10 (projected), 11, 12, 13, 24 and 25 in T8N, R6W, Section 30 in T8N, R5W, Sections 25 and 24 in T8N, R6W, Sections 19 and 30 in T8N, R5W to a point of intersection with the city limits of St. Helena on the eastern boundary of Section 30 in T8N, R5W, on the St. Helena Quadrangle map;

(12) Thence north, east and south along the city limits of St. Helena to the third point of intersection with the county road known as Howell Mountain Road in Section 29, T8N, R5W;

(13) Thence in a northeasterly direction approximately 900 feet along Howell Mountain Road to its intersection with Conn Valley Road;

(14) Thence northeasterly and then southeasterly along Conn Valley Road to its intersection with the eastern boundary of Section 28, T8N, R5W;

(15) Thence south approximately 5,200 feet along the eastern boundary of Sections 28 and 33 to a point of intersection with the 380 foot contour line near the southeast corner of Section 33, T8N, R5W, on the Rutherford Quadrangle map;

(16) Thence in a northwesterly direction along the 380 foot contour line in Section 33 to a point of intersection with a northeasterly straight line projection of Zinfandel Avenue;

(17) Thence in a southwesterly direction approximately 950 feet along this straight line projection of Zinfandel Avenue to its intersection with the Silverado Trail;

(18) Thence continuing along Zinfandel Avenue in a southwesterly direction to its intersection with State Highway 29, the point of beginning.

[T.D. ATF–366, 60 FR 47061, Sept. 11, 1995]

§ 9.150 Cucamonga Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Cucamonga Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Cucamonga Valley viticultural area are the following ten U.S.G.S. topographical maps (7.5 minute series 1:24000 scale):

(1) Mt. Baldy, Calif., 1967, photorevised 1988;

(2) Cucamonga Peak, Calif., 1966, photorevised 1988;

(3) Devore, Calif., 1966, photorevised 1988;

(4) San Bernardino North, Calif., 1967, photorevised 1988;

(5) Ontario, Calif., 1967, photorevised 1981;

(6) Guasti, Calif., 1966, photorevised 1981;

(7) Fontana, Calif., 1967, photorevised 1980;

(8) San Bernardino South, Calif., 1967, photorevised 1980;

(9) Prado Dam, Calif., 1967, photorevised 1981;

(10) Corona North, Calif., 1967, photorevised 1981.

(c) *Boundary*. The Cucamonga Valley viticultural area is located in San Bernardino and Riverside Counties, California. The boundary is as follows:

(1) The beginning point is the intersection of Euclid Avenue and 24th Street on the Mt. Baldy, Calif. U.S.G.S. map;

(2) From the beginning point, the boundary follows 24th Street east for approximately 0.3 mile, until it reaches the intersection of 24th Street with two unnamed light-duty streets to the north;

(3) The boundary then diverges from 24th Street and goes straight north for approximately 0.3 mile, until it reaches the 2,000 foot contour line;

(4) The boundary then follows the 2,000 foot contour line in a generally easterly direction across the Cucamonga Peak, Calif., U.S.G.S. map and onto the Devore, Calif., U.S.G.S. map until it reaches Lytle Creek Wash;

(5) The boundary follows the intermittent stream in Lytle Creek Wash in a southeasterly direction to the end of the intermittent stream on the Devore, Calif., U.S.G.S. map;

(6) The boundary then continues through Lytle Creek Wash, proceeding southeast in a straight line from the end of the intermittent stream, across the southwest corner of the San Bernardino North, Calif., U.S.G.S. map and onto the San Bernardino, South, Calif., U.S.G.S. map, to the northernmost point of the flood control basin at the end of the Lytle Creek Wash, a distance of approximately 4.3 miles;

(7) The boundary then proceeds in a straight line south-southeast across the flood control basin to the point where Lytle Creek Channel exits the basin;

(8) The boundary continues along Lytle Creek Channel until it empties into Warm Creek;

(9) The boundary then follows Warm Creek until it meets the Santa Ana River;

(10) The boundary then follows the western edge of the Santa Ana River in a generally southwesterly direction until it meets the San Bernardino—Riverside County line;

(11) The boundary follows the county line west, crossing onto the Guasti, Calif., U.S.G.S. map, until it reaches the unnamed channel between Etiwanda and Mulberry Avenues (identified by the petitioner as Etiwanda Creek Channel);

(12) The boundary then follows Etiwanda Creek Channel in a southerly direction until it parallels Bain Street;

(13) The boundary then diverges from Etiwanda Creek Channel and follows Bain Street south until it ends at Limonite Avenue in the northeast corner of the Corona North, Calif., U.S.G.S. map;

(14) The boundary then continues south in a straight line until it reaches the northern shore of the Santa Ana River;

(15) The boundary then follows the north shore of the Santa Ana River until it intersects the 560 foot contour line in Section 1 T3S/R7W;

(16) The boundary then follows the 560′ contour line to the north of the Santa Ana River in a generally westerly direction until it reaches Euclid Avenue on the Prado Dam, Calif., U.S.G.S. map;

(17) The boundary then follows Euclid Avenue north to the point of beginning.

[T.D. ATF–362, 60 FR 16578, Mar. 31, 1995]

§9.151 Puget Sound.

(a) *Name*. The name of the viticultural area described in this section is ''Puget Sound.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Puget Sound viticultural area are four 1:250,000 scale U.S.G.S. topographical maps, one 1:25,000 scale topographic map, and three 1:24,000 scale topographic maps. They are titled:

(1) Hoquiam, Washington, 1958 revised 1974 (1:250,000)

(2) Seattle, Washington, 1958 revised 1974 (1:250,000)

(3) Wenatchee, Washington, 1957 revised 1971 (1:250,000)

(4) Victoria, B.C., Can., Wash., U.S., 1957 revised (U.S. area) 1974 (1:250,000)

(5) Auburn, Washington, 1983 (1:25,000)

(6) Buckley, Washington, 1993 (1:24,000)

(7) Cumberland, Washington, 1993 (1:24,000)

(8) Enumclaw, Washington, 1993 (1:24,000)

(c) *Boundary*. The Puget Sound viticultural area is located in the State of Washington. The boundaries of the Puget Sound viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning where the Whatcom county line comes closest to an unnamed secondary road (referred to in the petition as Silver Lake Road) on the U.S.G.S. map ''Victoria,'' T41N/R6E;

(2) Then south along Silver Lake Road approximately 5.5 miles to its intersection with State Highway 542, T39N/R5E;

(3) Then west and then southwest along State Highway 542 approximately 11 miles to its intersection with State Highway 9, T38N/R5E;

(4) Then south along State Highway 9 approximately 44 miles to its intersection with an unnamed secondary road (referred to in the petition as Burn Road) at the town of Arlington, T31N/R5E;

(5) Then south, southeast along Burn Road approximately 11 miles to its intersection with State Highway 92, T30N/R6E;

(6) Then south along State Highway 92 approximately 3 miles to its intersection with an unnamed light duty road (referred to in the petition as Machias Hartford Road), T29N/R6E;

(7) Then south along Machias Hartford Road approximately 4 miles to its intersection with an unnamed secondary road (referred to in the petition as Lake Roesiger Road), on the U.S.G.S. map ''Wenatchee,'' T29N/R7E;

(8) Then east along Lake Roesiger Road approximately 3.5 miles to its intersection with an unnamed secondary road (referred to in the petition as Woods Creek Road), T29N/R7E;

(9) Then south along Woods Creek Road approximately 10.5 miles to its intersection with U.S. Highway 2 in the town of Monroe, T27N/R7E;

(10) Then west along U.S. Highway 2 approximately ½ mile to its intersection with State Highway 203, T27N/R6E;

(11) Then south along State Highway 203 approximately 24 miles to its intersection with an unnamed secondary road (referred to in the petition as Preston-Fall City Road), at the town of Fall City, T24N/R7E;

(12) Then southwest along Preston-Fall City Road approximately 4 miles to its intersection with Interstate Highway 90 at the town of Preston, T24N/R7E;

(13) Then east along Interstate Highway 90 approximately 3 miles to its intersection with State Highway 18, T23N/R7E;

(14) Then southwest along State Highway 18 approximately 7 miles to its intersection with an unnamed secondary road (referred to in the petition as 276th Avenue SE), T23N/R6E;

(15) Then south along 276th Avenue SE approximately 5 miles to its intersection with State Highway 516 at the town of Georgetown, T22N/R6E;

(16) Then west along State Highway 516 approximately 2 miles to its intersection with State Highway 169 at the town of Summit on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Auburn''), T22N/R6E;

(17) Then south along State Highway 169 approximately 11.5 miles to its intersection with State Highway 410 at the town of Enumclaw on the U.S.G.S. map, ''Wenatchee,'' (shown in greater detail on the U.S.G.S. map, ''Enumclaw''), T20N/R6E;

(18) Then southwest approximately 5 miles along State Highway 410 until its intersection with State Highway 165 on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Buckley''), T19N/R6E;

(19) Then southwest on State Highway 165 until its intersection with State Highway 162 at the town of Cascade Junction on the U.S.G.S. map, ''Seattle'' (shown in greater detail on

the U.S.G.S. Map, ''Buckley''), T19N/R6E;

(20) Then southwest along State Highway 162 approximately 8 miles to its intersection with an unnamed secondary road (referred to in the petition as Orville Road E.), T19N/R5E;

(21) Then south along Orville Road E., approximately 8 miles to its intersection with the CMSTP&P railroad at the town of Kapowsin, on the U.S.G.S. map, ''Hoquiam,'' T17N/R5E;

(22) Then south along the CMSTP&P railroad approximately 17 miles to where it crosses the Pierce County line at the town of Elbe, T15N/R5E;

(23) Then west along the Pierce County line approximately 1 mile to the eastern tip of Thurston County, T15N/R5E;

(24) Then west along the Thurston County line approximately 38 miles to where it crosses Interstate Highway 5, T15N/R2W;

(25) Then north along Interstate Highway 5 approximately 18 miles to its intersection with U.S. Highway 101 at the town of Tumwater on the U.S.G.S. map ''Seattle,'' T18N/R2W;

(26) Then northwest along U.S. Highway 101 approximately 18 miles to its intersection with State Highway 3 at the town of Shelton, T20N/R3W;

(27) Then northeast along State Highway 3 approximately 24 miles to where it crosses the Kitsap County line, T23N/R1W;

(28) Then north along the Kitsap County line approximately 3 miles to the point where it turns west, T23N/R1W;

(29) Then west along the Kitsap County line approximately 11 miles to the point where it turns north, T23N/R3W;

(30) Then continuing west across Hood Canal approximately 1 mile to join with U.S. Highway 101 just south of the mouth of an unnamed creek (referred to in the petition as Jorsted Creek), T23N/R3W;

(31) Then north along U.S. Highway 101 approximately 40 miles to the point where it turns west at the town of Gardiner on the U.S.G.S. map ''Victoria,'' T30N/R2W;

(32) Then west along U.S. Highway 101 approximately 32 miles to where it crosses the Elwha River, T30N/R7W;

(33) Then north along the Elwha River approximately 6 miles to its mouth, T31N/R7W;

(34) Then continuing north across the Strait of Juan de Fuca approximately 5 miles to the Clallam County line, T32N/R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

[T.D. ATF–368, 60 FR 51899, Oct. 4, 1995]

§9.152 Malibu-Newton Canyon.

(a) *Name.* The name of the viticultural area described in this petition is ''Malibu-Newton Canyon.''

(b) *Approved maps.* The appropriate map for determining the boundary of the Malibu-Newton Canyon viticultural area is the U.S.G.S. map, ''Point Dume Quadrangle, California'' (7.5 Minute Series 1:24,000 Topographic map, photorevised 1981).

(c) *Boundary.* The Malibu-Newton Canyon viticultural area is located in Los Angeles County, California. The boundary is as follows:

(1) Beginning at the intersection of the Newton Canyon creek (lowest elevation) and an unnamed medium duty road referred to by the petitioner as Kanan Dume Road at the boundary of section 13 and 18 on the U.S.G.S. map ''Point Dume Quadrangle.''

(2) Then south along Kanan Dume Road to the point where an unnamed, unimproved dirt road referred to by the petitioner as Ramerez Mountain Way crosses over Kanan Dume Road at the tunnel in the northwest corner of section 19.

(3) Then east along Ramerez Mountain Way, following the southern ridgeline of Newton Canyon, to Latigo Canyon Road in the southwest corner of section 17.

(4) Then south along Latigo Canyon Road to an unnamed, unimproved dirt road referred to by the petitioner as Newton Mountain Way at the southern boundary of section 17.

(5) Then northeast along Newton Mountain Way, following the southeastern ridgeline of Newton Canyon, to an unnamed, unimproved dirt road referred to by the petitioner as Castro Mountain Way in section 16.

(6) Then west along Castro Mountain Way, past Castro Peak, following the northern ridgeline of Newton Canyon to Latigo Canyon Road in section 18.

(7) Then southwest along the natural ridgeline of Newton Canyon to the intersection of Kanan Dume Road and the 1,600 foot contour line in the southeastern portion of section 13.

(8) Then southeasterly along Kanan Dume Road to the beginning point.

[T.D. ATF–375, 61 FR 29952, June 13, 1996]

§ 9.153 Redwood Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Redwood Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Redwood Valley viticultural area are four Quadrangle 7.5 minute series 1:24,000 scale U.S.G.S. topographical maps. They are titled:

(1) Redwood Valley, Calif., 1960, photorevised 1975;

(2) Ukiah, Calif., 1958, photorevised 1975;

(3) Laughlin Range, Calif., 1991;

(4) Orrs Springs, California, provisional edition, 1991.

(c) *Boundary.* The Redwood Valley viticultural area is located in the east central interior portion of Mendocino County, California. The boundaries of the Redwood Valley viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are:

(1) The beginning point is the intersection of State Highway 20 with the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map, ''Ukiah, Calif.'';

(2) Then north along the east boundary line of Sections 12 and 1 to the northeast corner of Section 1, T16N/R12W on the U.S.G.S. map, ''Redwood Valley, Calif.'';

(3) Then west along the northern boundary line of Section 1 to the northwest corner of Section 1, T16N/R12W;

(4) Then north along the east boundary line of sections 35, 26, 23, 14, 11, and 2 to the northeast corner of Section 2, T17N/R12W;

(5) Then west along the northern boundary of Sections 2, 3, 4, 5, and 6 to the northwest corner of Section 6, T17N/R12W;

(6) Then 10 degrees southwest cutting diagonally across Sections 1, 12, 13 ,24, 25, and 36 to a point at the northwest corner of Section 1, T16N/R13W on the U.S.G.S. map, ''Laughlin, Range, Calif.'';

(7) Then south along the western boundary line of Sections 1 and 12 to the southwest corner of Section 12, T16N/R13W;

(8) Then 13 degrees southeast across Sections 13, 18, and 17 to the intersection of State Highway 20 and U.S. Highway 101, T16N/R12W on the U.S.G.S. map, Ukiah, Calif.''; and

(9) Then easterly along a line following State Highway 20 back to the beginning point at the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map ''Ukiah, Calif.''

[T.D. ATF–386, 61 FR 67466, Dec. 23, 1996]

§ 9.154 Chiles Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Chiles Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Chiles Valley viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) St. Helena, CA 1960 photorevised 1980;

(2) Rutherford, CA 1951 photorevised 1968;

(3) Chiles Valley, CA 1958 photorevised 1980;

(4) Yountville, CA 1951 photorevised 1968.

(c) *Boundary.* The Chiles Valley viticultural area is located in the State of California, entirely within the Napa Valley viticultural area. The boundaries of the Chiles Valley viticultural

area, using landmarks and points of reference found on appropriate U.S.G.S. maps follow. The local names of roads are identified by name.

(1) Beginning on the St. Helena, CA quadrangle map at the northernmost corner of Rancho Catacula in Section 34, Township 9 North (T9N), Range 5 West (R5W), Mount Diablo Base and Meridian (MDBM);

(2) Then in southwesterly direction along the Rancho Catacula boundary line to its intersection with the Rancho La Jota boundary line;

(3) Then in a south-southeasterly direction approximately 3,800 feet along the Rancho Catacula/Rancho La Jota boundary line to the point where the Rancho Catacula boundary separates from the common boundary with Rancho La Jota;

(4) Then in a southeasterly direction continuing along the Rancho Catacula boundary approximately 23,600 feet to a point of intersection, in the NE ¼ Sec. 19, T8N, R4W, on the Chiles Valley quadrangle map, with a county road known locally as Chiles and Pope Valley Road;

(5) Then in a southwesterly direction along Chiles and Pope Valley Road to a point where it first crosses an unnamed blueline stream in the SE ¼ Section 19, T8N, R4W;

(6) Then following the unnamed stream in generally southeast direction to its intersection with the 1200 foot contour;

(7) Then following the 1200 foot contour in a northeasterly direction to a point of intersection with the Rancho Catacula boundary in section 20, T8N, R4W;

(8) Then in a southeasterly direction along the Rancho Catcula boundary approximately 17,500 feet to the southwest corner of Rancho Catacula in section 34, T8N, R4W on the Yountville, CA, quadrangle map;

(9) Then in a northeasterly direction along the Rancho Catacula boundary approximately 650 feet to its intersection with the 1040 foot contour;

(10) Then along the 1040 foot contour in a generally east and northeast direction to its intersection with the Rancho Catacula boundary;

(11) Then in a northeasterly direction along the Rancho Catacula boundary approximately 1100 feet to its intersection with the 1040 foot contour;

(12) Then along the 1040 foot contour in an easterly direction and then in a northwesterly direction to its intersection of the Rancho Catacula boundary;

(13) Then in a southwesterly direction along the Rancho Catacula boundary approximately 300 feet to a point of intersection with a line of high voltage power lines;

(14) Then in a westerly direction along the high voltage line approximately 650 feet to its intersection with the 1000 foot contour;

(15) Then continuing along the 1000 foot contour in a generally northwesterly direction to the point of intersection with the first unnamed blueline stream;

(16) Then along the unnamed stream in a northerly direction to its point of intersection with the 1200 foot contour;

(17) Then along the 1200 foot contour in a northwesterly direction to its points of intersection with the Rancho Catacula boundary in Section 35, T9N, R5W on the St. Helena, CA, quadrangle map;

(18) Then along the Rancho Catacula boundary in a northwesterly direction approximately 5,350 feet to a northernmost corner of Rancho Catacula, the beginning point on the St. Helena quadrangle map a the northernmost corner of Rancho Catacula in Section 34, T9N, R5W, MDBM.

[T.D. ATF–408, 64 FR 7787, Feb. 17, 1999]

§9.155 Texas Davis Mountains.

(a) *Name.* The name of the viticultural area described in this section is ''Texas Davis Mountains.''

(b) *Approved map.* The appropriate maps for determining the boundary of the Texas Davis Mountains viticultural area are two U.S.G.S. metric topographical maps of the 1:100 000 scale, titled:

(1) ''Fort Davis, Texas,'' 1985.

(2) ''Mount Livermore, Texas—Chihuahua,'' 1985.

(c) *Boundary.* The Texas Davis Mountains viticultural area is located in Jeff Davis County, Texas. The boundary is as follows:

(1) The beginning point is the intersection of Texas Highway 17 and Farm

Road 1832 on the Fort Davis, Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows Highway 17 in a southeasterly and then southwesterly direction until it reaches the intersection of Limpia Creek with the unnamed stream which flows through Grapevine Canyon on the Fort Davis, Texas, U.S.G.S. map;

(3) The boundary then proceeds in a straight line in a southwesterly direction until it meets Highway 118 at a gravel pit 1¾ miles southeast of the intersection of Highway 118 and Highway 17;

(4) The boundary then proceeds in a straight line east by southeast until it meets Highway 166 at its junction with Highway 17;

(5) The boundary then follows Highway 166 in a southwesterly direction onto the Mt. Livermore, Texas-Chihuahua, U.S.G.S. map;

(6) The boundary then continues to follow Highway 166 in a westerly direction;

(7) The boundary then continues to follow Highway 166 as it turns in a northerly and then northeasterly direction to the point where it meets Highway 118;

(8) The boundary then follows Highway 118 in a northerly direction until it reaches a point where it intersects with the 1600 meter contour line, just north of Robbers Roost Canyon;

(9) The boundary then proceeds in a straight line due east for about two miles until it reaches the 1600 meter contour line to the west of Friend Mountain;

(10) The boundary then follows the 1600 meter contour line in a northeasterly direction until it reaches the northernmost point of Friend Mountain;

(11) The boundary then diverges from the contour line and proceeds in a straight line east-southeast until it reaches the beginning point of Buckley Canyon, approximately three fifths of a mile;

(12) The boundary then follows Buckley Canyon in an easterly direction to the point where it meets Cherry Canyon;

(13) The boundary then follows Cherry Canyon in a northeasterly direction to the point where it meets Grapevine Canyon on the Mt. Livermore, Texas-Chihuahua, U.S.G.S. map;

(14) The boundary then proceeds in a straight line from the intersection of Cherry and Grapevine Canyons to the peak of Bear Cave Mountain, on the Fort Davis, Texas, U.S.G.S. map;

(15) The boundary then proceeds in a straight line from the peak of Bear Cave Mountain to the point where Farm Road 1832 begins;

(16) The boundary then follows Farm Road 1832 back to its intersection with Texas Highway 17, at the point of beginning.

[T.D. ATF–395, 63 FR 11828, Mar. 11, 1998]

§ 9.156 Diablo Grande.

(a) *Name*. The name of the viticultural area described in this section is ''Diablo Grande''.

(b) *Approved maps*. The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California—Stanislaus Co., 1953 (Photorevised 1971, Photoinspected 1978);

(2) Copper Mtn. Quadrangle, California—Stanislaus Co., 1953 (Field Check 1956, Aerial Photo 1971);

(3) Wilcox Ridge, California—Stanislaus Co., 1956 (Photorevised 1971);

(4) Orestimba Peak, California—Stanislaus Co., 1955 (Photorevised 1971).

(c) *Boundary*. The Diablo Grande viticultural area is located in the western foothills of Stanislaus County, California. The beginning point is at Reservoir Spillway 780 in section 8, Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point where the 1000 foot contour line crosses the northern section line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section 16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E., on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Oristimba Creek in section 6, T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast and then east/northeast to the point where Orestimba Creek meets Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir Spillway 780 in section 8, T. 6S., R. 7E.

[T.D. ATF–399, 63 FR 33853, June 22, 1998]

§9.157 San Francisco Bay.

(a) *Name*. The name of the viticultural area described in this section is ''San Francisco Bay.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the San Francisco Bay viticultural area are forty-two U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps and one U.S.G.S. Quadrangle 5 x 11 Minute (Topographic) map. They are titled:

(1) Pacheco Peak, California, scale 1:24,000, dated 1955, Photorevised 1971;

(2) Gilroy Hot Springs, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(3) Mt. Sizer, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(4) Morgan Hill, California, scale 1:24,000, dated 1955, Photorevised 1980

(5) Lick Observatory, California, scale 1:24,000, dated 1955, Photoinspected 1973, Photorevised 1968

(6) San Jose East, California, scale 1:24,000, dated 1961, Photorevised 1980;

(7) Calaveras Reservoir, California, scale 1:24,000, dated 1961, Photorevised 1980;

(8) La Costa Valley, California, scale 1:24,000, dated 1960, Photorevised 1968;

(9) Mendenhall Springs, California, scale 1:24,000, dated 1956, Photoinspected 1978, Photorevised 1971;

(10) Altamont, California, scale 1:24,000, dated 1953, Photorevised 1981;

(11) Byron Hot Springs, California, scale 1:24,000, dated 1953, Photorevised 1968;

(12) Tassajara, California, scale 1:24,000, dated 1953, Photoinspected 1974, Photorevised 1968;

(13) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980;

(14) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980;

(15) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980;

(16) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980;

(17) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980;

(18) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980;

(19) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980;

(20) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980;

(21) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980;

(22) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973;

(23) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980;

(24) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980;

(25) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973;

(26) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968;

(27) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(28) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968;

(29) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968;

(30) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968;

(31) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981;

(32) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980;

(33) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(34) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980;

(35) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980;

(36) Loma Prieta, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968;

(37) Watsonville East, California, scale 1:24,000, dated 1955, Photorevised 1980;

(38) Mt. Madonna, California, scale 1:24,000, dated 1955, Photorevised 1980;

(39) Gilroy, California, scale 1:24,000, dated 1955, Photorevised 1981;

(40) Chittenden, California, scale 1:24,000, dated 1955, Photorevised 1980;

(41) San Felipe, California, scale 1:24,000, dated 1955, Photorevised 1971; and

(42) Three Sisters, California, scale 1:24,000, dated 1954, Photoinspected 1978, Photorevised 1971.

(c) *Boundary*. The San Francisco Bay viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties in the State of California. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The Santa Cruz Mountains viticultural area is excluded (see 27 CFR 9.31.) The boundaries of the San Francisco Bay viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of the 37 degree 00′ North latitude parallel with State Route 152 on the Pacheco Peak Quadrangle.

(2) Then proceed in a northwesterly direction in a straight line to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South on the Gilroy Hot Springs Quadrangle.

(3) Then proceed in a northwesterly direction in a straight line to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East on the Mt. Sizer Quadrangle.

(4) Then proceed in a northwesterly direction in a straight line (across the Morgan Hill Quadrangle) to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East on the Lick Observatory Quadrangle.

(5) Then proceed in a northwesterly direction in a straight line to the intersection of State Route 130 with the township line dividing Township 6 South from Township 7 South on the San Jose East Quadrangle.

(6) Then proceed in a northeasterly direction following State Route 130 to its intersection with the range line dividing Range 1 East from Range 2 East on the Calaveras Reservoir Quadrangle.

(7) Then proceed north following this range line to its intersection with the Hetch Hetchy Aqueduct on the La Costa Valley Quadrangle.

(8) Then proceed in a northeasterly direction in a straight line following the Hetch Hetchy Aqueduct to the western boundary of Section 14 in Township 4 South, Range 2 East on the Mendenhall Springs Quadrangle.

(9) Then proceed south along the western boundary of Section 14 in Township 4 South, Range 2 East to the southwest corner of Section 14 on the Mendenhall Springs Quadrangle.

(10) Then proceed east along the southern boundary of Section 14 in Township 4 South, Range 2 East to the southeast corner of Section 14 on the Mendenhall Springs Quadrangle.

(11) Then proceed south along the western boundary of Section 24 in Township 4 South, Range 2 East to the southwest corner of Section 24 on the Mendenhall Springs Quadrangle.

(12) Then proceed east along the southern boundary of Section 24 in Township 4 South, Range 2 East and Section 19 in Township 4 South, Range 3 East to the southeast corner of Section 19 on the Mendenhall Springs Quadrangle.

(13) Then proceed north along the western boundaries of Sections 20, 17, 8, and 5 on the Mendenhall Springs Quadrangle in Township 4 South, Range 3 East, north (across the Altamont Quadrangle) along the western boundaries of Sections 32, 29, to the southwest corner of Section 20, in Township 3 South, Range 3 East.

(14) Then east along the southern boundary of Sections 20, and 21, in Township 3 South, Range 3 East on the Altamont Quadrangle to the 1100 meter elevation contour.

(15) Then, along the 1100 meter contour in a northwesterly direction to the intersection with the western boundary of Section 16, Township 3 South, Range 3 East on the Altamont Quadrangle.

(16) Then north along the eastern boundary of Sections 17, 8, and 5 in

Township 3 South, Range 3 East to the northeast corner of Section 5.

(17) Then proceed west along the northern border of Section 5 to the northwest corner of Section 5.

(18) Then north along the eastern boundaries of Sections 31, 30, 19, and 18 in Township 2 South, Range 3 East to the northeast corner of Section 18 on the Byron Hot Springs Quadrangle.

(19) Then proceed due west along the northern boundaries of Section 18 and Section 13 (Township 2 South, Range 2 East) to a point approximately 400 feet due south of Brushy Peak on the Byron Hot Springs Quadrangle.

(20) Then proceed due north to Brushy Peak (elevation 1,702) on the Byron Hot Springs Quadrangle.

(21) Then proceed in a northwesterly direction in a straight line (across the Tassajara and Diablo Quadrangles) to Mt. Diablo (elevation 3,849) on the Clayton Quadrangle.

(22) Then proceed in a northwesterly direction in a straight line to Mulligan Hill (elevation 1,438) on the Clayton Quadrangle.

(23) Then proceed in a northwesterly direction in a straight line (across the Honker Bay Quadrangle) to a point marked BM 15 on the shoreline of Contra Costa County on the Vine Hill Quadrangle.

(24) Then proceed west along the shoreline of Contra Costa County and Alameda County (across the Quadrangles of Benicia, Mare Island, Richmond, and San Quentin) to the San Francisco/Oakland Bay Bridge on the Oakland West Quadrangle.

(25) Then proceed west on the San Francisco/Oakland Bay Bridge to the San Francisco County shoreline on the San Francisco North Quadrangle.

(26) Then proceed along the San Francisco, San Mateo, and Santa Cruz County shoreline (across the Quadrangles of San Francisco South, Montara Mountain, Half Moon Bay, San Gregorio, Pigeon Point, Franklin Point, Año Nuevo and Davenport) to the place where Majors Creek flows into the Pacific Ocean on the Santa Cruz Quadrangle.

(27) Then proceed northeasterly along Majors Creek to its intersection with the 400 foot contour line on the Felton Quadrangle.

(28) Then proceed along the 400 foot contour line in a generally easterly/northeasterly direction to its intersection with Bull Creek on the Felton Quadrangle.

(29) Then proceed along Bull Creek to its intersection with Highway 9 on the Felton Quadrangle.

(30) Then proceed along Highway 9 in a northerly direction to its intersection with Felton Empire Road.

(31) Then proceed along Felton Empire Road in a westerly direction to its intersection with the 400 foot contour line on the Felton Quadrangle.

(32) Then proceed along the 400 foot contour line (across the Laurel, Soquel, Watsonville West and Loma Prieta Quadrangles) to its intersection with Highway 152 on the Watsonville East Quadrangle.

(33) Then proceed along Highway 152 in a northeasterly direction to its intersection with the 600 foot contour line just west of Bodfish Creek on the Watsonville East Quadrangle.

(34) Then proceed in a generally east/southeasterly direction along the 600 foot contour line (across the Mt. Madonna and Gilroy Quadrangles), approximately 7.3 miles, to the first intersection of the western section line of Section 30, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(35) Then proceed south along the section line approximately 1.9 miles to the south township line at Section 31, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(36) Then proceed in an easterly direction along the township line (across the San Felipe Quadrangle), approximately 12.4 miles to the intersection of Township 11 South and Township 12 South and Range 5 East and Range 6 East on the Three Sisters Quadrangle.

(37) Then proceed north along the Range 5 East and Range 6 East range line approximately 5.5 miles to Pacheco Creek on the Pacheco Creek Quadrangle.

(38) Then proceed northeast along Pacheco Creek approximately .5 mile to the beginning point.

[T.D. ATF–407, 64 FR 3024, Jan. 20, 1999]

§ 9.158 Mendocino Ridge.

(a) *Name.* The name of the viticultural area described in this section is ''Mendocino Ridge.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Mendocino Ridge viticultural area are four 1:62,500 scale U.S.G.S. topographical maps. They are titled:

(1) Ornbaun Valley Quadrangle, California, 15 minute series topographic map, 1960;

(2) Navarro Quadrangle, California, 15 minute series topographic map, 1961;

(3) Point Arena Quadrangle, California, 15 minute series topographic map, 1960;

(4) Boonville Quadrangle, California, 15 minute series topographic map, 1959.

(c) *Boundary.* The Mendocino Ridge viticultural area is located within Mendocino County, California. Within the boundary description that follows, the viticultural area starts at the 1200 foot elevation (contour line) and encompasses all areas at or above the 1200 foot elevation line. The boundaries of the Mendocino Ridge viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning at the Mendocino/Sonoma County line at the mouth of the Gualala River, where the Gualala River empties into the Pacific Ocean, in section 27 of Township 11 North (T11N), Range 5 West (R5W), located in the southeastern portion of U.S.G.S. 15 minute series map, ''Point Arena, California;''

(2) Then following the Mendocino/Sonoma County line eastward to the southeast corner of section 8 in T11N/R13W, on the U.S.G.S. 15 minute map, ''Ornbaun Valley, California;''

(3) Then from the southeast corner of section 8 in T11N/R13W directly north approximately 3+ miles to the southwest corner of section 9 in T12N/R13W;

(4) Then proceeding in a straight line in a northwesterly direction to the southwestern corner of section 14 in T13N/R14W;

(5) Then directly north along the western line of section 14 in T13N/R14W to a point on the western line of section 14 approximately ¼ from the top where the Anderson Valley viticultural area boundary intersects the western line of section 14 in T13N/R14W;

(6) Then in a straight line, in a northwesterly direction, to the intersection of an unnamed creek and the south section line of section 14, T14N/R15W, on the U.S.G.S. 15 minute series map, ''Boonville, California;''

(7) Then in a westerly direction along the south section lines of sections 14 and 15 in T14N/R15W to the southwest corner of section 15, T14N/R15W, on the U.S.G.S. 15 minute series map, ''Navarro, California;''

(8) Then in a northerly direction along the western section lines of sections 15, 10, and 3 in T14N/R15W in a straight line to the intersection of the Navarro River on the western section line of section 3 in T14N/R15W;

(9) Then in a northwesterly direction along the Navarro River to the mouth of the river where it meets the Pacific Ocean in section 5 of T15N/R17W;

(10) Then in a southern direction along the Mendocino County coastline to the Mendocino/Sonoma County line to the beginning point at the mouth of the Gualala River in section 27 of T11N/R15W, on the U.S.G.S. 15 minute series map, ''Point Arena, California.''

[T.D. ATF–392, 62 FR 55516, Oct. 27, 1997]

§ 9.159 Yorkville Highlands.

(a) *Name.* The name of the viticultural area described in this section is ''Yorkville Highlands.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yorkville Highlands viticultural area are the following six U.S.G.S. topographical maps (7.5 minute series, 1:24000 scale):

(1) Gube Mountain, Calif., provisional edition 1991;

(2) Big Foot Mountain, Calif., provisional edition 1991;

(3) Cloverdale, Calif., 1960, photoinspected 1975;

(4) Ornbaun Valley Quadrangle, Calif., provisional edition, 1991;

(5) Yorkville, Calif., provisional edition, 1991;

(6) Hopland, Calif., 1960, photoinspected 1975.

(c) *Boundary.* The Yorkville Highlands viticultural area is located in Mendocino County, California. The boundary is as follows:

(1) The beginning point is Benchmark 680, located in Section 30, T. 12 N., R. 13 W., on the Ornbaum Valley quadrangle map;

(2) From the beginning point, the boundary proceeds in a straight line in a northeasterly direction to a point intersecting the North Fork of Robinson Creek and the Section 20, T. 13 N., R. 13 W.;

(3) The boundary then proceeds in a straight line in a southeasterly direction to the summit of Sanel Mountain, located at the southeast corner of Section 30, T. 13 N., R. 12 W., on the Yorkville quadrangle map;

(4) The boundary then proceeds in a straight line in a southeasterly direction until it reaches the southeast corner of Section 15, T. 12 N., R 11 W., on the Hopland quadrangle map;

(5) The boundary then proceeds south, following the eastern boundaries of Sections 22 and 27, T. 12 N., R 11 W., until it reaches the Mendocino-Sonoma County line on the Cloverdale quadrangle map;

(6) The boundary then follows the Mendocino-Sonoma county line west, south and west until it reaches the southwest corner of Section 32, T. 12 N., R. 11 W.;

(7) The boundary then diverges from the county line and proceeds in a northwesterly direction, traversing the Big Foot Mountain quadrangle map, until it reaches the southwest corner of Section 5, T. 12 N., R. 13 W. on the Ornbaun Valley quadrangle map;

(8) The boundary proceeds in a straight line in a northerly direction until it reaches the beginning point at Benchmark 680.

[T.D. ATF–397, 63 FR 16904, Apr. 7, 1998]

§9.160 Yountville.

(a) *Name*. The name of the viticultural area described in this section is ''Yountville.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Yountville viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Napa, CA 1951 photorevised 1980;

(2) Rutherford, CA 1951 photorevised 1968;

(3) Sonoma, CA 1951 photorevised 1980;

(4) Yountville, CA 1951 photorevised 1968.

(c) *Boundary*. The Yountville viticultural area is located in the State of California, entirely within the Napa Valley viticultural area. The boundaries of the Yountville viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps are as follows:

(1) Beginning on the Rutherford quadrangle map at the intersection of the 500 foot contour line with an unnamed stream known locally as Hopper Creek north of the center of Section 3, T6N, R5W, Mount Diablo Meridan (MDM);

(2) Then along the unnamed stream (Hopper Creek) southeasterly, and at the fork in Section 3, northeasterly along the stream to the point where the stream intersects with an unnamed dirt road in the northwest corner of Section 2, T6N, R5W, MDM;

(3) Then in a straight line to the light duty road to the immediate northeast in Section 2, then along the light duty road in a northeasterly direction to the point at which the road turns 90 degrees to the left;

(4) Then northerly along the light duty road 625 feet, then northeasterly (N 40° by 43′) in a straight line 1,350 feet, along the northern property line of Assessor's Parcel Number 27–380–08, to State Highway 29, then continuing in a straight line approximately 500 feet to the peak of the 320 plus foot hill along the western edge of the Yountville hills;

(5) Then east to the second 300 foot contour line, then along said contour line around the Yountville hills to the north to the point at which the 300 foot line exits the Rutherford quadrangle for the second time;

(6) Then, on the Yountville quadrangle map, in a straight line in a northeasterly direction approximately N34° by 30′ E approximately 1,000 feet to the 90 degree bend in the unimproved dirt road shown on the map, then along that road, which coincides with a fence line to the intersection of Conn Creek and Rector Creek;

(7) Then along Rector Creek to the northeast past Silverado Trail to the Rector Reservoir spillway entrance, then south approximately 100 feet to

the 400 foot contour line, then southerly along the 400 foot contour line approximately 4200 feet to the intersection with a gully in section 30, T7N, R4W, MDM;

(8) Then southwesterly down the center of the gully approximately 800 feet to the medium duty road known as Silverado Trail, then southeasterly along the Silverado Trail approximately 590 feet to the medium duty road known locally Yountville Cross Road;

(9) Then southwesterly along the Yountville Cross Road (denoted as GRANT BDY on the map) approximately 4,700 feet to the main branch of the Napa River, then following the western boundary of the Stags Leap District viticultural area, first southerly down the center of the Napa River approximately 21,000 feet, then leaving the Napa River northeasterly in a straight line approximately 900 feet to the intersection of the Silverado Trail with an intermittent stream at the 60 foot contour line in T6N, R4W, MDM;

(10) Then along the Silverado Trail southerly approximately 3,200 feet, passing into the Napa quadrangle, to a point which is east of the confluence of Dry Creek with the Napa River; then west approximately 600 feet to said confluence; then northwesterly along Dry Creek approximately 3,500 feet, passing into the Yountville quadrangle to a fork in the creek; then northwesterly along the north fork of Dry Creek approximately 5,700 feet to the easterly end of the light duty road labeled Ragatz Lane;

(11) Then southwesterly along Ragatz Lane to the west side of State Highway 29, then southerly along Highway 29 by 982 feet to the easterly extension of the north line boundary of Napa County Assessor's parcel number 034–170–015, then along the north line of APN 034–170–015 and its extension westerly 3,550 feet to the dividing line Between R4W and R5W on the Napa quadrangle, then southwesterly approximately 1000 feet to the peak denoted as 564 (which is about 5,500 feet easterly of the northwest corner of the Napa quadrangle); then southwesterly approximately 4,000 feet to the peak northeast of the reservoir gauging station denoted as 835;

(12) Then southwesterly approximately 1,500 feet to the reservoir gauging station, then west to the 400 foot contour line on the west side of Dry Creek, then northwesterly along the 400 foot contour line to the point where the contour intersects the north line of Section 10. T6N, R5W, MDM, immediately adjacent to Dry Creek on the Rutherford, CA map;

(13) Then northwesterly along Dry Creek approximately 6,500 feet to BM503, then northeasterly approximately 3,000 feet to the peak denoted as 1478, then southeasterly approximately 2,300 feet to the beginning of the creek known locally as Hopper Creek, then southeasterly along Hopper Creek approximately 2,300 feet to the point of beginning.

[T.D. ATF–410, 64 FR 13513, Mar. 19, 1999]

§ 9.162 Santa Rita Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Santa Rita Hills.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Santa Rita Hills viticultural area are five (5) U.S.G.S. Quadrangle 7.5 Minute Series maps titled:

(1) ''Lompoc, Calif.,'' edition of 1959 (photorevised in 1982).

(2) ''Lompoc Hills, Calif.,'' edition of 1959 (photoinspected 1971).

(3) ''Los Alamos, Calif.,'' edition of 1959.

(4) ''Santa Rosa Hills, Calif.,'' edition of 1959 (photoinspected 1978).

(5) ''Solvang, Calif.,'' edition of 1959 (photorevised 1982).

(c) *Boundary.* The ''Santa Rita Hills'' viticultural area is located within Santa Barbara County, California. The boundary is as follows:

(1) The beginning point is found on the Solvang, California U.S.G.S. Quadrangle map at an unnamed hilltop, elevation 1600 feet, in section 27, T.6N, R. 32W, on the Slvang, Calif., Quadrangle U.S.G.S. map.

(2) Then proceed north and slightly west 2.3 miles to an unnamed hilltop elevation 1174 feet, Section 15, T.6N., R. 32W.

(3) Proceed west and slightly north 1.85 miles to an unnamed hilltop elevation 899 feet within the heart of the Santa Rosa Land Grant, T.7N., R. 32W,

on the Santa Rosa Hills, Calif., Quadrangle U.S.G.S. map.

(4) Proceed north approximately 2 miles to an unnamed hilltop elevation 1063 feet within the northeastern part of the Santa Rosa Land Grant, T.7N, R. 32W, on the Los Alamos, Calif., Quadrangle U.S.G.S. map.

(5) Proceed northwest 1.1 miles to an unnamed hilltop elevation 961 feet. Section 29, T.7N., R. 32W.

(6) Proceed north and slightly east 1.1 miles to an unnamed elevation 1443 feet. Section 20, T. 7N., R. 32W.

(7) Proceed west 1.4 miles to an unnamed hilltop elevation 1479 feet. Section 24, T.7N., R. 33W.

(8) Proceed north 1.2 miles to an unnamed hilltop elevation 1705 feet. Section 13, T.7N., R. 33W.

(9) Proceed northwest approximately 2 miles to an unnamed hilltop elevation 1543. Section 10, T.7N., R. 33W.

(10) Proceed west and slightly south 1.6 miles to an unnamed hilltop elevation 935 feet within the northern section of the Santa Rosa Land Grant. T.7N., R. 33W.

(11) Proceed south by southwest 1.5 miles to an unnamed hilltop elevation 605 feet in the northern section of the Santa Rosa Land Grant. T.7N., R. 33W.

(12) Proceed west by southwest approximately 2 miles to the point where California Highway 246 intersects with the 200-foot elevation contour line comprising the western border of the Santa Rita Hills, within the Santa Rosa Land Grant. T.7N., R. 34W, on the Lompoc, Calif., Quadrangle U.S.G.S. map.

(13) Proceed following the 200 foot elevation contour line south along the western border of the Santa Rita Hills to the extreme southern tip of the 200 foot elevation contour that is .6 miles due west of an unnamed hilltop 361 feet in elevation in the Canada de Salispuedes Land Grant. T.6N., R. 34W.

(14) Proceed southeast 2.35 miles to an unnamed hilltop elevation 1070 feet. Section 18, T.6N., R. 33W, on the Lompoc Hills, Calif., Quadrangle U.S.G.S. map.

(15) Proceed east and slightly south 1.95 miles to an unnamed hilltop elevation 921 feet. Section 16, T.6N., R. 33W, on the Santa Rosa Hills, Calif., Quadrangle U.S.G.S. map.

(16) Proceed east by southeast 1.35 miles to an unnamed hilltop elevation 1307 feet at intersection between Sections 22 and 23. T.6N., R. 33W.

(17) Proceed east 2.35 miles to an unnamed hilltop elevation 1507 feet in the southern area of the Santa Rosa Land Grant. T.6N., 32W.

(18) Proceed east by southeast 2.1 miles to an unnamed hilltop elevation 1279 feet in the southern area of the Santa Rosa Land Grant. T.6N., 32W.

(19) Then proceed east by southeast 1.45 miles to the point of the beginning.

[T.D. ATF–454, 66 FR 29479, May 31, 2001]

§9.164 River Junction.

(a) *Name.* The name of the viticultural area described in this section is ''River Junction.''

(b) *Approved maps.* The appropriate maps for determining the boundaries of the River Junction viticultural area are the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

(1) Ripon, CA 1969, photorevised 1980;

(2) Vernalis, CA 1969, photorevised 1980.

(c) *Boundaries.* The River Junction AVA is located in southern San Joaquin County, California. The boundaries are as follows:

(1) Beginning on the Vernalis, CA quadrangle map at the intersection of the secondary highway Airport Way and the San Joaquin River levee, near Benchmark 35 in T3S/R6E;

(2) Then in a southeasterly direction, follow the levee along the San Joaquin River onto the Ripon, CA quadrangle map;

(3) Then in a northerly direction around Sturgeon Bend in section 18 T3S/R7E;

(4) Then continuing in a generally southeasterly, then northeasterly direction along the levee adjoining the Stanislaus River through sections 19, 20 and 17 to the point where the levee intersects sections 17 and 8;

(5) Then continuing in a northerly direction along the levee in section 8 for approximately 1,000 feet;

(6) Then in a straight line in a northwesterly direction for approximately 100 feet to the intersection with Division Road;

(7) Then in a southwesterly, then northwesterly direction along Division Road through sections 8, 17, 18 and 7 to the intersection with the secondary highway Airport Way;

(8) Then in a southwesterly direction along Airport Way onto the Vernalis quadrangle map to the starting point at the intersection of Airport Way and the San Joaquin River levee T3S/R6E.

[T.D. ATF–452, 66 FR 23592, May 9, 2001]

§ 9.165 Applegate Valley.

(a) *Name*. The name of the viticultural area described in this section is ''Applegate Valley.''

(b) *Approved maps*. The appropriate map for determining the boundaries of the Applegate Valley viticultural area is one U.S.G.S. map titled ''Medford, Oregon; California'' (NK 10–5) scale 1:250,000 (1955, revised 1976).

(c) *Boundaries*. The Applegate Valley viticultural area is located in the State of Oregon within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area. The boundaries are as follows:

(1) Beginning at the confluence of the Applegate River with the Rogue River approximately 5 miles west of Grants Pass, the boundary proceeds due west to the boundary of the Siskiyou National Forest north of Dutcher Creek;

(2) Then in a straight line in a southerly and westerly direction along the boundary of the Siskiyou National Forest to Highway 199;

(3) Then in a straight line easterly to the peak of Roundtop Mountain (4693 feet);

(4) Then in a straight line easterly and southerly to the peak of Mungers Butte;

(5) Then in a straight line southerly and westerly to Holcomb Peak;

(6) Then in a generally southeasterly direction along the eastern boundary of the Siskiyou National Forest until it joins the northern boundary of the Rogue River National Forest;

(7) Then easterly along the northern boundary of the Rogue River National forest to a point due south of the peak of Bald Mountain;

(8) Then due north to the peak of Bald Mountain (5635 feet);

(9) Then in a straight-line northerly and westerly to the lookout tower on Anderson Butte;

(10) Then in a straight line northerly and westerly to the peak of an unnamed mountain with an elevation of 3181 feet;

(11) Then in a straight line northerly and westerly to the peak of Timber Mountain;

(12) Then in a straight line westerly and southerly to the middle peak of Billy Mountain;

(13) Then, northerly and westerly by straight lines connecting a series of five unnamed peaks with elevations of approximately 3600, 4000, 3800, 3400, and 3800 feet, respectively;

(14) Then in a straight line northerly and easterly to Grants Pass Peak;

(15) Then in a straight line westerly to Jerome Prairie;

(16) Then in a straight line northwesterly to the confluence of the Applegate River and the Rogue River and the point of the beginning.

[T.D. ATF–434, 65 FR 78099, Dec. 14, 2000]

§ 9.166 Diamond Mountain District.

(a) *Name*. The name of the viticultural area described in this section is ''Diamond Mountain District.''

(b) *Approved map*. The appropriate maps for determining the boundary of the Diamond Mountain District viticultural area are two 1:24,000 Scale U.S.G.S. topography maps.

They are titled:

(1) Mark West Springs, CA 1993

(2) Calistoga, CA 1993.

(c) *Boundaries*. The viticultural area is located in Napa County, California. The beginning point is where the boundary between Napa and Sonoma counties intersects Petrified Forest Road in Section 3 of Township 8 North, Range 7 West, Mount Diablo Base and Meridian on the Mark West Springs map;

(1) Then north and east along Petrified Forest Road approximately 1.9 miles to the point where it intersects the 400-foot contour just east of Section 35 of Township 9 North, Range 7 West, Mount Diablo Base and Meridian, in the Mallacomes land grant;

(2) Then generally east southeast along the 400-foot contour approximately 6.5 miles to the point where it

intersects Ritchey Creek in Section 3 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(3) Then west southwest along Ritchey Creek approximately 2.2 miles to the point where it intersects the boundary between Sections 17 and 20 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(4) Then due west in a straight line along the section boundary approximately 0.8 miles to the point where it intersects the boundary between Napa and Sonoma Counties between Sections 18 and 19 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(5) Then generally northwest along the boundary between Napa and Sonoma Counties approximately 4.2 miles to the point where it intersects Petrified Forest Road, to the point of beginning.

[T.D. ATF–456, 66 FR 29698, June 1, 2001]

§9.167 Red Mountain

(a) *Name*. The name of the viticultural area described in this section is ''Red Mountain.''

(b) *Approved maps*. The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled ''Benton City, Washington'' 7.5 minute series (topographic), (1974).

(c) *Boundaries*. The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight line across the lower southwest corner of section 33 to the 1253-foot peak located due north of the center of section 4.

(5) Then in a straight line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight line southeast to the border of sections 10 and 11 where the power line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line south following the border of sections 10 and 11 to the corner of sections 10,11,15, and 14. This point has an elevation of 684 feet.

(8) From this point southwest in a diagonal to the 700-foot elevation line and then following this 700-foot elevation through Section 15 and into section 16.

(9) Then following the 700-foot elevation line southwest ¼ mile in a southwest diagonal until it meets the creek bed.

(10) Following the creek bed southwest through section 16, across the extreme southeast corner of section 17 and into the northeast corner of section 20 to a point where the creek bed meets the 560-foot elevation point.

(11) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

[T.D. ATF–448, 66 FR 18545, Apr. 10, 2001]

§9.168 Fair Play.

(a) *Name*. The name of the viticultural area described in this section is ''Fair Play.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the Fair Play viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (7.5 minute series; quadrangles). They are titled:

(1) Omo Ranch, California, 1952 (photorevised 1973);

(2) Aukum, California, 1952 (photorevised 1973);

(3) Camino, California, 1952 (photorevised 1973).

(c) *Boundaries*. The Fair Play viticultural area is located in El Dorado County, California and is located

entirely within the existing Sierra Foothills and El Dorado viticultural areas. The boundary for Fair Play is as follows:

(1) The beginning point of the boundary is the intersection of the Middle Fork of the Cosumnes River and the U.S.G.S. map section line between Sections 26 and 27, T. 9 N., R. 11 E. (''Aukum'' Quadrangle);

(2) From the beginning point, the boundary follows northeast along the Middle Fork of the Cosumnes River until it meets an unnamed medium-duty road (Mt. Aukum Road or El Dorado County Road E–16) just as it crosses onto the ''Camino'' Quadrangle map;

(3) The boundary continues then northeast along Mt. Aukum Road to its intersection with Grizzly Flat Road at the town of Somerset (''Camino'' Quadrangle);

(4) The boundary continues east along Grizzly Flat Road to its intersection with the 2200'' contour line.

(5) The boundary continues along the 2200'' contour line north and then east until it intersects with the U.S.G.S. map section line between Sections 9 and 10, T. 9 N., R. 12 E. (''Camino'' Quadrangle):

(6) The boundary then proceeds south along the U.S.G.S. map section line between Sections 9 and 10, T. 9 N., R. 12 E., to its intersection with the Middle Fork of the Cosumnes River (''Aukum'' Quadrangle);

(7) The boundary then follows along the Middle Fork of the Cosumnes River in a southeasterly direction onto the ''Omo'' Quadrangle map and continues until it meets the range line between R. 12 E. and R. 13 E. (''Aukum'' Quadrangle and ''Omo Ranch'' Quadrangle);

(8) The boundary then follows south along the range line between R. 12 E. and R. 13 E. to its intersection with an unnamed medium-duty road in T. 8 N. (Omo Ranch Road) (''Omo Ranch'' Quadrangle);

(9) The boundary then continues west in a straight line approximately 0.3 miles to the point where Cedar Creek intersects with the 3200-foot contour line, within Section 1, T. 8 N.,R. 12 E. (''Omo Ranch'' Quadrangle);

(10) The boundary follows along Cedar Creek west and then southwest until it empties into Scott Creek (''Aukum'' Quadrangle);

(11) The boundary then proceeds west along Scott Creek until it empties into the South Fork of the Cosumnes River (''Aukum'' Quadrangle);

(12) The boundary continues west along the South Fork of the Cosumnes River to its intersection with the U.S.G.S. map section line between Sections 14 and 15, T. 8 N., R. 11 E. (''Aukum'' Quadrangle); and

(13) Finally, the boundary follows north along the section line back to its intersection with the Middle Fork of the Cosumnes River, the point of the beginning. (''Aukum'' Quadrangle).

[T.D. ATF–440, 66 FR 11539, Feb. 26, 2001]

§ 9.170 Long Island.

(a) *Name.* The name of the viticultural area described in this section is ''Long Island.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Long Island viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) ''New York, N.Y.; N.J.; Conn.,'' 1960 (revised 1979);

(2) ''Hartford, Conn.; N.Y.; N.J.; Mass.,'' 1962 (revised 1975); and

(3) ''Providence, R.I.; Mass.; Conn.; N.Y.,'' 1947 (revised 1969).

(c) *Boundaries.* The Long Island viticultural area includes approximately 1,170 square miles or 749,146 acres and is made up of the counties of Nassau and Suffolk, New York, including all off shore islands in those counties.

[T.D. ATF–453, 66 FR 26791, May 15, 2001]

§ 9.172 West Elks.

(a) *Name.* The name of the viticultural area described in this section is ''West Elks.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the West Elks viticultural area are four United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) Lazear Quadrangle (Colorado-Delta Co. 1955 (photorevised 1978));

(2) Hotchkiss Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979));

(3) Paonia Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979); and

(4) Bowie Quadrangle (Colorado-Delta Co. 1965 (photorevised 1978).

(c) *Boundaries.* The West Elks viticultural area is located in eastern Delta County, Colorado. The beginning point is found on the ''Bowie Quadrangle'' U.S.G.S. map at the ¼ corner common to Sections 19 and 20, Township 13 South, Range 91 West (T. 13 S., R. 91 W.);

(1) The boundary proceeds east following the center subdivision lines of Sections 20 and 21 to its intersection with Colorado Highway 133;

(2) Then northeasterly following Colorado Highway 133 to its intersection with the N–S center subdivision line of Section 14, T. 13 S., R. 91 W., near Juanita Junction;

(3) Then south following the center subdivision line to its intersection with the North Fork of the Gunnison River;

(4) Then southwesterly following the North Fork of the Gunnison River to its intersection with the Stewart Ditch in the extreme southern part of Section 15, T. 13 S., R. 91 W.;

(5) Then southwesterly following the Stewart Ditch to its intersection with the section line common to Sections 21 and 28, T. 13 S., R. 91 W.;

(6) Then east following the section line common to Sections 21 and 28 to its intersection with the 6000 foot contour;

(7) Then southerly following the 6000 foot contour to its second intersection with the section line common to Sections 3 and 4, T. 14 S., R. 91 W., located on the Paonia, Colo. U.S.G.S. map;

(8) Then south following the section line common to Sections 3 and 4 to its intersection with the 6200 foot contour;

(9) Then southerly following the 6200 foot contour to its intersection with the section line common to Sections 16 and 17, T. 14 S., R. 91 W.;

(10) Then south following the section line common to Sections 16 and 17 to the point of intersection of Sections 16, 17, 20 and 21;

(11) Then west following the section line common to Sections 17 and 20 to the point of intersection of Sections 17, 18, 19 and 20;

(12) Then south following the section line common to Sections 19 and 20 to the N1/16 corner common to Sections 19 and 20;

(13) Then west following the subdivision line across Section 19 to the N1/16 corner common to Section 19, T. 14 S., R. 91 W. and Section 24, T, 14 S., R. 92 W.;

(14) Then south following the range line between R. 91 W. and R. 92 W. to the point of intersection between Sections 19 and 30, T. 14 S., R. 91 W. and Sections 24 and 25, T. 14 S., R. 92 W.;

(15) Then west following the section line common to Sections 24 and 25 to the point of intersection between Sections 23, 24, 25 and 26, located on the Hotchkiss, Colo. U.S.G.S. map;

(16) Then south following the section line common to Sections 25 and 26 to the point of intersection between Sections 25, 26, 35 and 36;

(17) Then west following the section lines common to Sections 26 and 35 and Sections 27 and 34 to the point of intersection between Sections 27, 28, 33 and 34;

(18) Then south following the section line common to Sections 33 and 34 to the point of intersection between Sections 33 and 34, T. 14 S., R. 92 W. and Sections 3 and 4, T. 15 S., R. 92 W.;

(19) Then west following the township line between T. 14 S. and T. 15 S. approximately three miles to the point of intersection between Section 31, T. 14 S., R. 92 W., Section 6, T. 15 S., R. 92 W., Section 1, T. 15 S., R. 93 W., and Section 36, T. 14 S., R. 93 W.;

(20) Then south following the range line between R. 92 W. and R. 93 W. to the point of intersection between Sections 6 and 7, T. 15 S., R. 92 W. and Sections 1 and 12, T. 15 S., R. 93 W.;

(21) Then west following the section lines common to Sections 1 and 12 and Sections 2 and 11 to its intersection with the North Fork of the Gunnison River, located on the Lazear, Colo. U.S.G.S. map;

(22) Then westerly following the North Fork of the Gunnison River to its intersection with Big Gulch in the extreme northeastern corner of Section 6, T. 15 S., R. 93 W.;

(23) Then northerly following Big Gulch to its intersection with the section line common to Sections 17 and 18, T. 14 S., R. 93 W.;

(24) Then north following the section lines common to Sections 17 and 18, Sections 7 and 8, and Sections 5 and 6 to the point of intersection between Sections 5 and 6, T. 14 S., R. 93 W. and Sections 31 and 32, T. 13 S., R. 93 W.;

(25) Then east following the township line between T. 13 S. and T. 14 S. approximately two miles to the point of intersection between Sections 3 and 4, T. 14 S., R. 93 W. and Sections 33 and 34, T. 13 S., R. 93 W.;

(26) Then south following the section line common to Sections 3 and 4 to the point of intersection between Sections 3, 4, 9 and 10;

(27) Then east following the section lines for approximately 6 miles to the point of intersection between Sections 3, 4, 9 and 10, T. 14 S., R. 92 W., located on the Hotchkiss, Colo. U.S.G.S. map;

(28) Then north following the section line common to Sections 3 and 4 to the point of intersection between Sections 3 and 4, T. 14 S., R. 92 W. and Sections 33 and 34, T. 13 S., R. 92 W.;

(29) Then east following the township line between T. 13 S. and T. 14 S. to its intersection with the Fire Mountain Canal in the southwestern corner of Section 35, T. 13 S., R. 92 W.;

(30) Then northeasterly following the Fire Mountain Canal through the extreme northwest corner of the Paonia, Colo. U.S.G.S. map to its intersection with the section line common to Sections 29 and 30, T. 13 S., R. 91 W., located on the Bowie, Colo. U.S.G.S. map;

(31) Then north following the section lines common to Sections 29 and 30 and Sections 19 and 20 to the 1/4 corner common to Sections 19 and 20, the point of beginning.

[T.D. ATF–445, 66 FR 13430, Mar. 6, 2001]

§ 9.173 Rockpile.

(a) *Name.* The name of the viticultural area described in this section is ''Rockpile''.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Rockpile viticultural area are four 1:24,000 Scale U.S.G.S. topographic maps. They are titled:

(1) Warm Springs Dam Quadrangle, CA—Sonoma Co. 1978;

(2) Cloverdale Quadrangle, CA 1975;

(3) Tombs Creek Quadrangle, CA—Sonoma Co. 1978; and

(4) Big Foot Mountain Quadrangle, CA 1991.

(c) *Boundary.* The Rockpile viticultural area is located in northwestern Sonoma County, California. The boundary encircles the Rockpile Ranch area, located west of Lake Sonoma. The point of beginning is the intersection of Rockpile Road and the Section 15 east boundary line, T 10 N, R 11 W (Warm Springs Dam Quadrangle);

(1) Then proceed straight north to the 800-foot contour line, Section 10, T 10 N, R 11 W (Warm Springs Dam Quadrangle);

(2) Then proceed west along the 800-foot contour line through Sections 10, 9, 4, 5, and 32 to the Section 31 east boundary line, T 11 N, R 11 W (Warm Springs Dam and Cloverdale Quadrangles);

(3) Then proceed west along the 800-foot contour line in Section 31, following the line as it reverses from the west to the east direction, returning to the east boundary of Section 31, T 11 N, R 11 W (Cloverdale and Big Foot Mountain Quadrangles);

(4) Then proceed along the 800-foot contour line east through Section 32 and northwest through Sections 33, 32, 29, 30, 25, 24, 23, 14, 15, 22, 21, and 20 to the east boundary line of Section 19, T 11 N, R 12 W (Cloverdale and Big Foot Mountain Quadrangles);

(5) Then proceed west, north, south and east along the meandering 800-foot contour line, in a loop, crossing the southwest and northwest headwaters of Galloway Creek, and returning to the east boundary line of Section 19, T 11 N, R 12 W (Big Foot Mountain Quadrangle);

(6) Then proceed straight north to the Mendocino-Sonoma county boundary line, then follow the county line straight west to the R 13 and 12 W line, and continue straight south to the 1,600-foot contour line in the Section 19 southwest corner, T 11 N, R 12 W (Big Foot Mountain Quadrangle);

(7) Then proceed southeast along the meandering 1,600-foot contour line to the Section 29 west boundary line, and continue straight south to the T 11 and 10 N boundary line, R 12 W (Big Foot Mountain Quadrangle);

(8) Then proceed east along the T 11 and 10 N boundary line to the Section 1 west boundary line, R 12 W (Big Foot Mountain Quadrangle);

(9) Then proceed south along the Section 1 west boundary line, turning east at the Section 1 south boundary and continue east to the northwest corner of Section 8, T 10 N, R 11 W (Big Foot Mountain, Tombs Creek and Warm Springs Dam Quadrangles);

(10) Then proceed south along the west boundary of Section 8, turning east at its southwest corner, and continue east to the 876-foot elevation marker, T 10 N, R 11 W (Warm Springs Dam Quadrangle);

(11) Then proceed straight south approximately 2,000 feet to the 800-foot contour line, T 10 N, R 11 W (Warm Springs Dam Quadrangle);

(12) Then follow the 800-foot contour line as it meanders west, southeast, southwest, and east to the Section 14 west boundary, and then straight north, returning to the point of beginning at Rockpile Road, T 10 N, R 11 W (Warm Springs Dam Quadrangle).

[T.D. ATF–473, 67 FR 9193, Feb. 28, 2002]

EFFECTIVE DATE NOTE: By T.D. ATF–473, 67 FR 9193, Feb. 28, 2002, § 9.173 was added to subpart C of part 9, effective Apr. 29, 2002.

PART 10—COMMERCIAL BRIBERY

Subpart A—Scope of Regulations

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AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF–74, 45 FR 63257, Sept. 30, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 10.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices which may result in violations of section 105(c) of the Act and criteria for determining whether a practice is a violation of section 105(c) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(c) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20426, Apr. 26, 1995]

§ 10.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 10.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and employees, officers, or representatives of trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply only to transactions between industry members and employees of State agencies operating as retailers, wholesalers, or both. The regulations do not apply to State agencies with regard to their dealings with employees, officers, or representatives of trade buyers.

§ 10.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member induces a trade buyer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) If: (i) The inducement is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between an employee, officer, or representative of a trade buyer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(c) of the Federal Alcohol Administration Act (27 U.S.C. 205(c)), with respect to similar transactions between an employee, officer, or representative of a trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

[T.D. ATF–74, 45 FR 63257, Sept. 30, 1980, as amended by T.D. ATF–364, 60 FR 20426, Apr. 26, 1995]

§ 10.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 10 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 6, 8, 10 and 11. ATF delegation orders, such as ATF Order 1130.7, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

§ 10.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* Any appropriate ATF officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate ATF officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate ATF officer*—(1) *General.* The appropriate ATF officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate ATF officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20426, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart B—Definitions

§ 10.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

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 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11.

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

Industry member. Any person engaged in business as a distiller, brewer, recitifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Officer. All corporate executives, including presidents, vice presidents, treasurers, and chief executive officers.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

[T.D. ATF–74, 45 FR 63257, Sept. 30, 1980, as amended by T.D. ATF–364, 60 FR 20426, Apr. 26, 1995; T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart C—Commercial Bribery

§ 10.21 Commercial bribery.

It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce a trade buyer to purchase the industry member's products, to the complete or partial exclusion of products sold or offered for sale by other persons in interstate or foreign commerce, by offering or giving a bonus, premium, compensation, or other thing of value to any officer, employee, or representative of the trade buyer. The bonus, premium, compensation, or other thing of value need not be offered or given for the purpose of directly inducing a trade buyer to purchase from the seller, but rather is applicable if an industry member induces officers, employees or representatives of the trade buyer to promote sales of the industry member's products and thereby indirectly induces the trade buyer to purchase from the industry member.

§ 10.22 Employee associations.

Gifts, donations, and other payments such as for advertising in publications, by an industry member, to trade buyer employee associations are considered the same as bonuses, premiums, compensation, or other things of value given directly to the employees, since the benefits resulting from the gifts or payments flow to the individual members of the association.

§ 10.23 Gifts or payments to wholesalers.

Although industry members are not prohibited from offering or giving money or other things of value to a wholesale entity (i.e., the corporation, partnership, or individual who owns the business), the wholesaler will be considered as acting as a mere conduit between its officers, employees, or representatives and the industry member, if:

(a) There is an agreement or understanding, implied or explicit, that the money or thing of value will be passed on to the officers, employees, or representatives, or

(b) It is obvious by the very nature of the item given (such as a free trip) that a pass through to the officers, employees, or representatives is clearly contemplated, or

(c) The records of the recipient wholesaler do not accurately reflect such money or item as an asset or the wholesale entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the money

or item as a personal asset of an officer, employee, or representative.

§ 10.24 Sales promotion contests.

Sales contests sponsored by an industry member which offer prizes directly or indirectly to trade buyer officers, employees or representatives are inducements within the meaning of the Act.

Subpart D—Exclusion

SOURCE: T.D. ATF–364, 60 FR 20427, Apr. 26, 1995, unless otherwise noted.

§ 10.51 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) trade buyer independence at risk by means of a tie or link between the industry member and trade buyer or by any other means of industry member control over the trade buyer, and

(2) Such practice results in the trade buyer purchasing less than it would have of a competitor's product.

(b) Section 10.52 lists practices that create a tie or link that places trade buyer independence at risk. Section 10.53 is reserved and will list practices not resulting in exclusion. Section 10.54 lists the criteria used for determining whether other practices can put trade buyer independence at risk.

§ 10.52 Practice which puts trade buyer independence at risk.

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

§ 10.53 Practices not resulting in exclusion. [Reserved]

§ 10.54 Criteria for determining trade buyer independence.

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 11—CONSIGNMENT SALES

Subpart A—Scope of Regulations

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EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

11.45 Overstocked and slow-moving products.
11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are consignment sales under section 105(d) of the Act and contain guidelines concerning return of distilled spirits, wine and malt beverages from a trade buyer. This part does not attempt to enumerate all of the practices prohibited by section 105(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995]

§ 11.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 11.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply to transactions involving State agencies operating as retailers or wholesalers.

§ 11.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) If: (i) The sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in using the practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the sale, purchase, offer or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(d) of the Federal Alcohol Administration Act (27 U.S.C. 205(d)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

§ 11.5 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 11 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 6, 8, 10 and 11. ATF delegation orders, such as ATF Order 1130.7, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–428, 65 FR 52021, Aug. 28, 2000]

§ 11.6 Administrative provisions.

(a) *General*. The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act.

(b) *Examination and subpoena*. Any appropriate ATF officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate ATF officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52021, Aug. 28, 2000]

Subpart B—Definitions

§ 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

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 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11.

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

Exchange. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

Return. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF–364, 60 FR 20427, Apr. 26, 1995; T.D. ATF–428, 65 FR 52021, Aug. 28, 2000]

Subpart C—Unlawful Sales Arrangements

§ 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

§ 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

§ 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of ''other'' products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

§ 11.24 Other than a bona fide sale.

''Other than a bona fide sale'' includes, but is not limited to, sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995]

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

§ 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be ''ordinary and usual commercial reasons'' arising after the product has been sold. Sections 11.32 through 11.39 specify what are considered ''ordinary and usual commercial reasons'' for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in §§ 11.32 through 11.39.

EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS

§ 11.32 Defective products.

Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995]

§ 11.33 Error in products delivered.

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

§ 11.34 Products which may no longer be lawfully sold.

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations

where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

[T.D. ATF–364, 60 FR 20428, Apr. 26, 1995]

§ 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.39).

[T.D. ATF–364, 60 FR 20428, Apr. 26, 1995]

§ 11.36 Termination of franchise.

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

§ 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to § 11.46) may be exchanged for equal quantities of the new version of that product.

§ 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

§ 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

§ 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for ''ordinary and usual commercial reasons.''

§ 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for ''ordinary and usual commercial reasons.''

PART 12—FOREIGN NONGENERIC NAMES OF GEOGRAPHIC SIGNIFICANCE USED IN THE DESIGNATION OF WINES

Subpart A—General Provisions

Sec.
12.1 Scope.
12.2 Territorial extent.
12.3 Procedure for recognition of foreign distinctive designations.

Subpart B [Reserved]

Subpart C—Foreign Nongeneric Names of Geographic Significance

12.21 List of examples of names by country.

Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

12.31 List of approved names by country.

AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. ATF–296, 55 FR 17967, Apr. 30, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 Scope.

The regulations in this part relate to foreign names of geographic significance used in the designation of wines which are recognized as nongeneric under 27 CFR 4.24, and include those nongeneric names which the Director has found to be distinctive designations of wine, as defined in § 4.24(c)(1) of this chapter.

§ 12.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 12.3 Procedure for recognition of foreign distinctive designations.

(a) *Procedure*. Under the provisions of 27 CFR 70.701(c), the Director may approve petitions requesting ATF recognition of names of geographic significance which are the distinctive designations of specific wines under § 4.24(c) of this chapter.

(b) *Format*. A petition shall be in the form of a letterhead application requesting that ATF recognize the distinctive wine designation listed in their petition. The petition should present evidence to support a finding that the geographic designation is known to the U.S. consumer and trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. All background material and supporting data submitted will be made part of the application and will be considered in the review process.

[T.D. ATF–296, 55 FR 17967, Apr. 30, 1990, as amended by T.D. ATF–463, 66 FR 42733, Aug. 15, 2001]

Subpart B [Reserved]

Subpart C—Foreign Nongeneric Names of Geographic Significance

§ 12.21 List of examples of names by country.

The names listed in this section are examples of foreign nongeneric names of geographic significance under § 4.24(c) (1) and (2) of this chapter.

(a) *Argentina:* Alto Colorado, Valles Calchaquies.

(b) *Australia:* Adelaide, Barossa Valley, Clare Valley, Cowra, Forbes, Geelong, Goulburn Valley, Granite Belt, Great Western, Hunter Valley, McLaren Vale, Mudgee, Murray River Valley, New South Wales, North Richmond, Queensland, South Australia, Swan Valley, Tasmania, Victoria, Western Australia, Yarra Valley.

(c) *Austria:* Bisamberg-Kreuzenstein, Burgenland, Carnuntum, Frauenweingarten, Kapellenweg, Kirchberger Wagram, Matzner Hugel, Niederosterreich, Nussberg, Pinkatal, Schatzberg, Sekt, Wachau, Weststeiermark, Wien.

(d) *Federal Republic of Germany:* Ahr, Bacharach, Bad Durkheim, Baden, Badisches Frankenland, Badstube, Bayerischer Bodensee, Bernkastel, Bingen, Breisgau, Deidesheimer Hofstuck, Dhroner Hofberger, Erdener Treppchen, Graach, Graben, Hessische Bergstrasse, Himmelreich, Hochheimer Holle, Johannisberg, Klosterberg, Kocher-Jagst-Tauber, Kreuznach, Kurfurstlay, Loreley, Maindreieck, Mainviereck, Markgraflerland, Mittelrhein, Moseltor, Nahe, Nierstein, Obermosel, Oppenheimer Krotenbrunnen, Ortenau, Remstal-Stuttgart, Rhein-Burgengau, Rheinfalz, Rheingau, Rheinhessen, Schloss Bockelheim, Sekt, Siebengebirge, Starkenburg, Steigerwald, Sudliche Weinstrasse, Trier, Umstadt, Urziger Wurzgarten, Walporzheim/Ahrtal, Wiltinger Scharzberg, Winkeler Jesuitengarten, Wonnegau, Wurttemberg, Zell/Mosel.

(e) *France:* Ajaccio, Arbois, Auxey-Duresses, Bandol, Bearn, Bellet, Bergerac, Blagny, Blaye, Bonnezeaux, Bourg, Buzet, Cadillac, Cahors, Canon-Fronsac, Cassis, Cerons, Charlemagne, Chateau Chalon, Chateau-Grillet, Chinon, Chorey-les-Beaunes, Clos de Tart, Clos des Lambrays, Clos Saint-Denis, Collioure, Condrieu, Cornas, Coteaux de l'Aubance, Coteaux du Languedoc, Coteaux du Loir, Coteaux du Lyonnais, Coteaux du Tricastin, Cotes de Duras, Cotes de Provence, Cotes du Jura, Cotes du Roussillon, Cotes du Ventoux, Crepy, Dezize-les-Maranges, Faugeres, Fitou, Fixin, Gaillac, Gigondas, Givry, Gros Plant, Irouleguy, Jasnieres, Jurancon, Ladoix, L'Etoile, Limoux, Lirac, Loupiac, Madiran, Mazis-Chambertin, Menetou Salon, Minervois, Monbazillac, Montagny, Monthelie, Montlouis, Montravel, Moulis, Muscat de Beaumes de Venise, Muscat de Frontignan, Neac, Pacherenc du Vic Bilh, Palette, Pecharmant, Pernand-Vergelesses, Picpoul-de-Pinet, Pineau des Charentes, Pouilly-Loche, Quarts-de-Chaume, Quincy, Regnie, Reuilly, Rosette, Rully, Saint-Aubin, Saint-Chinian, Saint-Georges-d'Orques, Saint-Joseph, Saint-Nicolas-de-Bourgueil, Saint-Peray, Saint-Romain, Saint-Veran, Sainte-Croix-du-Mont, Saussignac, Sauvignon de Saint-Bris,

Savennieres, Seyssel, Vin de Lavilledieu, Vin de pays de l'Aude, Vin de Savoie, Vin du Bugey, Vin du Haut-Poitou.

(f) *Greece:* Aghialos, Amynteon, Archanes, Daphnes, Goumenissa, Kantza, Mantinea, Mavrodaphni Cefalonia, Mavrodaphni Patras, Moschatos Lemnos, Moschatos Rhodes, Naoussa, Nemea, Paros, Peza, Plagies Melitona, Rapsani, Retsina Attica, Retsina Megaron, Samos, Santorini, Sitia, Sitsa.

(g) *Italy:* Abruzzo, Acqui, Affile, Aleatico di Gradoli, Alto Mincio, Avellino, Barbera del Monferrato, Basilicata, Bianco di Custoza, Bianco Pisano di S. Torpe, Boca, Campidano di Terralba, Castelli di Jesi, Chieri, Cinque Terre, Ciro, Colli Albani, Colli del Trasimeno, Diano d'Alba, Est! Est! Est! di Montefiascone, Etna, Fara, Faro, Franciacorta, Gabiano, Gavi, Ghemme, Ischia, Lambrusco Reggiano, Lamezia, Langhe Monregalesi, Lessona, Lipari, Melissa, Metauro, Molise, Olevano Romano, Oristano, Ovada, Parrina, Piceno, Piemonte, Piglio, Pollino, Puglia, Romagna, Rosso Barletta, Savuto, Sicilia, Sorbara, Sulcis, Taurasi, Torgiano, Trani, Valtellina Sassella, Velletri, Veneto, Vermentino di Gallura, Vesuvio, Vulture, Zagarolo.

(h) *New Zealand:* Blenheim, Canterbury, Central Otago, Gisborne, Hawkes Bay, Henderson, Marlborough, Nelson, Northland, Richmond, Rodney, South Auckland, Te Kauwhata, Wanganui, Wellington.

(i) *Portugal:* Algarve, Alijo, Bairrada, Baixo Corgo, Basto, Beiras, Belem, Braga, Bucelas, Camara de Lobos, Campanario, Cantahede, Carcavelos, Cartaxo, Chamusca, Colares, Douro, Estremadura, Favaios, Lafoes, Lagoa, Lagos, Lamego, Lousada, Meda, Mesao Frio, Moncao, Moscatel de Setubal, Murca, Nelas, Penafiel, Pico, Portimao, Preces, Ribatejo-Oeste, Sabrosa, Santa Luzia, Sao Joao, Sao Martinho, Sao Pedro, Tavira, Torres Vedras, Tras-os-Montes, Viana do Castelo, Vila Real, Vinho Verde.

(j) *Romania:* Alba Iulia, Arges, Bistrita-Nasaud, Bujoru, Cotesti, Cotnari, Dealu Mare, Dealurile, Dragasani, Drobeta Turnuseverin, Istria, Ivesti, Jidvei, Medias, Mehedinti, Minis, Moldovei, Murfatlar, Nicoresti, Odobesti, Oltina, Panciu, Recas, Sarica Niculitel, Sebes, Segarcea, Tecuci-Galati, Teremia, Tirnave.

(k) *Spain:* Alella, Alicante, Almansa, Ampurdan-Costa Brava, Campo de Borja, Carinena, Cava, Condado de Huelva, Jumilla, La Mancha, Manzanilla-Sanlucar de Barrameda, Mentrida, Montilla-Moriles, Navarra, Penedes, Priorato, Ribeiro, Ribera del Duero, Rueda, Tarragona, Utiel-Requena, Valdeorras, Valencia, Yecla.

(l) *Switzerland:* Agarn, Aire-la-Ville, Argovie, Auvernier, Avully, Berne, Bernex, Bonvillars, Bratsch, Chalais, Chamoson, Cressier, Cully, Dardagny, Dezaley, Epesses, Erlenbach, Friburg, Fully, Geneve, Grisons, Gy, Herrliberg, Hornussen, La Cote, Lavaux, Lens, Limmattal, Lucerne, Lutry, Meilen, Montreux, Neuchatel, Niedergesteln, Riex, Rivaz, Schaffhouse, Schlossgut Herdern, Schwyz, Suisse, Swiss, Tessin, Thurgovie, Valais, Varen/Varone, Vaud, Veyrier, Villette, Zeneggen, Zurcher Unterland, Zurich.

(m) *Yugoslavia:* Blatina Mostar, Bolski Plavac, Borje, Brodska Grasevina, Crnogorski Vranac, Dingac, Erdutski Burgundac Bijeli, Faros, Grk Lumbarda, Ilocka Frankovka, Kutjevacka Grasevina, Merlot Bujstine, Plesivicki Rizling Rajnski, Porecki Merlot, Postup, Primostenski Babic, Smedereveski Sovinjon, Vinaracki Merlo, Viska Vugava, Vrsacki Rizling, Zlata Radgonska Penina.

Subpart D—Foreign Nongeneric Names Which Are Distinctive Designations of Specific Grape Wines

§ 12.31 List of approved names by country.

The names listed in this section are foreign nongeneric names of geographic significance which are also recognized by the Director as distinctive designations of specific grape wines, in accordance with § 4.24 (c) (1) and (3) of this chapter.

(a) *Federal Republic of Germany:* Bernkasteler Doctor (Doktor), Deidesheimer, Dexheimer Doktor, Erbacher Marcobrunn, Forster, Forster

Jesuitengarten, Graacher Himmelreich, Liebfraumilch, Liebfrauenmilch, Mosel, Mosel-Saar-Ruwer, Ockfener Bockstein, Piesporter Goldtropfchen, Piesporter Michelsberg, Piesporter Treppchen, Rudesheimer, Scharzhofberger, Schloss Johannisberger, Schloss Vollrads, Wehlener Sonnenuhr, Zeller Schwarze Katz.

(b) *France:* Aloxe-Corton, Alsace or Vin d'Alsace, Anjou, Barsac, Batard-Montrachet, Beaujolais, Beaujolais Villages, Beaune, Bonnes Mares, Bordeaux, Bordeaux Blanc, Bordeaux Rouge, Bourgogne, Brouilly, Chambertin, Chambolle-Musigny, Charmes-Chambertin, Chassagne-Montrachet, Chateau Lafite, Chateau Margaux, Chateau Yquem, Chateauneuf-du-Pape, Chenas, Chevalier-Montrachet, Chiroubles, Clos de la Roche, Clos de Vougeot, Corton, Corton-Charlemagne, Cote de Beaune, Cote de Beaune-Villages, Cote de Brouilly, Cote de Nuits, Cote de Nuits-Villages, Cote Rotie, Coteaux du Layon, Cotes du Rhone, Echezeaux, Entre-Deux-Mers, Fleurie, Gevrey-Chambertin, Grands Echezeaux, Graves, Haut Medoc, Hermitage, La Tache, Loire, Macon, Margaux, Medoc, Mercurey, Meursault, Montrachet, Morgon, Moulin-a-Vent, Muscadet, Musigny, Nuits or Nuits-Saint-Georges, Pauillac, Pomerol, Pommard, Pouilly-Fuisse, Pouilly Fume, Puligny-Montrachet, Rhone, Richebourg, Romanee-Conti, Romanee Saint-Vivant, Rose d'Anjou, Saint-Amour, Saint-Emilion, Saint-Estephe, Saint-Julien, Sancerre, Santenay, Saumur, Savigny or Savigny-les-Beaunes, Tavel, Touraine, Volnay, Vosne-Romanee, Vouvray.

(c) *Italy:* Asti Spumante, Barbaresco, Barbera d'Alba, Barbera d'Asti, Bardolino, Barolo, Brunello di Montalcino, Dolcetto d'Alba, Frascati, Gattinara, Lacryma Christi, Nebbiolo d'Alba, Orvieto, Soave, Valpolicella, Vino Nobile de Montepulciano.

(d) *Portugal:* Dao, Oporto, Porto, or Vinho do Porto.

(e) *Spain:* Lagrima, Rioja.

PART 13—LABELING PROCEEDINGS

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AUTHORITY: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

SOURCE: T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 13 appear by T.D. ATF–449, 66 FR 19085, Apr. 13, 2001.

Subpart A—Scope and Construction of Regulations

§ 13.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals under 27 U.S.C. 205(e) and 26 U.S.C. 5301. The regulations in this part also provide for appeal procedures when applications for label approval, exemptions from label approval, or distinctive liquor bottle approvals are denied, when such applications are approved with qualifications, or when these applications are approved and then subsequently revoked.

§ 13.2 Delegations of the Director.

All of the regulatory authorities of the Director contained in part 13 of the regulations are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.21, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 13—Labeling Proceedings. ATF delegation orders, such as ATF Order 1130.21, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov).

[T.D. ATF–449, 66 FR 19085, Apr. 13, 2001]

Subpart B—Definitions

§ 13.11 Meaning of terms.

Where 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 that are in the same general class.

Act. The Federal Alcohol Administration Act.

Applicant. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an unapproved ATF F 5100.31, application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

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 1130.21, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 13—Labeling Proceedings.

ATF. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an approved ATF F 5100.31, certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Certificate of exemption from label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval. A certificate issued on ATF F 5100.31 that authorizes the bottling or packing of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the project bears labels identical to the labels affixed to the face of the certificate, or labels with changes authorized by the certificate.

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

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Distinctive liquor bottle. A liquor bottle of distinctive shape or design.

Distinctive liquor bottle approval. Approval issued on ATF F 5100.31 that authorizes the bottling of distilled spirits, or the removal of bottled distilled spirits from customs custody for introduction into commerce, as long as the bottle is identical to the photograph affixed to the face of the form.

Interstate or foreign commerce. Commerce between any State and any place outside that State, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside that State.

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 appropriate ATF officer to protect the revenue adequately.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof.

United States. The several States and Territories and the District of Columbia; the term ''State'' includes a Territory and the District of Columbia; and the term ''Territory'' means the Commonwealth of Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19085, Apr. 13, 2001]

Subpart C—Applications

§ 13.20 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form must be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, the information called for in each form is that which is required by this part. The form will be filed in accordance with the instructions on the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov).

[T.D. ATF–449, 66 FR 19085, Apr. 13, 2001]

§ 13.21 Application for certificate.

(a) *Form of application.* An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, must send or deliver signed duplicate copies of ATF Form 5100.31, ''Application For And Certification/Exemption Of Label/Bottle Approval'' according to the instructions for that form. If the application complies with applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval will be issued. If the approval is qualified in any manner, such qualifications will be set forth in the appropriate space on the form.

(b) *Time period for action on application.* Within 90 days of receipt of an application, the appropriate ATF officer must notify the applicant whether the application has been approved or denied. The appropriate ATF officer may extend this period of time once, by an additional 90 days, if he or she finds that unusual circumstances require additional time to consider the issues presented by an application. If the appropriate ATF officer extends the period, he or she must notify the applicant by letter, along with a brief explanation of the issues presented by the label. If the applicant receives no decision from the appropriate ATF officer within the time periods set forth in this paragraph, the applicant may file an appeal as provided in § 13.25.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19085, Apr. 13, 2001]

§ 13.22 Withdrawal of applications.

A person who has filed an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may withdraw such application at any time before ATF takes action on the application.

§ 13.23 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, the appropriate ATF officer must issue to the applicant a notice of denial on ATF Form 5190.1, entitled ''ATF F 5100.31 Correction Sheet,'' briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19085, Apr. 13, 2001]

§ 13.25 Appeal of qualification or denial.

(a) *Form of appeal.* If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the qualified approval or denial of an application, the applicant may file a written appeal with the appropriate ATF officer within 45 days after the date of the notice of qualification or denial. The appeal should explain why the applicant believes that the label or bottle is in compliance with applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of qualification or denial, the notice will be the final decision of ATF.

(b) *Informal resolution.* Applicants may choose to pursue informal resolution of disagreements regarding correction sheets or qualifications by requesting an informal conference with the appropriate ATF officer. However, formal administrative appeals must comply with the provisions of paragraph (a) of this section.

§ 13.26 Decision after appeal of qualification or denial.

(a) *Decision.* After considering any written arguments or evidence presented by the applicant, the appropriate ATF officer must issue a written decision to the applicant. If the decision is that the qualified approval or denial should stand, a copy of the application, marked ''appeal denied,'' must be returned to the applicant with an explanation of the decision and the specific laws or regulations relied upon

in qualifying or denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant should resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision*. Within 90 days of receipt of an appeal, the appropriate ATF officer must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the appropriate ATF officer extends the period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. If the appellant receives no decision from the appropriate ATF officer within the time periods set forth in this paragraph, the appellant may appeal as provided in § 13.27.

(c) *Judicial review*. Prior to applying to the Federal courts for review, an applicant must first exhaust his or her administrative remedies, including the appeal rights set forth in this section and § 13.27.

§ 13.27 Second appeal of qualification or denial.

(a) *Form of appeal*. The decision after appeal of qualification or denial may be appealed in writing to the appropriate ATF officer within 45 days after the date of that decision. If the appropriate ATF officer concludes that the qualified approval or denial was correct, a copy of the application, marked ''appeal denied,'' must be returned to the applicant, with an explanation of the decision and the specific laws or regulations relied upon in qualifying or denying the application. If the appropriate ATF officer concludes that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant may resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision after second appeal*. Within 90 days of receipt of the second appeal, the appropriate ATF officer must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90–day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once, by an additional 90 days, if he or she finds that unusual circumstances require additional time to consider the unique issues presented by an appeal. If the appropriate ATF officer extends the time period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. The decision made on the second appeal shall be the final decision of ATF.

(c) *Judicial review*. An appeal to the appropriate ATF officer is required prior to application to the Federal courts for review of any denial or qualification of an application.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999; T.D. ATF–406a, 64 FR 10949, Mar. 8, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

Subpart D—Revocations of Specific Certificates

§ 13.41 Authority to revoke certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the appropriate ATF officer upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.42 Notice of proposed revocation.

Except as provided in § 13.51, when the appropriate ATF officer determines

that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle that is not in compliance with the laws or regulations, he or she must issue to the certificate holder a notice of proposed revocation. The notice must set forth the basis for the proposed revocation and must provide the certificate holder with 45 days from the date of receipt of the notice to present written arguments or evidence why the revocation should not occur.

§ 13.43 Decision after notice of proposed revocation.

(a) *Decision*. After considering any written arguments or evidence presented by the certificate holder, the appropriate ATF officer must issue a decision. If the decision is to revoke the certificate, a letter must be sent to the holder explaining the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter of explanation must be sent.

(b) *Time limits for decision*. Within 90 days of receipt of written arguments or evidence from the certificate holder, the appropriate ATF officer shall notify the appellant of his or her decision. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by a proposed revocation. If the appropriate ATF officer extends the time period, he or she must notify the applicant by letter, along with a brief explanation of the issues under consideration.

§ 13.44 Appeal of revocation.

(a) *Filing of appeal*. A certificate holder who wishes to appeal the decision to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal setting forth why the holder believes that the decision was erroneous. The appeal must be filed with the appropriate ATF officer within 45 days after the date of receipt of the decision to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

(b) *Judicial review*. An appeal to the appropriate ATF officer is required prior to application to the Federal courts for review of any revocation of a certificate.

[T.D. ATF–449, 66 FR 19086, Apr.13, 2001]

§ 13.45 Final decision after appeal.

(a) *Issuance of decision*. After considering any written arguments or evidence presented by the certificate holder or the holder's representative, the appropriate ATF officer must issue a final decision. If the decision is to revoke the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter must be issued explaining the basis for the revocation, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter explaining the decision must be sent.

(b) *Time limits for decision*. Within 90 days of receipt of an appeal, the appropriate ATF officer must notify the holder whether the appeal has been granted or denied. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the appropriate ATF officer extends the period, he or she must notify the holder by letter, briefly explaining the issues presented by the label. The

final decision after appeal will be the final decision of ATF.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

Subpart E—Revocation by Operation of Law or Regulation

§ 13.51 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, that their approvals have been revoked if the revocation occurs by operation of law or regulation. If changes in labeling or other requirements are made as a result of amendments or revisions to the law or regulations, the certificate holder must voluntarily surrender all certificates that are no longer in compliance. The holder must submit applications for new certificates in compliance with the new requirements, unless ATF determines that new applications are not necessary. If a new application is unnecessary, it is the responsibility of the certificate holder to ensure that labels are in compliance with their requirements of the new regulations or law.

§ 13.52 Notice of revocation.

If ATF determines that a certificate holder is still using a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval that is no longer in compliance due to amendments or revisions in the law or regulations, the appropriate ATF officer will notify the certificate holder in writing that the subject certificate has been revoked by operation of law or regulations, with a brief description of the grounds for such revocation.

§ 13.53 Appeal of notice of revocation.

Within 45 days after the date of receipt of a notice of revocation by operation of law or regulations, the certificate holder may file a written appeal with the appropriate ATF officer. The appeal should set forth the reasons why the certificate holder believes that the regulation or law at issue does not require the revocation of the certificate.

§ 13.54 Decision after appeal.

(a) *Issuance of decision.* After considering all written arguments and evidence submitted by the certificate holder, the appropriate ATF officer must issue a final decision regarding the revocation by operation of law or regulation of the certificate. If the decision is that the law or regulation at issue requires the revocation of the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter must be issued explaining the basis for the revocation, and citing the specific laws or regulations which required the revocation of the certificate. If the decision is that the law or regulation at issue does not require the revocation of such certificate, a letter explaining the decision must be sent to the certificate holder. The decision after appeal will be the final decision of the ATF.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the appropriate ATF officer must notify the holder whether the appeal has been granted or denied. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate ATF officer may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the appropriate ATF officer extends the period, he or she must notify the holder by letter, briefly explaining the issues presented by the label. The decision of the appropriate ATF officer shall be the final decision of the ATF.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

Subpart F—Miscellaneous

§ 13.61 Publicity of information.

(a) *Pending and denied applications.* Pending and denied applications for

certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals are treated as proprietary information, unless the applicant or certificate holder provides written authorization to release such information.

(b) *Approved applications.* The appropriate ATF officer shall cause to be maintained in the ATF Library for public inspection, a copy of each approved application for certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. These documents may be viewed during business hours at 650 Massachusetts Avenue, NW, Washington, DC 20226.

(c) *Revoked certificates.* If an approved certificate is subsequently revoked, the record of the approved application will remain on file for public inspection, but the index will be annotated to show it was revoked.

(d) *Further disclosure of information on denied or revoked certificates.* If an applicant whose application is pending or has been denied, or a holder of a revoked certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, issues public statements concerning ATF action in connection with such application or certificate, then ATF may issue a statement to clarify its position or correct any misstatements of fact, including a disclosure of information contained on the application or certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

§ 13.62. Third-party comment on certificates.

When a third party (such as foreign government, another Federal agency, a State agency, an industry association, a competitor of a certificate holder, a consumer or consumer group, or any other interested person) wishes to comment on an approved certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, such comments should be submitted in writing to the appropriate ATF officer who will review the subject of the comment. If the comment raises an issue that is outside the scope of ATF's statutory or regulatory authority, or the appropriate ATF officer determines that the certificate is in compliance with applicable law and regulations, the commenter will be informed that no further action will be taken. If the appropriate ATF officer determines that the commenter has raised a valid issue that ATF has authority to address, he or she will initiate appropriate action. The appropriate ATF officer may, in his or her discretion, notify the commenter as to the action being taken by ATF with respect to the certificate.

[T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

§ 13.71 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the appropriate ATF officer deciding the appeal.

(b) *Informal conference procedures.* The appropriate ATF officer and the applicant or certificate holder will agree upon a date for an informal conference. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the appropriate ATF officer.

[T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

§ 13.72 Effective dates of revocations.

(a) *Effective dates*—(1) *Revocation of specific certificates.* A written decision to revoke a certificate becomes effective 60 days after the date of the decision.

(2) *Revocation by operation of law or regulation.* If a certificate is revoked by operation of law or regulation, the revocation becomes effective on the effective date of the change in law or regulation with which the certificate does not comply, or if a separate label compliance date is given, on that date.

(b) *Use of certificate during period of appeal.* If a certificate holder files a

timely appeal after receipt of a decision to revoke a certificate pursuant to § 13.44, the holder may continue to use the certificate at issue until the effective date of a final decision issued by the appropriate ATF officer. However, the effective date of a notice of revocation by operation of law or regulations, issued pursuant to § 13.52, is not stayed pending the appeal.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

§ 13.73 Effect of revocation.

On and after the effective date of a revocation of a certificate of label approval, certificate or exemption from label approval, or distinctive liquor bottle approval, the label or distinctive liquor bottle in question may not be used to bottle or pack distilled spirits, wine or malt beverages, to remove such products from the place where they were bottled or packed, or to remove such products from customs custody for consumption.

§ 13.74 Surrender of certificates.

On the effective date of a final decision that has been issued to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, the certificate holder must surrender the original of the certificate to ATF for manual cancellation. Regardless of whether the original certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been manually canceled or not, the certificate is null and void after the effective date of the revocation. It is a violation of this section for any certificate holder to present a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval to an official of the United States Government as a valid certificate after the effective date of the revocation of the certificate if the certificate holder has been previously notified that such certificate has been revoked by ATF.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

§ 13.75 Evidence of receipt by ATF.

If there is a time limit on ATF action that runs from ATF's receipt of a document, the date of receipt may be established by a certified mail receipt or equivalent written acknowledgment secured by a commercial delivery service or by a written acknowledgment of personal delivery. In the absence of proof of receipt, the date the document is logged in by ATF will be considered the date of receipt.

§ 13.76 Service on applicant or certificate holder.

(a) *Method of service.* ATF must serve notices of denial on an applicant by first class mail, or by personal delivery. ATF must serve notices of proposed revocation and notices of revocation on a certificate holder by certified mail, return receipt requested, by a commercial delivery service that will provide an equivalent written acknowledgment from the recipient, or by personal delivery.

(b) *Date of receipt.* If there is a time limit on a certificate holder's action that runs from the holder's receipt of a document, the date of receipt may be established by a certified mail receipt, an equivalent written acknowledgment secured by a commercial delivery service, or by a written acknowledgment of personal delivery.

(c) *Person to be served.* When service is by mail or other commercial delivery service, a copy of the document must be sent to the applicant or certificate holder at the address stated in the application or at the last known address. If authorized by the applicant or certificate holder, the copy of the document may be mailed to a designated representative. If service is by personal delivery, a copy of the document must be delivered to the certificate holder or to a designated representative. In the case of a corporation, partnership, or association, personal delivery may be made to an officer, manager, or general agent thereof, or to the attorney of record.

§ 13.81 Representation before ATF.

An applicant or certificate holder may be represented by an attorney, certified public accountant, or other person recognized to practice before

ATF as provided in 31 CFR part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms). The applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities) shall apply.

§ 13.91 Computation of time.

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 counted. The last day of the period to be computed is counted, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the next day that is not a Saturday, Sunday, or legal holiday. Papers or documents that are required or permitted to be filed under this part must be received at the appropriate office within the filing time limits, if any.

§ 13.92 Extensions.

An applicant or certificate holder may apply to the appropriate ATF officer deciding the appeal for an extension of any time limit prescribed in this part. The time limit may be extended if ATF agrees the request is reasonable.

[T.D. ATF–406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF–449, 66 FR 19086, Apr. 13, 2001]

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT

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AUTHORITY: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

SOURCE: T.D. ATF–294, 55 FR 5421, Feb. 14, 1990, unless otherwise noted.

Subpart A—Scope

§ 16.1 General.

The regulations in this part relate to a health warning statement on labels of containers of alcoholic beverages.

§ 16.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

Subpart B—Definitions

§ 16.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this section.

Act. The Alcoholic Beverage Labeling Act of 1988.

Alcoholic beverage. Includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption.

ATF. The Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury.

Bottle. To fill a container with an alcoholic beverage and to seal such container.

Bottler. A person who bottles an alcoholic beverage.

Brand label. The label carrying, in the usual distinctive design, the brand name of the alcoholic beverage.

Container. The innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

Health. Includes, but is not limited to, the prevention of accidents.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State

agency, or any officer or employee thereof.

Sale and distribution. Includes sampling or any other distribution not for sale.

State. Includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

State law. Includes State statutes, regulations and principles and rules having the force of law.

United States. The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

Use of other terms. Any other term defined in the Alcoholic Beverage Labeling Act and used in this part shall have the same meaning as assigned to it by the Act.

[T.D. ATF–294, 55 FR 5421, Feb. 14, 1990, as amended by T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

Subpart C—Health Warning Statement Requirements for Alcoholic Beverages

§ 16.20 General.

(a) *Domestic products*. On and after November 18, 1989, no person shall bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by § 16.21. It is the responsibility of the bottler to provide, upon request, sufficient evidence to establish that the alcoholic beverage was bottled prior to November 18, 1989.

(b) *Imported products*. On and after November 18, 1989, no person shall import for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by § 16.21. This requirement does not apply to alcoholic beverages that were bottled in the foreign country prior to November 18, 1989. It is the responsibility of the importer to provide, upon request, sufficient evidence to establish that the alcoholic beverage was bottled prior to such date.

§ 16.21 Mandatory label information.

There shall be stated on the brand label or separate front label, or on a back or side label, separate and apart from all other information, the following statement:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.

(2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

(Authority: Sec. 8001, Pub. L. 100–690, 102 Stat. 4181, 27 U.S.C. 215)

§16.22 General requirements.

(a) *Legibility*. (1) All labels shall be so designed that the statement required by § 16.21 is readily legible under ordinary conditions, and such statement shall be on a contrasting background.

(2) The first two words of the statement required by § 16.21, i.e., ''GOVERNMENT WARNING,'' shall apear in capital letters and in bold type. The remainder of the warning statement may not appear in bold type.

(3) The letters and/or words of the statement required by § 16.21 shall not be compressed in such a manner that the warning statement is not readily legible.

(4) The warning statement required by § 16.21 shall appear in a maximum number of characters (i.e., letters, numbers, marks) per inch, as follows:

Minimum required type size for warning statement	Maximum number of characters per inch
1 millimeter	40
2 millimeters	25
3 millimeters	12

(b) *Size of type*. (1) Containers of 237 milliliters (8 fl. oz.) or less. The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 1 millimeter.

(2) Containers of more than 237 milliliters (8 fl. oz.) up to 3 liters (101 fl. oz.). The mandatory statement required by

§ 16.21 shall be in script, type, or printing not smaller than 2 millimeters.

(3) Containers of more than 3 liters (101 fl. oz.). The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 3 millimeters.

(c) *Labels firmly affixed.* Labels bearing the statement required by § 16.21 which are not an integral part of the container shall be affixed to containers of alcoholic beverages in such manner that thay cannot be removed without thorough application of water or other solvents.

[T.D. ATF–294, 55 FR 5421, Feb. 14, 1990, as amended by T.D. 372, 61 FR 20723, May 8, 1996]

Subpart D—General Provisions

§ 16.30 Certificates of label approval.

Certificates of label/bottle approval or certificates of exemption from label approval on ATF Form 5100.31, issued pursuant to parts 4, 5, and 7 of this chapter for imported and domestically bottled wine, distilled spirits, and malt beverages, shall not be approved with respect to such beverage bottled on and after November 18, 1989, unless the label for the container of such beverage bears the health warning statement required.

[T.D. ATF–294, 55 FR 5421, Feb. 14, 1990, as amended by T.D. ATF–425, 65 FR 11892, Mar. 7, 2000]

§ 16.31 Exports.

The regulations in this part shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: *Provided*, That this exemption shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

§ 16.32 Preemption.

No statement relating to alcoholic beverages and health, other than the statement required by § 16.21, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

§ 16.33 Civil penalties.

(a) *General.* Any person who violates the provisions of this part shall be subject to a civil penalty of not more than $10,000, and each day shall constitute a separate offense.

(b) *Adjusted penalty for violations occurring after October 23, 1996.* Pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the civil penalty provided for in paragraph (a) of this section shall be periodically adjusted in accordance with inflation. Accordingly, for violations occurring after October 23, 1996, the civil penalty shall be not more than $11,000.

[T.D. ATF–385, 61 FR 54936, Oct. 23, 1996]

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

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AUTHORITY: 26 U.S.C. 5010, 5131-5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: T.D. ATF–379, 61 FR 31412, June 20, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 17 appear by T.D. ATF–436, 66 FR 5470, 5471, Jan. 19, 2001.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms, including bonds and records, 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or at the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5470, Jan. 19, 2001]

§ 17.3 Alternate methods or procedures.

(a) *General.* The appropriate ATF officer may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she 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 method or procedure prescribed by this part, 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.

(b) *Application.* A letter of application to employ an alternate method or procedure must be submitted to the appropriate ATF officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the appropriate ATF officer. The appropriate ATF officer shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the appropriate ATF officer in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization

given by the appropriate ATF officer under this section.

[T.D. ATF–379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5470, Jan. 19, 2001]

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose*. This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96–511.

(b) *OMB control number 1512–0078*. OMB control number 1512–0078 is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512–0079*. OMB control number 1512–0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512–0095*. OMB control number 1512–0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512–0141*. OMB control number 1512–0141 is assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512–0188*. OMB control number 1512–0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512–0378*. OMB control number 1512–0378 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1512–0379*. OMB control number 1512–0379 is assigned to the following sections in this part: §§ 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512–0472*. OMB control number 1512–0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512–0492*. OMB control number 1512–0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512–0500*. OMB control number 1512–0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

(l) *OMB control number 1512–0514*. OMB control number 1512–0514 is assigned to the following sections in this part: §§ 17.147 and 17.182.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see part 26, subparts I and Ob, of this chapter.

[T.D. ATF–436, 66 FR 5470, 5471, Jan. 19, 2001, as amended by T.D. ATF–459, 66 FR 38549, July 25, 2001]

§ 17.6 Signature authority.

No claim, bond, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office where the required document must be filed. The appropriate ATF officer with whom the claim or other required document is filed may, when he or she considers it necessary, require additional evidence of the authority of the agent or representative to execute the document. Except as otherwise provided by this part, powers of attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, ATF Form 5100.1, Signing Authority for Corporate Officials, may be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

§ 17.7 Delegations of the Director.

The regulatory authorities of the Director contained in this part 17 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.13, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 17 and 18. ATF delegation orders, such as ATF Order 1130.13, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, VA 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–436, 66 FR 5470, Jan. 19, 2001]

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender 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 1130.13, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 17 and 18.

Approved, or *approved for drawback*. When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of Treasury, Washington, DC 20226.

Distilled spirits, or *spirits*. That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

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 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or *eligible for drawback*. When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been ''filed'' when it is received by the office of the proper Government official; but if an item is mailed timely with postage prepaid, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products to which all three of the following conditions apply: they are made with taxpaid distilled spirits, they have been disapproved for drawback, and they are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. However, ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

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

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become ''subject to drawback'' when they are used in the manufacture of a nonbeverage product. When spirits have become ''subject to drawback,'' they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

U.S.C. The United States Code.

[T.D. ATF–379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5470, Jan. 19, 2001]

Subpart C—Special Tax

§ 17.21 Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rate of special tax.

Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the claim.

SPECIAL TAX RETURNS

§ 17.31 Filing of return and payment of special tax.

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.

(26 U.S.C. 6091, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General*. 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 §§ 17.41–43).

(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 of special tax to which the taxpayer is subject.

(6) Ownership and control information: 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, and if the information previously provided is still current.

(b) *Multiple locations.* 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 the 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 § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as ''individual owner,'' ''member of partnership,'' or, in the case of a corporation, the title of the officer. 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.

§ 17.34 Verification of returns.

ATF Forms 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

EMPLOYER IDENTIFICATION NUMBER

§ 17.41 Requirement for employer identification number.

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 (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS–4, Application for Employer Identification Number, filed by the taxpayer. Form SS–4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS–4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS–4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of

business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS–4.

The taxpayer shall prepare and file the application on IRS Form SS–4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated ''Manufacturer of Nonbeverage Products.'' This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by §17.32(b)(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).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by §17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location*. On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated ''Amended Return,'' disclosing the proper name and address.

(b) *Multiple locations*. If an error is discovered on a special tax stamp obtained under the provisions of §17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the appropriate ATF officer. On receipt of this notification, the appropriate ATF officer shall issue to the taxpayer a ''Certificate in Lieu of Lost or Destroyed Special Tax Stamp.'' The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in §17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any appropriate ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

CHANGE IN LOCATION

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as ''Amended Return.'' This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

CHANGE IN CONTROL

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to

be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

CHANGE IN NAME OR STYLE

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

REFUND OF SPECIAL TAX

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax must be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim must set forth in detail sufficient reasons and supporting facts of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

[T.D. ATF–379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Appropriate ATF officers are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the

Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the FEDERAL REGISTER annually on 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: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, 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 principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR part 225.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. 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 other than a manually signed original is submitted, it shall be accompanied by certification of its validity.

(b) *Principal.* The principal shall execute and file a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, any consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the appropriate ATF officer shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) 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 superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the appropriate ATF officer, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, ''Superseding Bond.'' When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

TERMINATION OF BONDS

§ 17.111 General.

(a) Bonds on ATF Form 5154.3 shall be terminated by the appropriate ATF officer, as to liability on drawback allowed after a specified future date, in the following circumstances:

(1) Pursuant to a notice by the surety as provided in § 17.112.

(2) Following approval of a superseding bond, as provided in § 17.108.

(3) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis.

(b) However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the appropriate ATF officer shall mark the bond ''canceled,'' followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the appropriate ATF officer in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the appropriate ATF officer. The surety shall deliver one copy of the notice to the principal and the original to the appropriate ATF officer. The surety shall also file with the appropriate ATF officer an acknowledgment or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the appropriate ATF officer according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the appropriate ATF officer determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in §§ 17.132 and 17.182, manufacturers shall

file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing*. Formulas shall be filed on ATF Form 5154.1, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering*. The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas*. One copy of each approved Form 5154.1 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to appropriate ATF officers for examination in the investigation of drawback claims.

[T.D. ATF–179, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 17.122 Amended or revised formulas.

Except as provided in this section, amended or revised formulas are considered to be new formulas and shall be numbered accordingly. Minor changes may be made to a current formula on ATF Form 5154.1 with retention of the original formula number, if approval is obtained from the appropriate ATF officer. In order to obtain approval to make a minor formula change, the person holding the Form 5154.1 shall submit a letter of application to the appropriate ATF officer, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

[T.D. ATF–179, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 17.123 Statement of process.

Any person claiming drawback under the regulations in this part may be required, at any time, to file a statement of process, in addition to that required by ATF Form 5154.1, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

Any person claiming drawback or submitting a formula for approval under the regulations in this part may be required, at any time, to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas*. If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of adoption with the appropriate ATF officer. The notice shall be filed with the first

claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. A letterhead notice must be filed with the appropriate ATF officer and be accompanied by two photocopies of each formula to be adopted. The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5154.2) filed with the first claim relating to the adopted formula(s).

[T.D. ATF–179, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5154.1 for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5154.1 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from ''intermediate product'' to ''unfinished nonbeverage product'' (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5154.1. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

APPROVAL OF FORMULAS

§ 17.131 Formulas on ATF Form 5154.1.

Upon receipt, formulas on ATF Form 5154.1 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by paragraph (b) of this section

or by ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5154.1.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 (''4×'') are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5154.1 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces or syrups.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The appropriate ATF officer has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5154.1, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5154.1 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479–A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A.

may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, provided—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; recovered S.D.A., with or without its original denaturants, shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5154.1 . This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved because it is fit for beverage use, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the appropriate ATF officer, the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer must file claim for drawback with the appropriate ATF officer who has the authority to approve or disapprove claims. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place

of business. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

[T.D. ATF–179, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the appropriate ATF officer, in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the appropriate ATF officer.

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file an executed bond on ATF Form 5154.3, conforming to the provisions of subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). 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 is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

(a) Whether the special tax has been paid.

(b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.

(c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under subpart F of this part. (If not, attach explanation.)

(e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5154.2 may be used without prior authorization, if the modified format clearly shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the appropriate ATF officer may require additional supporting

data when needed to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown, with separate totals for each effective tax rate. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains shall not be offset by known losses.

§ 17.148 Allowance of claims.

(a) *General*. Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(b) *Penalty*. Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of $1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause*. Reasonable cause exists where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case is individually evaluated.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

SPIRITS SUBJECT TO DRAWBACK

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General*. Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(b) *Spirits used in an ion exchange column*. Distilled spirits used in recharging an ion exchange column, the operation of which is essential to the production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment*. Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be

considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable appropriate ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of each tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) *Distilled spirits received in bottles.* For distilled spirits received in bottles, the manufacturer shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the U.S. Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a

distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained with the commercial invoice (if the latter is a separate document) as evidence of taxpayment of the spirits. The record shall show the effective tax rate(s) (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whisky (as defined in the standards of identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* The production record shall refer to ingredients by the same names as are used for them in the product's formula. This includes formulas submitted to ATF and formulas contained in the publications listed in § 17.132. Other names for the ingredients may be added in the production record, if necessary for the manufacturer's operations. Usage of ingredients (including spirits) may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees

Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the ''Gauging Manual,'' is available. See subpart E of part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

(1) The type of disposition;

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either contains less than 3 percent of distilled spirits by volume, or is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the appropriate ATF officer may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The ''on hand'' figures reported in Part II of ATF Form 5154.2 shall be verified by physical inventories taken as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback. Spirits taxpaid at different effective tax rates shall be inventoried separately. The inventory record shall show the date inventory was taken, the person(s) by whom it was taken, subtotals for each product inventoried, and any gains or losses disclosed; and shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5154.2) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by known losses. If no claim is filed for a quarter (nor for any monthly period therein), then no physical inventory is required for that quarter.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the appropriate ATF officer may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the appropriate ATF officer. Any apparatus used to separate alcohol is subject to the registration requirements of 26 U.S.C. 5179 and subpart C of part 29 of this chapter. Recovery operations

shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(1) The date of recovery;

(2) The commodity or process from which the spirits were recovered;

(3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;

(4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;

(5) The commodity in which the recovered distilled spirits were reused; and

(6) The date of reuse.

(c) Whenever recovered spirits are destroyed (see § 17.183), the record shall further show—

(1) The reason for the destruction;

(2) The date, time, location, and manner of destruction;

(3) The number of proof gallons destroyed; and

(4) The name of the individual who accomplished or supervised the destruction.

[T.D. ATF–379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF–462, 66 FR 42736, Aug. 15, 2001]

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5154.1 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the appropriate ATF officer may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by appropriate ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by appropriate ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has

been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by appropriate ATF officers. If refills have been made of prescriptions received in a previous claim period, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *Recovered alcohol.* Manufacturers of nonbeverage products shall not sell or transfer recovered spirits to any other premises without ATF authorization under § 17.3. If recovered spirits are stored pending reuse, storage facilities shall be adequate to protect the revenue. If recovered spirits are destroyed, the record required by § 17.168(c) must be kept. Spirits recovered from intermediate products may be destroyed without notice to ATF. Spirits recovered from nonbeverage products may be destroyed pursuant to a notice filed with the regional director (compliance) at least 12 days prior to the date of destruction. The notice shall state the reason for the destruction, the intended date of destruction, and the approximate quantity involved. The regional director (compliance) may impose specific conditions, including requiring that the destruction be witnessed by an appropriate ATF officer. Unless the manufacturer is otherwise advised by the regional director (compliance) before the date specified in the notice, the destruction may proceed as planned.

(b) *By-product material (general).* By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (c) of this section, prior written approval shall be obtained from the appropriate ATF officer as to the adequacy, under this section, of any substance proposed to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(c) *Spent vanilla beans.* Specific approval from the appropriate ATF officer is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by Part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase ''separate and distinct entities'' includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5154.1. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as ''in process'' in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as an integral part of the production records for the related nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

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Subpart F—Records and Reports

18.61 Records and reports.
18.62 Record of transfer.
18.63 Record of transfer to a bonded wine cellar.
18.64 Photographic copies of records.
18.65 Annual report.

AUTHORITY: 26 U.S.C. 5001, 5171–5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 7805.

SOURCE: T.D. ATF–104, 47 FR 23921, June 2, 1982, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 18 appear by T.D. ATF–436, 66 FR 5471, 5472, Jan. 19, 2001.

Subpart A—Scope

§ 18.1 Scope.

The regulations in this part relate to the qualification and operation (including activities incident thereto) of plants for the manufacture of volatile fruit-flavor concentrate (essence). The regulations in this part apply to the several States of the United States and the District of Columbia.

§ 18.2 Applicability of law.

Except as specified in 26 U.S.C. 5511, the provisions of 26 U.S.C. Chapter 51 are not applicable to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if:

(a) The concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of the concentrate; and

(b) The concentrate is rendered unfit for use as a beverage before removal from the place of manufacture, or (in the case of concentrate which does not exceed 24 percent alcohol by volume) the concentrate is transferred to a bonded wine cellar for use in the production of natural wine; and

(c) The manufacturer of concentrate complies with all requirements for the protection of the revenue with respect to the production, removal, sale, transportation, and use of concentrate, and of the mash or juice from which it is produced, as may be prescribed by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.3 Unlawful operations.

(a) A manufacturer of concentrate who violates any of the conditions stated in § 18.2 is subject to the taxes and penalties otherwise applicable under 26 U.S.C. Chapter 51 in respect to such operations.

(b) Any person who sells, transports, or uses any concentrate or the mash or juice from which it is produced in violation of law or regulations is subject to all the provisions of 26 U.S.C. Chapter 51 pertaining to distilled spirits and wines, including those requiring the payment of the tax thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Subpart B—Definitions

§ 18.11 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.

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 1130.13, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 17 and 18.

Bonded wine cellar. Premises established under 27 CFR part 24 for the production, blending, cellar treatment, storage, bottling, or packaging of untaxpaid wine, and includes premises designated as ''bonded winery.''

Concentrate. Any volatile fruit-flavor concentrate (essence) produced by any process which includes evaporations from any fruit mash or juice.

Concentrate plant. An establishment qualified under this part for the production of concentrate.

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

Distilled spirits plant. An establishment qualified under 27 CFR part 19, excluding alcohol fuel plants, for producing, warehousing, or processing distilled spirits (including denatured distilled spirits).

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the application, report, 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 application or report), 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.''

Fold. The ratio of the volume of the fruit mash or juice to the volume of the concentrate produced from the fruit mash or juice. For example, one gallon of concentrate of 100-fold would be the product from 100 gallons of fruit mash or juice.

Fruit. All products commonly known and classified as fruit, berries, or grapes.

Fruit mash. Any unfermented mixture of juice, pulp, skins, and seeds prepared from fruit, berries, or grapes.

High-proof concentrate. For the purposes of this part, ''high-proof concentrate'' means a concentrate (essence), as defined in this section, that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e. without the addition of other substances.

Juice. The unfermented juice (concentrated or unconcentrated) of fruit, berries, or grapes, exclusive of pulp, skins, or seeds.

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

Processing material. The fruit mash or juice from which concentrate is produced.

Proprietor. A person qualified under this part to operate a concentrate plant.

Registry number. The number assigned to a concentrate plant or a bonded wine cellar for an approved application as required by Parts 18 and 24, respectively.

U.S.C. The United States Code.

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–299, 55 FR 24989, June 19, 1990; T.D. ATF–436, 66 FR 5471, Jan. 19, 2001; T.D. ATF–455, 66 FR 29482, May 31, 2001]

Subpart C—Administrative and Miscellaneous Provisions

§ 18.12 Delegations of the Director.

The regulatory authorities of the Director contained in this part 18 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.13, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 17 and 18. ATF delegation orders, such as ATF Order 1130.13, are available to any interested person 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/).

[T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 18.13 Alternate methods or procedures.

(a) *General*. The proprietor, on specific approval by the appropriate ATF officer, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The appropriate ATF officer may approve an alternate method or procedure, subject to stated conditions, when 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.

(b) *Application*. A proprietor who desires to employ an alternate method or procedure shall submit a written application to the appropriate ATF officer. The application will specifically describe the proposed alternate method or procedure and set forth the reasons therefor. Alternate methods or procedures may not be employed until the application has been approved by the appropriate ATF officer. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the appropriate ATF officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996; T.D. ATF–436, 66 FR 5471, Jan. 19, 2001]

§ 18.14 Emergency variations from requirements.

(a) *General*. The appropriate ATF officer may approve emergency variations from requirements specified in this part, where the appropriate ATF officer finds that an emergency exists, the proposed variations are necessary, and the proposed variations:

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) 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 stated in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations will automatically terminate the authority for such variations and the proprietor 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 regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation.

(b) *Application*. A proprietor who desires to employ emergency variations shall submit a written application to the appropriate ATF officer. The application will describe the proposed variations and set forth the reasons therefor. Variations will not be employed until the application has been approved, except when an emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the appropriate ATF officer via telephone.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.15 Right of entry and examination.

Appropriate ATF officers may at all times, as well by night as by day, enter any concentrate plant to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as they deem necessary. Whenever appropriate ATF

officers, having demanded admittance and declared their name and office, are not admitted into such premises by the proprietor or other person having charge thereof, they may at all times use such force as is necessary for them to gain entry to such premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended, 1392, as amended (26 U.S.C. 5203, 5511))

§ 18.16 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form will 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 will be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or at the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–249, 52 FR 5960, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF–436, 66 FR 5472, Jan. 19, 2001]

DOCUMENT REQUIREMENTS

§ 18.17 Retention of documents.

The proprietor shall maintain a file of all approved applications and other documents, on or convenient to the concentrate plant premises, available for inspection by appropriate ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.18 Execution under penalties of perjury.

When a form or other document called for under this part is required to be executed under penalties of perjury, it will be so executed, as defined in § 18.11, and signed by an authorized person.

(Act of August 16, 1954, Pub. L. 591, Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

§ 18.19 Security.

The concentrate plant and equipment will be so constructed, arranged, equipped, and protected as to afford adequate protection to the revenue and facilitate inspection by appropriate ATF officers.

Subpart D—Qualification

§ 18.21 General.

A person who desires to engage in the business of manufacturing concentrate shall submit an application for registration on Form 27–G (5520.3) and receive approval as provided in this part. All written statements, affidavits, and other documents submitted in support of the application or incorporated by reference are deemed a part thereof.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.22 Restrictions as to location and use.

(a) *Restrictions.* A concentrate plant may not be established in any dwelling house or on board any vessel or boat, or on any premises where any other business is conducted. The premises of a concentrate plant may be used only for the business stated in the approved application for registration.

(b) *Exceptions.* The appropriate ATF officer may authorize (1) the establishment of a concentrate plant on premise where other business is conducted, or (2) the use of the premises of a concentrate plant for other business. A person or proprietor desiring such authorization shall submit a written application to the appropriate ATF officer. The application will describe the other business by type and the premises to be used. If the premises of a concentrate plant are to be used for other business, the relationship (if any) to the concentrate plant will be described in the application. A concentrate plant may not be established on premises where other business is conducted or used to conduct other business until the application is approved. The appropriate ATF officer may decline to approve the application or withdraw the

authorization if the revenue is jeopardized or the effective administration of this part is hindered.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.23 Registry of stills.

The provisions of subpart C of part 29 of this chapter are applicable to stills or distilling apparatus located on concentrate plant premises used for the production of concentrate. As provided under § 29.55, the listing of a still in the application, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1392, as amended (26 U.S.C. 5179, 5511))

[T.D. ATF–207, 50 FR 23681, June 5, 1985, as amended by T.D. ATF–462, 66 FR 42736, Aug. 15, 2001]

APPLICATION

§ 18.24 Data for application.

Applications on Form 27–G (5520.3) will include the following:

(a) Serial number;

(b) Name and principal business address of the applicant, and the location of the plant if different from the business address;

(c) Purpose for which filed;

(d) Information regarding proprietorship, supported by the organizational documents listed in § 18.25; and

(e) Description of each still and a statement of its maximum capacity.

Where any of the information required by this section is on file with the appropriate ATF officer, that information, if accurate and complete, may be incorporated by reference by the applicant and made a part of the application.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.25 Organizational documents.

The supporting information required by paragraph (d) of § 18.24 includes, as applicable:

(a) Extracts from the articles of incorporation or from the minutes of meetings of the board of directors, authorizing the incumbents of certain offices, or other persons, to sign for the corporation;

(b) Names and addresses of the officers and directors (Do not list officers and directors who have no responsibility in connection with the operation of the concentrate plant.);

(c) Names and addresses of the 10 persons having the largest ownership or other interest in the corporation or other entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him; and

(d) In the case of an individual owner or a partnership, the name and address of every person interested in the concentrate plant, whether the interest appears in the name of the interested party or in the name of another for him.

§ 18.26 Powers of attorney.

The proprietor shall execute and file a Form 1534 (5000.8) for every person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application.)

(Approved by the Office of Management and Budget under control number 1512–0079)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.27 Additional requirements.

(a) The appropriate ATF officer, to protect the revenue, may require:

(1) Additional information in support of an application for registration;

(2) Marks on major equipment to show serial number, capacity, and use;

(3) Installation of meters, tanks, pipes, or other apparatus; and

(4) Installation of security devices.

(b) Any proprietor refusing or neglecting to comply with any requirement of this section shall not be permitted to operate.

(Approved by the Office of Management and Budget under control number 1512–0046)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended, 1395, as amended (26 U.S.C. 5172, 5178, 5552))

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

CHANGES AFTER ORIGINAL ESTABLISHMENT

§ 18.31 General requirements.

Where there is a change with respect to the information shown in the application, the proprietor shall submit, within 30 days of the change (except as otherwise provided in this part), an amended application on Form 27–G (5520.3).

(Approved by the Office of Management and Budget under control number 1512–0046)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.32 Change in name.

The proprietor shall submit an amended application to cover any change in the individual, firm, or corporate name.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.33 Change in location.

The proprietor shall submit an amended application to cover a change in the location of a concentrate plant. Operation of the concentrate plant may not be commenced at the new location prior to approval of the amended application.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.34 Continuing partnerships.

If, under the laws of the particular State, the partnership is not immediately terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the plant under the prior qualification of the partnership. If the surviving partner acquires the business on completion of the settlement of the partnership, such partner shall qualify in his own name form the date of acquisition, as provided in § 18.35. The rule set forth in this section also applies where there is more than one surviving partner.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.35 Change in proprietorship.

(a) *General*. If there is a change in the proprietorship of a concentrate plant, the outgoing proprietor shall comply with the requirements of § 18.38, and the successor shall, before commencing operations, file application and receive approval in the same manner as a person qualifying as the proprietor of a new concentrate plant. Processing material, concentrate and other materials may be transferred from an outgoing proprietor to a successor.

(b) *Fiduciary*. A successor to the proprietorship of a concentrate plant who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall comply with the provisions of paragraph (a) of this section. If the fiduciary was appointed by a court, the effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by a court, the date the fiduciary assumes control shall coincide with the effective date of

the qualifying documents filed by the fiduciary.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.36 Change in officers and directors.

The proprietor shall submit an amended application to cover changes in the list of officers and directors furnished under the provisions of § 18.25.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.37 Change in stockholders.

The proprietor shall submit changes in the list of stockholders furnished under the provisions of § 18.25 annually on May 1. When the sale or transfer of capital stock results in a change of control or management of the business, the proprietor shall comply with the provisions of § 18.35.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.38 Permanent discontinuance.

A proprietor who permanently discontinues the business of a concentrate manufacturer shall, after completion of operations, file an application on Form 27–G (5520.3) to cover such discontinuance, giving the date of the discontinuance.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.39 Qualification to alternate a volatile fruit-flavor concentrate plant and a distilled spirits plant.

A proprietor of a volatile fruit-flavor concentrate plant operating a contiguous distilled spirits plant may alternate the use of such premises between the two functions through extension and curtailment by filing with the appropriate ATF officer the following information:

(a) ATF Form 27–G (5520.3) and ATF Form 5110.41 to cover the proposed alternation of premises;

(b) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and pipe lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(c) A bond or a consent of surety to cover the proposed alternation of premises.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

§ 18.40 Qualification to alternate volatile fruit-flavor concentrate plant and bonded wine cellar.

A proprietor of a volatile fruit-flavor concentrate plant operating a contiguous bonded wine cellar may alternate the use of each premise by extension and curtailment by filing with the appropriate ATF officer the following information:

(a) ATF Form 27–G (5520.3) and ATF Form 5120.25 to cover the proposed alternation of premises;

(b) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and pipe lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(c) A bond or a consent of surety to cover the proposed alternation of premises.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

§ 18.41 Separation of premises.

The appropriate ATF officer may specify additional means of separating the volatile fruit-flavor concentrate plant from a distilled spirits plant or bonded wine cellar premises.

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

§ 18.42 Record of alternation.

After approval of the qualifying documents for the alternation of premises, the proprietor must execute a record each time that the premises are alternated. The record will contain the following information:

(a) Identification assigned by ATF, including the plant or registry number, of the volatile fruit-flavor concentrate plant and the distilled spirits plant or bonded wine cellar;

(b) Effective date and time of proposed change; and

(c) Description of the alternation that identifies the diagrams depicting the premises before and after the alternation.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

§ 18.43 Conditions of alternation.

(a) *Curtailment of volatile fruit-flavor concentrate plant.* The proprietor must remove all concentrate, fruit mash, and juice from the volatile fruit-flavor concentrate plant alternated to a distilled spirits plant or to a bonded wine cellar premises, unless such concentrate, fruit mash, or juice is being simultaneously transferred to the distilled spirits plant or bonded wine cellar premises.

(b) *Extension of volatile fruit-flavor concentrate premises and curtailment of distilled spirits plant.* The proprietor must remove all spirits, denatured spirits, articles and wine, except for concentrate, fruit mash, or juice that is being simultaneously transferred to the volatile fruit-flavor concentrate plant.

(c) *Extension of volatile fruit-flavor concentrate premises and curtailment of bonded wine cellar premises.* The proprietor must remove all wine and spirits from the alternated bonded wine cellar premises, except for concentrate, fruit mash, or juice that is being simultaneously transferred to the volatile fruit-flavor concentrate plant.

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

Subpart E—Operations

§ 18.51 Processing material.

(a) *General.* A proprietor may produce processing material or receive processing material produced elsewhere. Fermented processing material may not be used in the manufacture of concentrate. Processing material may be used if it contains no more alcohol than is reasonably unavoidable, and must be used when produced, or as soon thereafter as practicable.

(b) *Record of processing material.* A proprietor shall maintain a record, by kind and quantity, of processing material used.

(Approved by the Office of Management and Budget under control number 1512–0098)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.52 Production of high-proof concentrate.

(a) *General.* High-proof concentrate may be produced in a concentrate plant. Concentrate having an alcohol content of more than 24 percent by volume that is fit for beverage use may not be produced in a concentrate plant.

(b) *Determination.* A proprietor shall determine whether a particular concentrate is a high-proof concentrate. However, a proprietor may at any time submit a written request to the appropriate ATF officer for a determination of whether a concentrate is unfit for beverage use. Each request for a determination will include information as to kind, percent alcohol by volume, and fold of the concentrate. The request will be accompanied by a representative 8-ounce sample of the concentrate.

(Approved by the Office of Management and Budget under control number 1512–0046)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.53 Use of concentrate.

Concentrate may be used in the manufacture of any product made in the conduct of another business authorized to be conducted on concentrate plant

premises under the provisions of § 18.22, if such product contains less than one-half of one percent of alcohol by volume.

§ 18.54 Transfer of concentrate.

(a) *Concentrate unfit for beverage use.* Concentrate (including high-proof concentrate and concentrate treated as provided in paragraph (c) of this section) unfit for beverage use may be transferred for any purpose authorized by law.

(b) *Concentrate fit for beverage use.* Concentrate fit for beverage use may be transferred only to a bonded wine cellar. If such concentrate is rendered unfit for beverage use, it may be transferred as provided in paragraph (a) of this section.

(c) *Rendering concentrate unfit for beverage use.* Concentrate may be rendered unfit for beverage use by reducing the alcohol content to not more than 15 percent alcohol by volume (if the reduction does not result in a concentrate of less than 100-fold), and adding to each gallon thereof, in a quantity sufficient to render the concentrate unfit for beverage use, the following:

(1) Sucrose; or

(2) Concentrated fruit juice, of at least 70 Brix, made from the same kind of fruit as the concentrate; or

(3) Malic, citric, or tartaric acid.

(d) *Record of transfer.* The proprietor shall record transfers of concentrate (including high-proof concentrate) on a record of transfer as required in §§ 18.62 or 18.63.

(Approved by the Office of Management and Budget under control number 1512–0098)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.55 Label.

Each container of concentrate will have affixed thereto, before transfer, a label identifying the product and showing (a) the name of the proprietor; (b) the registry number of the plant; (c) the address of the plant; (d) the number of wine gallons; and (e) the percent of alcohol by volume.

(Approved by the Office of Management and Budget under control number 1512–0098)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.56 Receipt of concentrate.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate that the proprietor shipped. In addition, concentrate that is unfit for beverage use may be received from another concentrate plant for further processing in accordance with this part.

(b) *Record of concentrate received.* When concentrate is received, the proprietor must record the receipt, including the name of the consignor and a notation regarding any loss in transit or other discrepancy.

(Approved by the Office of Management and Budget under control number 1512–0098)

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

Subpart F—Records and Reports

§ 18.61 Records and reports.

(a) *General.* Each proprietor shall keep records and reports as required by this part. These records and reports will be maintained on or convenient to the concentrate plant and will be available for inspection by appropriate ATF officers during business hours. Records and reports will be retained by the proprietor for three years from the date they were prepared, or three years from the date of the last entry, whichever is later.

(b) *Records.* Each proprietor shall keep such records relating to or connected with the production, transfer, or return of concentrate and the juice or mash from which it is produced, as will (1) enable any appropriate ATF officer to verify operations and to ascertain whether there has been compliance with law and regulations, and (2) enable the proprietor to prepare Form 1695(5520.2). A proprietor need not prepare a specific record to meet the record requirements of this part. Any book, paper, invoice, bill of lading, or

similar document that the proprietor prepares or receives for other purposes may be used, if all required information is shown.

(c) *Reports.* Each proprietor shall prepare and submit reports (including applications) as required by this part.

(Approved by the Office of Management and Budget under control number 1512–0098)

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.62 Record of transfer.

When concentrate, juice, or fruit mash is transferred from the concentrate plant premises, the proprietor shall prepare, in duplicate, a record of transfer. The record of transfer may consist of a commercial invoice, bill of lading, or any other similar document. The proprietor shall forward the original of the record of transfer to the consignee and retain the copy as a record. Each record of transfer shall show the following information:

(a) Name, registry number, and address of the concentrate plant;

(b) Name and address of the consignee;

(c) Kind (by fruit from which produced) and description of product, e.g. grape concentrate, concentrated grape juice, unconcentrated grape juice, grape mash;

(d) Quantity (in wine gallons); and

(e) For concentrate, percent of alcohol by volume.

(Approved by the Office of Management and Budget under control number 1512–0098)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.63 Record of transfer to a bonded wine cellar.

A proprietor transferring concentrate, juice, or fruit mash to a bonded wine cellar shall prepare a record of transfer as required by § 18.62 and enter the following additional information:

(a) Registry number of the bonded wine cellar;

(b) For each product manufactured from grapes or berries, variety of grape or berry;

(c) For concentrate, fold;

(d) For juice and fruit mash, whether volatile fruit flavor has been removed and, if so, whether the identical volatile fruit flavor has been restored; and

(e) For concentrated juice, total solids content before and after concentration.

(Approved by the Office of Management and Budget under control number 1512–0098)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

[T.D. ATF–104, 47 FR 23921, June 2, 1982, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 18.64 Photographic copies of records.

Proprietors may record, copy, or reproduce records required by this part by any process which accurately reproduces or forms a durable medium for reproducing the original of records. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it were the original record. The reproduced record will be treated and considered for all purposes as though it were the original record. All provisions of law and regulation applicable to the original record are applicable to the reproduced record.

§ 18.65 Annual report.

An annual report, on Form 1695(5520.2), of concentrate plant operations shall be prepared by each proprietor and forwarded in accordance with the instructions for the form. When a proprietor permanently discontinues the business of manufacturing concentrate, the proprietor shall submit the annual report in accordance with the instructions for the form.

[T.D. ATF–436, 66 FR 5472, Jan. 19, 2001]

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AUTHORITY: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 19 appear by T.D. ATF–463 and T.D. ATF–462, 66 FR 42733, 42736, Aug. 15, 2001.

Subpart A—Scope

§ 19.1 General.

The regulations in this part relate to the location, construction, equipment, arrangement, qualification, and operation (including activities incident thereto) of distilled spirits plants.

§ 19.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 19.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR part 4—Wine Labeling and Advertising.
27 CFR part 5—Labeling and Advertising Distilled Spirits.
27 CFR part 20—Distribution and Use of Denatured Alcohol and Rum.
27 CFR part 21—Formulas for Denatured Alcohol and Rum.
27 CFR part 22—Distribution and Use of Tax-Free Alcohol.
27 CFR part 24—Wine.
27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR part 29—Stills and Miscellaneous Regulations.
27 CFR part 30—Gauging Manual.
27 CFR part 71—Rules of Practice in Permit Proceedings.
27 CFR part 194—Liquor Dealers.
27 CFR part 197—Drawback on Distilled Spirits Used in Manfacturing Nonbeverage Products.
27 CFR part 251—Importation of Distilled Spirits, Wine, and Beer.
27 CFR part 252—Exportation of Liquors.
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.

[T.D. ATF–199, 50 FR 9160, Mar. 6, 1985, as amended by T.D. ATF–207, 50 FR 23681, June 5, 1985; T.D. ATF–299, 55 FR 24989, June 19, 1990; T.D. ATF–459, 66 FR 38549, July 25, 2001]

Subpart B—Definitions

§ 19.11 Meaning of terms.

When used in this part and in forms prescribed under this part, terms shall have the meaning ascribed in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms ''includes'' and ''including'' do not exclude other things not enumerated which are in the same general class.

Alcoholic flavoring materials. Any nonbeverage product on which drawback has been or will be claimed under 26 U.S.C. 5131–5134 or flavors imported free of tax which are unfit for beverage purposes. The term includes eligible flavors but does not include flavorings or flavoring extracts manufactured on the bonded premises of distilled spirits plant as an intermediate product.

Application for registration. The application required under 26 U.S.C. 5171(c).

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

Article. A product, containing denatured spirits, which was manufactured under 27 CFR part 20 or this part.

ATF bond. For purposes of this part, ATF bond means the internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

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.

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

Bonded premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bottler. A proprietor of a distilled spirits plant qualified under this part as a processor who bottles distilled spirits.

Bulk container. Any approved container having a capacity in excess of one wine gallon.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or any other container approved by the Director for the conveyance of comparable quantities of spirits, including denatured spirits, and wines.

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

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 statewide holidays in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits, denatured spirits, or wine in any manner for himself or others.

CFR. The Code of Federal Regulations.

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.

Container. A receptacle, vessel, or form of bottle, can, package, tank or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits and denatured spirits.

Denaturant or denaturing material. Any material authorized under 27 CFR part 21 for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in 27 CFR part 21.

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

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

Distilled spirits operations. Any authorized distilling, warehousing, or processing operations conducted on the bonded premises of a plant qualified under this part.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

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 or 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 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.

Export or 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. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, and to the territories of the Virgin Islands, American Samoa, and Guam, shall also be treated as exportations.

Fermenting material. Any material which is to be subjected to a process of fermentation to produce distilling material.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Fiscal year. The period October 1 of one calendar year through September 30 of the following year.

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

In bond. When used with respect to spirits, denatured spirits, articles, or wine refers to spirits, denatured spirits, articles, or wine possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes such spirits, denatured spirits, articles, or wine on the bonded premises of a distilled spirits plant, such spirits, denatured spirits, or wines in transit between bonded premises (including, in the case of wine, bonded wine cellar premises). Additionally, the term refers to spirits in transit from customs custody to bonded premises, and spirits withdrawn without payment of tax under 26 U.S.C. 5214, and with respect to which relief from liability has not occurred under the provisions of 26 U.S.C. 5005(e)(2).

Industrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR part 2.

Intermediate product. Any product manufactured pursuant to an approved formula under 27 CFR part 5, not intended for sale as such but for use in the manufacture of a distilled spirits product.

I.R.C. The Internal Revenue Code of 1954, as amended.

Kind. As applied to spirits, except as provided in § 19.597, 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 protect the revenue adequately.

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.''

Lot identification. The lot identification described in § 19.593.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

Nonindustrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR part 2.

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

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

Package identification number. The package identification number described in § 19.593.

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

Plant or distilled spirits plant. An establishment qualified under this part for distilling, warehousing, processing or any combination thereof.

Plant number. The number assigned to a distilled spirits plant by the regional director (compliance).

Processor. Except as otherwise provided under 26 U.S.C. 5002(a)(6), any person qualified under this part who manufactures, mixes, bottles, or otherwise processes distilled spirits or denatured spirits, or manufactures any article.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof of distillation. The composite proof of the spirits at the time the production gauge is made,or, if the spirits had been reduced in proof prior to the production gauge, the proof of the spirits prior to such reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

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.

Proprietor. The person qualified under this part to operate the distilled spirits plant.

Reconditioning. The dumping of distilled spirits products in bond after their bottling or packaging, for purposes other than destruction, denaturation, redistillation, or rebottling. The term may include the filtration, clarification, stabilization, or reformulation of a product.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the denaturants for completely denatured alcohol, under 27 CFR part 20.

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

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

Season. The period from January 1 through June 30, is the spring season, and the period from July 1 through December 31 is the fall season.

Secretary. The Secretary of the Treasury or his delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Spirits or distilled 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 unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Spirits residues. Residues, containing distilled spirits, of a manufacturing process related to the production of an article under 27 CFR part 20.

Tax-determined or determined. When used with respect to the tax on any distilled spirits to be withdrawn from bond on determination of tax, shall mean that the taxable quantity of spirits has been established.

Taxpaid. When used with respect to distilled spirits shall mean that all applicable taxes imposed by law in respect of such spirits have been determined or paid as provided by law.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Transfer in bond. The removal of spirits, denatured spirits and wines from one bonded premises to another bonded premises.

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

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Warehouseman. A proprietor of a distilled spirits plant qualified under this part to store bulk distilled spirits.

Wine spirits. The term ''wine spirits'' means spirits authorized for use in wine production by 26 U.S.C. 5373.

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985; T.D. ATF–206, 50 FR 23951, June 7, 1985; T.D. ATF–230, 51 FR 21748, June 16, 1986; T.D. ATF–297, 55 FR 18061, Apr. 30, 1990; T.D. ATF–398, 63 FR 44783, Aug. 21, 1998]

Subpart C—Taxes

GALLONAGE TAXES

§ 19.21 Tax.

(a) A tax is imposed by 26 U.S.C. 5001 and 7652 on all spirits produced in, imported into or brought into the United States at the rate prescribed in section 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. Wines containing more than 24 percent of alcohol by volume are taxed as spirits. All products of distillation, by whatever name known, which contain spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as spirits.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 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 § 19.34. The effective tax rate established will be applied to each withdrawal or other taxable disposition of the distilled spirits.

(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); Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652)).

[T.D. ATF–297, 55 FR 18061, Apr. 30, 1990]

§ 19.22 Attachment of tax.

Under 26 U.S.C. 5001(b), the tax attaches to spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.23 Lien.

Under 26 U.S.C. 5004, the tax becomes a first lien on the spirits from the time the spirits come into existence as such. The conditions under which the first lien shall be terminated are described in 26 U.S.C. 5004.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1317, as amended (26 U.S.C. 5004))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.24 Persons liable for tax.

(a) *Distilling*. 26 U.S.C. 5005 provides that the distiller of spirits is liable for the tax and that each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However,

a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond so liable for the tax are relieved of liability if

(1) The proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(2) No person so liable for the tax on the spirits transferred retains any interest in the spirits.

(b) *Storage on bonded premises.* 26 U.S.C. 5005(c) provides that each person operating bonded premises shall be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits which are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are provided for in § 19.41. Voluntary destruction of spirits in bond is provided for in subpart U of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C. 5214, shall be liable for the tax on the spirits from the time of withdrawal. The person shall be relieved of any liability at the time the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawn from customs custody without payment of tax.* 26 U.S.C. 5232(a) provides that when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred shall become liable for the tax on the spirits upon their release from customs custody, and the importer shall thereupon be relieved of liability for the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 U.S.C. 5005); sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.25 Time for tax determination.

Except as otherwise provided in this part, the tax on spirits shall be determined when the spirits are withdrawn from bond. The tax on spirits which are to be withdrawn from bonded premises shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat 1320, as amended (26 U.S.C. 5006))

§ 19.26 Tax on wine.

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 or 7652 on wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported or brought into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5362(b)(3) in connection with wine transferred in bond to a distilled spirits plant. Wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, will continue

until the wine is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5362))

[T.D. ATF–297, 55 FR 18062, Apr. 30, 1990; 55 FR 23634, June 11, 1990]

ASSESSMENTS

§ 19.31 Production not accounted for.

Where the regional director (compliance) finds that a distiller has not accounted for all spirits produced by him, assessment shall be made for the tax on the difference between the quantity reported and the quantity found to have been actually produced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.32 Assessment of tax on spirits, denatured spirits, or wines in bond which are lost, destroyed or removed without authorization.

When spirits, denatured spirits, or wines in bond are lost or destroyed (except spirits, denatured spirits, or wines on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 (a) or (d) or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the spirits, denatured spirits, or wines fails to file a claim for remission as provided in § 19.41(a) or when the claim is denied, the tax shall be assessed. In any case where spirits, denatured spirits, or wines in bond are removed from bonded premises other than as authorized by law, the tax shall be assessed. In the case of losses under circumstances described in 26 U.S.C. 5006(b) with respect to packages of spirits or denatured spirits on bonded premises, the tax shall be assessed if the tax is not paid upon the demand of the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1323, as amended, 1381, as amended (26 U.S.C. 5006, 5008, 5370))

EFFECTIVE TAX RATES

SOURCE: Sections 19.34 through 19.38 added by T.D. ATF–297, 55 FR 18062, Apr. 30, 1990, unless otherwise noted.

§ 19.34 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), which would be imposed on the wine but for its removal to bonded premises; 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 flavors	100.9 proof gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.		

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

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

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

[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).

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

[T.D. ATF–297, 55 FR 18062, Apr. 30, 1990, as amended by T.D. ATF–307, 52736, Dec. 21, 1990]

§ 19.35 Application of effective tax rate (Actual).

Any proprietor who does not apply effective tax rates to taxable removals in accordance with § 19.36, 19.37 or 19.38 shall establish an effective tax rate for each batch of distilled spirits in the processing account on which credit against tax is desired for alcohol derived from eligible wine or eligible flavors. The effective tax rate will be computed in accordance with § 19.34 and will be recorded on the dump or batch record for the product, as required by § 19.748. The serial numbers of the cases removed at such rate shall be recorded on the record of tax determination prescribed in § 19.761 or other related record available for examination by any ATF officer.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); 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))

§ 19.36 Standard effective tax rate.

(a) The proprietor may establish a permanent standard effective tax rate for any eligible distilled spirits product based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product. The permanent standard effective tax rate must equal the highest tax rate applicable to the product. The proprietor shall maintain a permanent record of the standard effective tax rate established for each product in accordance with § 19.765. Whenever the proprietor manufactures a batch of the product with a lesser quantity or lower alcohol content of eligible wine or eligible flavor, he shall keep the cased goods segregated from other completed cases of the same product and shall tax determine the product in accordance with § 19.35.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of the procedure.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); 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))

§ 19.37 Average effective tax rate.

(a) The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition which have been produced during the preceding 6-month period and which have been or will be bottled or packaged, in whole or in part, for domestic consumption. At the beginning of each month, the proprietor shall recompute the average effective tax rate so as to include only the immediately preceding 6-month period.

The average effective tax rate established for a product will be shown in the record of average effective tax rates prescribed in § 19.763.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); 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))

§ 19.38 Inventory reserve account.

(a) The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by 19.764. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); 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))

CLAIMS

§ 19.41 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond.

(a) *Claims for remission*. All claims for remission of tax required by this part, relating to the destruction or loss of spirits, denatured spirits, articles, or wines in bond, shall be filed with the regional director (compliance) and shall set forth the following:

(1) Identification (including serial numbers if any) and location of the container or containers from which the spirits, denatured spirits, articles, or wines were lost, or removed for destruction;

(2) Quantity of spirits, denatured spirits, articles, or wines lost or destroyed from each container, and the total quantity of spirits or wines covered by the claim;

(3) Total amount of tax for which the claim is filed;

(4) Name, number, and address of the plant from which withdrawn without payment of tax or removed for transfer in bond (if claim involves spirits so withdrawn or removed or if claim involves wines transferred in bond) and date and purpose of such withdrawal or removal, except that in the case of imported spirits lost or destroyed while being transferred from customs custody to ATF bond as provided in § 19.481, the name of the customs warehouse, if any, and port of entry will be given instead of the plant name, number, and address;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(9) In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund*. Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, for spirits, denatured spirits, articles, or wines lost or destroyed in bond shall be filed with the regional director (compliance). The claims shall set forth the information required under paragraph (a) of this section and, in addition, shall set forth—

(1) The date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of

the tax for which abatement, credit or refund is claimed, and

(2) The name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name, address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) *Supporting document.* (1) Claims under paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. For claims on spirits, denatured spirits, articles, or wines lost while being transferred by carrier, the claim shall be supported by a copy of the bill of lading.

(2) For claims pertaining to losses of spirits withdrawn without payment of tax and lost prior to being used for research, development or testing, the claim shall be supported by a copy of the proprietor's sample record prescribed in subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.42 Claims on spirits returned to bonded premises.

(a) Claims for credit or refund of tax on spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned under 26 U.S.C. 5215 shall be filed with the regional director (compliance) and shall set forth the following:

(1) Quantity of spirits so returned;

(2) Amount of tax for which the claim is filed;

(3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;

(4) The purpose for which returned; and

(5) The serial number of the gauge record on which the spirits were returned.

(b) If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim shall show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

(d) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–233, 51 FR 28077, Aug. 5, 1986; T.D. ATF–297, 55 FR 18063, Apr. 30, 1990]

§ 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under § 19.41(b) and be supported by documents as provided under § 19.41(c).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.44 Execution of claims and supporting documents.

All claims filed under this part shall be filed on Form 2635 (5620.8). Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 19.100. Supporting documents required by this part to be submitted

with a claim shall be attached to the claim and shall be deemed to be a part thereof. The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; T.D. ATF–251, 52 FR 19313, May 22, 1987]

§ 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.46 Adjustments for credited tax.

When notification of allowance of credit is received from the regional director (compliance), including notification of credit for tax on spirits exported with benefit of drawback as provided in 27 CFR part 252, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next excise tax return (or returns) to the extent necessary to exhaust the credit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1336, as amended (26 U.S.C. 5008, 5062))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985]

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF–271, 53 FR 17541, May 17, 1988, unless otherwise noted.

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant*—(1) *General*. Except as provided in § 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, 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).

(2) *Transition rule*. For purposes of paragraph (a)(1) of this section, a proprietor engaged in distilled spirits plant operations 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.

(b) *Liquor Dealer*—(1) *General*. A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 194 of this chapter.

(2) *Exemption for sales by a proprietor of a distilled spirits plant*. A proprietor of a distilled spirits plant is not required to pay special tax as a wholesale or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a tax-paid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax for each distilled spirits plant. The distiller may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the distilled spirits plant.

(c) *Each place of business taxable*—(1) *General*. A proprietor of a distilled spirits plant 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 partititions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) *Exception for contiguous areas.* A proprietor of a distilled spirits plant does not incur additional special tax liability for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

(26 U.S.C. 5081, 5111, 5113, 5142, 5143)

[T.D. ATF–271, 53 FR 17541, May 17, 1988, as amended by T.D. ATF–285, 54 FR 12609, Mar. 28, 1989]

§ 19.50 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081(a)(1) imposes a special tax of $1,000 per year on every proprietor of a distilled spirits plant.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any distilled spirits plant 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 § 19.49 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 that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 19.51 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 § 19.52).

(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 § 19.723(c).

(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. 6061, 6065, 6151, 7011)

§ 19.52 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 17541, May 17, 1988, as amended by T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

SPECIAL TAX STAMPS

§ 19.53 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 § 19.51(c), 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 shall 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)

§ 19.54 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 Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The 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 a distilled spirits plant, 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 proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The 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 proprietor does not file the amended return within 30 days, the proprietor is required to pay

a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Subpart D—Administrative and Miscellaneous Provisions

ACTIVITIES NOT SUBJECT TO THIS PART

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

[T.D. ATF–379, 61 FR 31425, June 20, 1996]

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General*. Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Exceptions; products classed as beverages*. Products specified under part 17 of this chapter as being fit for beverage use are alcoholic beverages. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also alcoholic beverages. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required*. On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required*. If the regional director (compliance) finds at any time that any product manufactured under paragraph (a) of this section is being used for beverage purposes, or for mixing with beverage spirits other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. (However, the provisions of this paragraph shall not prohibit such products, which are unfit for beverage use, from being used in small quantities for flavoring drinks at the time of serving for immediate consumption.) Where, pursuant to notice, the manufacturer does not desist, or the formula

is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96–39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

[T.D. ATF–379, 61 FR 31425, June 20, 1996]

AUTHORITIES OF THE DIRECTOR

§ 19.61 Form prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information required by each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

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

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. 372, 61 FR 20724, May 8, 1996]

§ 19.62 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, 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 prescibed 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 paragraph. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to do so 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 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 by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1395, as amended (26 U.S.C. 5178, 5552))

§ 19.63 Pilot operations.

The Director may waive any regulatory provisions of 26 U.S.C. Chapter 51, and of the regulations in this part, for temporary pilot or experimental operations for the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the Director may, with the approval of the proprietor thereof, designate any plant for such operations. The provision of law and regulations waived and the period of time during which such waiver shall continue shall be stated in writing by the Director. The provisions of this section shall not be construed as authority to waive the filing of any bond or the payment of any tax, including special (occupational) tax, provided for in 26 U.S.C. Chapter 51.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5554))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–271 53 FR 17543, May 17, 1988]

§ 19.64 [Reserved]

§ 19.65 Experimental distilled spirits plants.

The Director may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of—

(a) Sources of materials from which spirits may be produced;

(b) Processes by which spirits may be produced or refined; or

(c) Industrial uses of spirits.

The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) and of this part (other than this section and § 19.66) to the extent he deems necessary to effectuate the purposes of 26 U.S.C. 5312(b), except that he may not waive the payment of any tax on spirits removed from such plant. A proprietor of an experimental distilled spirits plant established under this section is subject to special (occupational) tax under subpart Ca of this part and shall hold a separate special tax stamp to cover the experimental operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–271 53 FR 17543, May 17, 1988]

§ 19.66 Application to establish experimental plants.

Any person desiring to establish an experimental plant shall make written application to the Director, through the regional director (compliance), and obtain the Director's approval of the proposed establishment. The applicant shall file with such application a bond in such form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location of the plant (including the proximity to other premises or operations subject to the provisions of 26 U.S.C. Chapter 51) and the security measures to be provided. The Director may require the submission of additional information as he deems necessary. The regional director (compliance) shall not permit operations until he has found that the plant conforms to the specifications set forth in the application, as approved, and the applicant has complied with provisions of 26 U.S.C. Chapter 51, and this part not specifically waived by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.67 Spirits produced in industrial processes.

(a) *Applicability*. (1) Persons who produce spirits in industrial processes (including spirits produced as a by-product in connection with chemical or other processes) are distillers and are required to qualify and pay special (occupational) tax under provisions of 26 U.S.C. Chapter 51 and this part.

(2) The Director may, however, waive any provision of 26 U.S.C. Chapter 51, or of this part, with respect to the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification (except the payment of special (occupational) tax), if such mixtures are produced:

(i) For transfer to the bonded premises of a distilled spirits plant for completion of distilling; or

(ii) As a by-product which would require expensive and complex equipment for the recovery of spirits.

(3) The waiver under the provisions of paragraph (a)(2)(ii) of this section is further conditioned that such mixture would:

(i) Be destroyed on the premises where produced; or

(ii) Contain a minimum quantity of spirits practicable with the procedure employed, not be subjected to further operations solely for the purification or recovery of spirits, and be found by the Director to be as nonpotable and at least as difficult with respect to recovery as completely denatured alcohol.

(b) *Application for waiver*. (1) When the producer of nonpotable mixtures desires to secure a waiver of designated provisions of 26 U.S.C. Chapter 51, or this part, he shall file an application with the Director through the regional director (compliance).

(2) The application shall include, as applicable—

(i) Name and address of producer;

(ii) Chemical composition and source of the nonpotable mixture;

(iii) Approximate percentages of chemicals and spirits in the mixture;

(iv) Method of operation proposed;

(v) Bonded premises where the mixture will be distilled; and

(vi) Other pertinent information required by the Director.

(c) *Approval.* If the Director finds that the waiver of the requirements, or any of them, will not jeopardize the revenue and will not unduly hinder supervision of the operations, he may approve the application under such terms and conditions as he deems advisable and subject to the furnishing of any bond which he deems necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–271 53 FR 17543, May 17, 1988]

§ 19.68 Other businesses.

The Director may authorize the carrying on of other businesses (not specifically prohibited by 26 U.S.C. 5601(a)(6)) on premises of plants if he finds that those businesses will not jeopardize the revenue, hinder the effective administration of this part, or be contrary to law. The authorization will designate the premises (i.e., bonded or general) on which such other business is to be conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.70 Exemptions to meet the requirements of National defense.

The Director may temporarily exempt proprietors from any provision of the internal revenue laws or this part relating to spirits except those requiring payment of tax thereon whenever in his judgement it is expedient to do so to meet the requirements of the National defense.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5561))

§ 19.71 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The Director may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in quantities as may be reasonably necessary for such purposes. The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312), or this part (other than this section) to the extent necessary to effect the purposes of 26 U.S.C. 5312(a), except he may not waive the payment of any tax on distilled spirits removed from any university, college, or institution. A person conducting experimental or research operations authorized under this section is subject to special (occupational) tax under subpart Ca of this part and shall hold a special tax stamp to cover the experimental or research operations.

(b) *Qualification.* Any university, college, or institution desiring to conduct any of the experimental or research operations listed in the preceding paragraphs shall make written application, to the Director, through the regional director (compliance), and obtain the Director's approval of the proposed operations. The applicant shall file with the application a bond in a form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location at which operations will be conducted (including identification of the building or buildings, or the portions thereof to be used), and the security measures to be provided. The Director may require any additional information. Operations shall not be commenced until authorized by the Director.

(c) *Records.* Reports concerning the operations need not be submitted unless required by the Director, but records of the quantities of spirits produced, received, and used each day shall be made and retained for inspection by ATF officers.

(d) *Discontinuance of operations.* When operations authorized by the Director are discontinued, all remaining spirits shall be disposed of by destruction. When these spirits have been destroyed, notice of the discontinuance of

operations shall be given to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–271, 53 FR 17543, May 17, 1988]

AUTHORITIES OF THE REGIONAL DIRECTOR (COMPLIANCE)

§ 19.72 Other businesses.

Application to conduct at a distilled spirits plant a type of business other than that of a distiller, warehouseman, or processor may be approved by the regional director (compliance) if the Director has, as provided in § 19.68, authorized the carrying on of a business of the type proposed, unless the regional director (compliance) finds that there are particular conditions in respect to the applicant's plant that would cause the carrying on of such business to be a jeopardy to the revenue or a hindrance to the effective administration of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.73 Emergency variations from requirements.

The regional director (compliance) may approve construction, equipment, and 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 provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations with respect thereto 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 proprietor 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 judgement of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor desires to employ such variation, he shall submit a written application to do so to the regional director (compliance). The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1395, as amended (26 U.S.C. 5178, 5552))

§ 19.74 Disaster exemptions.

The regional director (compliance) may, whenever he finds that it is necessary or desirable, by reason of disaster, temporarily exempt the proprietor of any plant from any provisions of the internal revenue laws and this part relating to spirits, except those requiring the payment of tax on spirits, to the extent he may deem necessary or desirable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5562))

§ 19.75 Assignment of officers and supervision of operations.

(a) *General.* The regional director (compliance) may assign such number of ATF officers to distilled spirits plants and utilize controls (including the use of Government locks and seals) as necessary to maintain supervision of operations conducted at such plants. When supervision is necessary:

(1) The regional director (compliance) may require a proprietor to delay any distilled spirits operation so that it may be conducted in the presence of an ATF officer; and

(2) The regional director (compliance) may require the proprietor to submit a schedule of operations to an ATF officer.

(b) *Hours of operation.* When operations at a distilled spirits plant are to be conducted in the presence of an ATF officer, such operations: (1) Shall not

be conducted on Sunday unless specifically authorized by the regional director (compliance) in each instance on the showing of an emergency; and (2) Shall be conducted during an 8-hour period between 7 a.m. and 5 p.m. unless, pursuant to the proprietor's application the regional director (compliance) authorizes the performance and supervision of operations during other hours. The regional director (compliance), in administering this provision, shall not restrict such operation or function to a greater extent than did the provisions of internal revenue law and regulations on June 30, 1959.

(c) *Notification of supervision.* (1) When it is determined that supervision of plant operations is necessary, the regional director (compliance) shall notify the proprietor of the extent of ATF supervision.

(2) If supervision of a distilled spirits plant was not terminated as of December 31, 1979, notification is not necessary for continued supervision.

(d) *Withdrawal of supervision.* The regional director (compliance) shall notify the proprietor when ATF supervision of plant operations is to be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5553); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5201, 5202))

§ 19.76 Allowance of remission, abatement, credit or refund of tax.

The regional director (compliance) is authorized to allow claims for remission, abatement, credit, and refund of tax, filed under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.77 Installation of meters, tanks and other apparatus.

The regional director (compliance) is authorized to require the proprietor to install meters, tanks, pipes, or any other apparatus which the regional director (compliance) deems advisable for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install such apparatus when so required shall not be permitted to conduct business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 19.78 Approval of qualifying documents.

The regional director (compliance) is authorized to approve, except as otherwise provided in this part, all qualifying documents, including bonds and consents of surety, required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1394, as amended (26 U.S.C. 5172, 5551); sec. 805, Pub. L. 96–39, 93 Stat. 275, 276 (26 U.S.C. 5171, 5173))

§ 19.79 Discontinuance of storage facilities.

When the regional director (compliance) finds that any facilities for the storage of spirits on bonded premises are unsafe or unfit for use, or that spirits stored are subject to great loss or wastage, he may require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the regional director (compliance) may require and the expense of the transfer shall be paid by the owner or the warehouseman of the spirits. Whenever the owner of such spirits or the warehouseman fails to make such transfer within the time prescribed or to pay the just and proper expense of such transfer, as ascertained and determined by the regional director (compliance), such spirits may be seized and sold in the same manner as goods sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance shall be paid over to the owner of such spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5236))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

AUTHORITIES OF ATF OFFICERS

§ 19.81 Right of entry and examination.

Any ATF officer may at all times, as well by night as by day, enter any distilled spirits plant, or any other premises where distilled spirits operations are carried on, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any ATF officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

§ 19.82 Detention of containers.

Any ATF officer may detain any container containing, or supposed to contain, spirits when such officer has reason to believe that the tax imposed by law on such spirits has not been paid or determined as required by law or this part, or that such container is being removed in violation of law or this part. Every such container may be held by the ATF officer at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture. However, such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the regional director (compliance), unless the person in possession of the container immediately prior to its detention, in consideration of the container being kept on his premises during detention, executes a waiver of the 72-hours limitation on detention of the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375 (26 U.S.C. 5311))

§ 19.83 Samples for the United States.

Any ATF officer is authorized to take samples of spirits, denatured spirits, articles, wines, or any other materials which may be added to such products for analysis, testing, or other determinations to ascertain whether there is compliance with the provisions of law and regulations. When such samples are removed from the bonded premises, the ATF officer shall give the proprietor a receipt covering the sample so removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1357, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5201, 5203, 5214, 5362))

§ 19.84 Gauging and measuring equipment.

All gauging and measuring equipment and means required by 27 CFR part 30 and this part to be furnished by the proprietor for the purpose of ascertaining the quantity, alcoholic content, specific gravity, and producing capacity of any materials, denaturants, mash, wort, or beer, or the quantity and alcoholic content of spirits, denatured spirits, or wines, shall be maintained by the proprietor in accurate and readily usable condition. Any ATF officer may disapprove the use of any equipment or means if such officer finds it would be insufficiently accurate and the proprietor shall promptly provide accurate equipment or means in lieu of the disapproved equipment or means.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended (26 U.S.C. 5006, 5204))

ENTRY AND EXAMINATION OF PREMISES

§ 19.86 Furnishing facilities and assistance.

On the demand of any ATF officer or agent, the proprietor shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on the distilled spirits plant premises. The proprietor shall also, on demand of an ATF officer or agent, open all doors, and open for examination all containers on the plant premises. The proprietor shall, on request of an ATF officer, furnish the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot,

and locations (i.e., buildings, rooms or areas) where spirits in cases are stored.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

GAUGING OF SPIRITS, WINES OR ALCOHOLIC FLAVORING MATERIALS

§ 19.91 Gauging.

(a) *Gauging of spirits and wine.* Gauges shall be made by the proprietor. However, the regional director (compliance) may require that such gauges be made in the presence of and be verified by an ATF officer. Gauges of spirits, denatured spirits, or wine shall be made in accordance with 27 CFR part 30 and as provided in this part. However, the gauge for wine that is to be transferred to a bonded wine cellar shall be recorded by kind and percent of alcohol by volume. When bulk spirits, denatured spirits, or wines are to be volumetrically measured, the measurement shall be in a tank or bulk conveyance for which a calibration chart is provided, by a meter approved under § 19.277, or, when approved by the Director, by other devices or methods. Calibration charts shall be certified as accurate by persons qualified to calibrate tanks or bulk conveyances. When spirits in bottles are gauged, the gauge may be established on the basis of legible case markings and label information, if (1) the bottles are full, and (2) there is no evidence that the bottles have been tampered with.

(b) *Gauging of alcoholic flavoring materials.* Each alcoholic flavoring material shall be gauged when dumped, except that when received from a manufacturer in a closed nonporous bottle, can, or package such material may be gauged by using the proof derived from the container label or a related statement of the proof from the manufacturer. When proof is determined from a label or manufacturer's statement, the proprietor shall periodically test a sufficient number of samples of the alcoholic flavoring material to verify the accuracy of the proof so determined and shall record the results of those tests on the gauge record. The regional director (compliance) may require that all alcoholic flavoring materials be gauged by the methods provided in 27 CFR part 30.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1396, as amended (26 U.S.C. 5204, 5559))

§ 19.92 When gauges are required.

(a) *Initial proof.* Except for a gauge required by § 19.383 or § 19.517 or in any case where the proof changes as a result of a storage or processing operation, the initial determination of proof for distilled spirits, wine, or eligible flavors may be used whenever a subsequent gauge is required by this part to be made at the same plant.

(b) *Required gauges.* Spirits, wine and alcoholic flavoring materials shall be gauged whenever required by this part. Such gauges include:

(1) Entered for deposit,

(2) Filled into packages from storage tanks,

(3) Transferred or received in bond,

(4) Transferred between operational accounts,

(5) Mixed in the manufacture of a distilled spirits product,

(6) Reduced in proof prior to commencement of bottling,

(7) Destroyed,

(8) Removed or withdrawn from bond,

(9) Returned to bond, or

(10) As otherwise required by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1396, as amended (26 U.S.C. 5204, 5559))

[T.D. ATF–199, 50 FR 9160, Mar. 6, 1985, as amended by T.D. ATF–297, 55 FR 18063, Apr. 30, 1990]

§ 19.93 Quantity determination of spirits in bond.

Where bulk spirits in bond are gauged for determination of tax, or are gauged in packages, the quantity shall be determined by weight pursuant to the provisions of 27 CFR part 30. In all other instances where spirits are gauged in bond, gauged for denaturation, or are gauged for transfer in bond or for withdrawal from bond free of tax or without payment of tax, the quantity may be determined by weight or volume. Volumetric determinations of

quantity may be made by meters approved under § 19.277.

(Sec, 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5559))

SECURING OF CONVEYANCES USED FOR TRANSPORTING SPIRITS

§ 19.96 Securing of conveyances.

(a) *Construction for securing.* If a conveyance is required by this part to be secured, the conveyance shall be constructed in such manner that all openings, including valves (if any) on bulk conveyances, may be closed and secured.

(b) *Approval of securing devices.* (1) All seals, locks, or other devices that are required to be used on conveyances in which spirits are transferred in bond, or withdrawn free of tax or without payment of tax, shall be approved by the Director prior to use. However, cap seals, at least ¾ of an inch in diameter, and ball-strap-type (railroad) seals with a strap at least 5/16 of an inch wide may be used on conveyances without prior approval of the Director. Such seals shall:

(i) Be made of durable materials,

(ii) Bear the plant registration number or name, or readily recognizable abbreviation of the name of the proprietor,

(iii) Bear a serial number including letter prefixes or suffixes, that will not be repeated within a six month period,

(iv) Be durably marked in readily legible form, and

(v) Be made so that their being opened will leave evidence thereof.

(2) Seals, locks or other devices that are used on conveyances to transport taxpaid spirits, or denatured spirits transferred in bond or withdrawn free of tax, need not be approved.

(c) *Furnishing and affixing securing devices.* (1) Seals, locks, or other devices for use on conveyances shall be furnished and affixed by the proprietor.

(2) The regional director (compliance) may, if he deems necessary, require conveyances in which spirits are: (i) transferred in bond, (ii) withdrawn free of tax, or (iii) withdrawn without payment of tax, to be secured by seals, locks, or other devices approved and furnished by the Bureau and affixed by an ATF officer.

(3) Seals, locks, or other devices shall be affixed:

(i) As soon as the conveyance is loaded for shipment, and

(ii) In such a manner that access to the contents of the conveyance cannot be gained without showing evidence of tampering.

(4) The openings of bulk conveyances may be secured with permanent seals, locks, or other devices.

(d) *Numbers and marks on proprietor's securing devices.* Seals, locks, or other devices that are furnished by the proprietor for use on conveyances shall be serially numbered. Letter abbreviations of the name of a proprietor may not be used unless approved by the Director pursuant to written application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended 1410, as amended (26 U.S.C. 5206, 5682))

CONVEYANCE OF SPIRITS OR WINES ON PLANT PREMISES

§ 19.97 Taxpaid spirits or wines on bonded premises.

Spirits or wines on which the tax has been paid or determined may be conveyed within a plant across bonded premises, but such spirits or wines shall not be stored or allowed to remain on the bonded premises and shall be kept separate and apart from spirits or wines on which the tax has not been paid or determined. However, spirits returned to bonded premises in accordance with the provisions of 26 U.S.C. 5215 shall be allowed to remain on the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1404, as amended, (26 U.S.C. 5201, 5612))

§ 19.98 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.

Untaxpaid spirits or wines may be conveyed between different portions of the bonded premises of the same distilled spirits plant, across any other premises of such plant; or (by uninterrupted transportation) over any public thoroughfare; or (by uninterrupted transportation) over a private roadway if the owner, or lessee, of the roadway agrees, in writing, to allow ATF officers access to the roadway to perform

their necessary duties. The conveyance of spirits or wines as authorized in this section is subject to the following conditions:

(a) The spirits or wines are not stored or allowed to remain on any premises of such plant other than bonded premises,

(b) The spirits or wines are kept completely separate and apart from spirits on which the tax has been paid or determined,

(c) A description of the means and route of the conveyance and of the portions of the distilled spirits plant between which spirits or wines will be conveyed, and a copy of any agreement furnished by the owner, or lessee, of a private roadway have been submitted to and approved by the regional director (compliance), and

(d) Consent of surety on the operations or unit bond has been furnished by the proprietor, on Form 1533, extending the terms of the bond to cover conveyance of the spirits or wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1398, as amended (26 U.S.C. 5201, 5601))

§ 19.99 Spirits in customs custody.

Spirits in customs custody may be conveyed, when necessary, across distilled spirits plant premises if:

(a) The spirits are not stored or allowed to remain on the premises of the distilled spirits plant,

(b) The spirits are kept separate and apart from other spirits on the premises and are moved expeditiously,

(c) A description of the means and route of conveyance of the spirits across the plant premises has been submitted to and approved by the regional director (compliance), and

(d) Consent of surety on the operations or unit bond has been furnished by the proprietor, on Form 1533, extending the terms of the bond to cover the conveyance of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

PENALTIES OF PERJURY

§ 19.100 Execution under penalties of perjury.

(a) *Declaration*. When a return, claim, form, or other document called for under this part, or in the instructions thereon, is required to be executed under penalties of perjury, it shall contain the following declaration:

I declare under the penalties of perjury that this (insert type of document, such as report, or claim), including supporting documents, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(b) *Signing*. The declaration shall bear the signature and title of the proprietor or other duly authorized person.

(Act of August 16, 1954, Pub. L. 591—Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

Subpart E [Reserved]

Subpart F—Location and Use

§ 19.131 Restrictions as to locations.

Distilled spirits plants shall not be located in any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 19.133) on premises where any other business is conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.132 Continuity of premises.

The continuity of the distilled spirits plant shall be unbroken except for separations by public waterways, thoroughfares, or carrier rights-of-way. However, where there are other separations of the plant premises and all parts of the plant premises are in the same general location, the Director may approve the registration of the distilled spirits plant if he finds no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.133 Use of distilled spirits plant premises.

(a) *General*. No business or operation shall be conducted on the premises of a distilled spirits plant other than those authorized in accordance with subpart D of this part or those authorized to be

carried on or conducted by the notice of registration.

(b) *Bonded premises.* Bonded premises shall be used exclusively for distilled spirits operations. Spirits in packages, cases, or other portable containers on bonded premises shall be stored in a room or building. However, upon application by the proprietor, the regional director (compliance) may approve an alternative method of storage of such spirits if such method is suitable for the protection of the revenue and the effective administration of this part.

(c) *General premises.* General premises are any portion of the distilled spirits plant described in the notice of registration other than bonded premises. General premises may not be used for any of the operations required to be conducted on bonded premises. Business offices and service facilities may be included as a part of general premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.134 Bonded warehouses not on premises qualified for production of spirits.

(a) *Criteria for establishment.* (1) A bonded warehouse, other than one established on the bonded premises of a distilled spirits plant qualified for production of spirits, or contiguous to a distillery operated by the warehouseman, may be established if the need therefor is clearly shown and the prospective needs of the warehouseman will be for the bonded storage of not less than 250,000 wine gallons of bulk distilled spirits.

(2) When commercial bonded warehouses are not available in an area and it is impractical to have a warehouse of 250,000 wine gallon capacity, the regional director (compliance) may approve the establishment of a warehouse without regard to the minimum storage requirements.

(b) *Application.* (1) The application for registration to establish a warehouse shall be accompanied by a separate written application setting forth the necessity for the establishment of the warehouse.

(2) The application shall include:

(i) Approximate quantity of bulk spirits that will be received, stored, and withdrawn annually;

(ii) Probable number of depositors of spirits;

(iii) Approximate number of persons to be served from the warehouse; and

(iv) Data or documents indicating the prospective volume of business or need for establishment.

(c) *Approval.* (1) The regional director (compliance) may approve the application for registration if the proposed location of the warehouse will not be a jeopardy to the revenue and there is satisfactory evidence of the need for establishing a warehouse.

(2) The regional director (compliance) may also limit the type of operation to be conducted at a bonded warehouse established with less than the minimum storage requirements.

(d) *Special condition.* The proprietor of a warehouse established for a limited type of operation shall not, in any manner, expand or change his operation to include any other type of operations until, pursuant to written application to make such change, he has obtained the approval of the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

Subpart G—Qualification of Distilled Spirits Plants

§ 19.151 General requirements for registration.

(a) *Operations.* Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a distilled spirits plant by a person qualified to carry out such operations under this subpart.

(b) *Establishment.* A distilled spirits plant may be established only by a person who intends to conduct at such plant operations as a distiller, as a warehouseman, or as both.

(c) *Registration.* Each person shall, before commencing operations at a distilled spirits plant, make application for and receive notice of registration of his plant with respect to such operations as provided in this part. Application for registration shall be made

on Form 5110.41 to the regional director (compliance). Each application shall be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application or incorporated by reference shall be deemed to be a part thereof. The regional director (compliance) may, in any instance where the outstanding notice of registration is inadequate or incorrect in any respect, require the filing of an application on Form 5110.41 to amend the notice of registration, specifying the respects in which amendment is required. Within 60 days after the receipt of such notice, the proprietor shall file such application.

(Sec. 201. Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.152 Data for application for registration.

Application on Form 5110.41 shall include the following information:

(a) Serial number and statement of purpose for which filed.

(b) Name and principal business address of the applicant, and the location of the distilled spirits plant if different from the business address.

(c) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(d) Statement of the operations to be conducted.

(e) In respect of the plant to which the Form 5110.41 relates, a list of applicant's operating and basic permits, and of the operations, withdrawal, or unit bonds (including those filed with the application) with the name of the surety or sureties for each bond.

(f) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(g) Description of the plant (see § 19.168).

(h) List of major equipment (see § 19.166).

(i) Statement of maximum proof gallons that will be produced in the distillery during a period of 15 days, stored on bonded premises, and in transit to the bonded premises. (Not required if the operations or unit bond is in the maximum sum.)

(j) With respect to any distilled spirits plant which was not qualified to operate before June 1, 1985 a certified statement that relevant and material accounting records (including regular books of account and such other records and data as may be necessary to support such records) will be maintained in accordance with generally accepted accounting principles which enable the proprietor to file a correct distilled spirits tax return or determine whether he is liable for distilled spirits taxes.

(k) Statement of physical security measures employed (see § 19.153).

(l) As applicable, the following:

(1) With respect to the operations of a distiller:

(i) Statement of daily producing capacity in proof gallons.

(ii) Statement of production procedure (see § 19.170).

(iii) Statement whether spirits will be redistilled.

(2) With respect to the operations of a warehouseman:

(i) Description of the system of storage.

(ii) Statement of bulk storage capacity in wine gallons.

(3) With respect to the operations of a processor:

(i) Statement whether bottling operations will be conducted.

(ii) Statement whether denaturing operations will be conducted.

(iii) Statement whether articles will be manufactured.

(iv) Statement whether spirits will be redistilled.

(v) Description of the system of storage of spirits bottled and cased or otherwise packaged or placed in approved containers for removal from bonded premises.

(4) If any other business is to be conducted on the distilled spirits plant premises, as provided by subpart D of this part, a description of the business, a list of the buildings and/or equipment to be used, and a statement as to the relationship, if any, of the business to distilled spirits operations at the plant.

If any of the information required by paragraph (c) of this section is on file with the regional director (compliance), that information, if accurate and complete, may by incorporation by reference, be made part of the application. The applicant shall, when required by the regional director (compliance), furnish as a part of the application for registration, additional information as may be necessary to determine whether the application for registration should be approved.

(68 A Stat. 731, as amended (26 U.S.C. 6001); sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.153 Statement of physical security.

(a) *Content.* The statement of security shall include:

(1) A general description of the physical security at the distilled spirits plant, including methods utilized to secure buildings and outdoor tanks;

(2) A statement whether guard personnel are employed;

(3) A statement whether any electronic or mechanical alarm system is used;

(4) A statement certifying that locks used meet the specifications provided in paragraph (e) of § 19.281;

(5) A list of persons by position or title having responsibility for the custody of and access to keys for approved locks used at the distilled spirits plant.

(b) *Changes.* The proprietor shall file an application for amended registration with the regional director (compliance) for any change in personnel or procedures contained in the statement of security.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.154 Notice of registration.

The application for registration, when approved, shall constitute the notice of registration of the distilled spirits plant. A distilled spirits plant shall not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or operations in which the applicant intends to engage. A plant shall not be operated unless the proprietor has a valid notice of registration covering the businesses and operations to be conducted at such plant. In any instance where a bond is required to be given or a permit is required to be obtained with respect to a business or operation before notice of registration of the plant may be received with respect thereto, the notice of registration shall not be valid with respect to such business or operation in the event that such bond or permit is no longer in effect. An application for reregistration shall be filed and notice of registration again obtained before engaging in such business or operation at such plant. Reregistration is not required when a new bond or a strengthening bond is filed pursuant to § 19.246 or 19.247.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.155 Maintenance of registration file.

The proprietor shall maintain the registration file in looseleaf form in complete and current condition, readily available at the plant for inspection by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.156 Powers of attorney.

The proprietor shall execute and file with the regional director (compliance) a Form 1534 (5000.8) for each person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application for registration.)

(See 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.157 Operating permits.

(a) *General.* Except as provided in paragraph (b) of this section, each person required to file an application for registration under § 19.151 shall make application for and obtain an operating permit before commencing any of the following operations:

(1) Distilling for industrial use.

(2) Warehousing of spirits for industrial use.

(3) Denaturing spirits.

(4) Warehousing of spirits (without bottling) for nonindustrial use.

(5) Bottling or packaging of spirits for industrial use.

(6) Manufacturing articles.

(7) Any other distilling, warehousing, or processing operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978, 27 U.S.C. 203, 204). Application for such operating permit shall be made on Form 5110.25 to the regional director (compliance).

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply to any agency of a State or political subdivision thereof, or to any officer or employee of any such agency acting for the agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.158 Data for application for operating permits.

Each application on Form 5110.25 shall be executed under the penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application shall be deemed to be a part thereof. Applications on Form 5110.25 shall include the following information:

(a) Name and principal business address of the applicant.

(b) Plant address, if different from the business address.

(c) Description of the operation to be conducted for which an operating permit must be obtained.

(d) Statement of type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(e) Trade names (see § 19.165).

(f) On specific request of the regional director (compliance), furnish a statement as to whether the applicant or any of the persons whose names and addresses are required to be furnished under the provisions of § 19.167(a)(2) and (c) has ever: (1) Been convicted of a felony or misdemeanor under Federal or State law; (2) Been arrested or charged with any violation of State or Federal law (convictions or arrests or charges for traffic violations need not be reported as to paragraphs (f)(1) and (f)(2) of this section, if these violations are not felonies); or (3) Applied for, held, or been connected with a permit, issued under Federal law to manufacture, distribute, sell or use spirits or products containing spirits, whether or not for beverage use, or held any financial interest in any business covered by any such permit, and, if so, give the number and classification of the permit, the period of operation, and state in detail whether the permit was ever suspended, revoked, annulled, or otherwise terminated.

Where any of the information required by paragraph (d) or (f)(3) of this section is on file with the regional director (compliance), the applicant may, by incorporation or by reference, state that the information is made a part of the application for an operating permit. The applicant shall, when required by the regional director (compliance), furnish as a part of his application for an operating permit additional information as may be necessary for the regional director (compliance) to determine whether the applicant is entitled to the permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.159 Issuance of operating permits.

Only one operating permit will be issued for a plant. The operating permit shall designate the operations permitted. All of the provisions of this part relating to the performance of the operations covered by the permit shall be included in the provisions and conditions of the permit. Operating permits shall be kept posted available for inspection at the distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.160 Duration of permits.

Operating permits are continuing, unless automatically terminated by the terms thereof, suspended or revoked as provided in § 19.163, or voluntarily surrendered. The provisions of § 19.181 shall be a part of the terms and conditions of all operating permits issued under this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.161 Denial of permit.

If, on examination of an application for an operating permit (or on the basis of inquiry or investigation), the regional director (compliance) has reason to believe that—

(a) 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 51, or regulations issued thereunder; or

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

(c) The premises on which the applicant proposes to conduct the operations are not adequate to protect the revenue; the regional director (compliance) may institute proceedings for the denial of the application in accordance with the procedures set forth in 27 CFR part 71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.162 Correction of permits.

Where an error in an operating permit is discovered, the proprietor shall, on demand of the regional director (compliance), immediately return the permit for correction.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.163 Suspension or revocation.

Whenever the regional director (compliance) has reason to believe that any person holding an operating permit—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) Has violated conditions of the permit; or

(c) Has made any false statement as to any material fact in the 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 Title 26, U.S.C. punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years; the regional director (compliance) may institute proceedings for the revocation or suspension of the permit in accordance with the procedures set forth in 27 CFR part 71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.164 Rules of practice in permit proceedings.

The regulations in 27 CFR part 71 are made applicable to the procedure and practice in connection with the disapproval of any application for an operating permit required by this subpart, and in connection with the suspension and revocation of such permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.165 Trade names.

(a) *Operating permits*. Where a trade name is to be used in connection with the operations of a plant for which an operating permit is required, the proprietor shall list that trade name on Form 5110.25 (showing the operations in which each trade name will be used) and the offices where the trade name is registered, supported by copies of any certificate or other document filed or issued in respect to the trade name.

(b) *Basic permits*. Where any distilling, warehousing, or processing operation is required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204), regulations issued under such Act govern the approval and use of trade names for those operations.

(c) *Conditions*. Operations shall not be conducted under a trade name until the proprietor is in possession of an operating or basic permit covering the use of such name.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.166 Major equipment.

The following items of major equipment, if on the plant premises, shall be described in the application for registration:

(a) Tanks (serial number and capacity) used in the production, storage and processing of distilled spirits, wine, denatured spirits and articles;

(b) Stills (serial number, kind, capacity and intended use). The capacity shall be stated as the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or (for column stills) may be represented by a statement of the diameter of the base and number of plates; and

(c) Condensers (serial number).

A statement of certification of accurate calibration shall be included in the description of tanks that are to be used for gauging distilled spirits or wine for any purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1352, as amended (26 U.S.C. 5172, 5179))

§ 19.167 Organizational documents.

The supporting information required by paragraph (c) of § 19.152, and paragraph (d) of § 19.158, includes, as applicable, copies of—

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation.

(2) List of directors and officers, showing their names and addresses.

(3) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* 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.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the plant, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents which may be required by the regional director (compliance) such as the articles of incorporation, bylaws, and State certificate authorizing operations shall be made available to any ATF officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.168 Description of plant.

(a) The application for registration shall include a description of each tract of land comprising the distilled spirits plant.

(b) The description shall:

(1) Clearly indicate the bonded premises and any general premises included as part of the distilled spirits plant; and

(2) Contain directions and distances in sufficient detail to enable ATF officers to readily determine the boundaries of the plant.

(c) Each building and outside tank used for the production, storage and processing of spirits, denatured spirits, articles, or wines shall be described by location, size, construction, and arrangement with reference to each by its designated number or letter.

(d) If a plant includes a room or floor in a building, a description of the building in which the room or floor is situated and its location shall be given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.169 Registry of stills.

The provisions of subpart C of part 29 of this chapter are applicable to stills or distilling apparatus located on plant premises used for distilling. As provided under § 29.55, the listing of a still in the application for registration, and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1355, as amended (26 U.S.C. 5172, 5179))

[T.D. ATF–207, 50 FR 23681, June 5, 1985]

§ 19.170 Statement of production procedure.

The statement of production procedure in the application for registration shall set forth a step-by-step description of the procedure employed to produce spirits from an original source, commencing with the treating, mashing, or fermenting of the raw materials or substances and continuing through each step of the distilling, purifying and refining procedure to the production gauge. The kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits shall be shown.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

CHANGES AFTER ORIGINAL QUALIFICATION

§ 19.180 Application for amended registration.

Where there is a change with respect to the information shown in the notice of registration, the proprietor shall submit, within 30 days of such change (except as otherwise provided in this subpart), an application on Form 5110.41 for amended registration. Such application shall set forth, on sheets appropriately numbered or otherwise identified, the information necessary to make the notice of registration accurate and current. Where the change affects only pages or parts of pages of the notice of registration, such complete pages shall be submitted as will enable the replacement of the pages affected and maintenance of the file as provided in § 19.155.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.181 Automatic termination of permits.

(a) *Permits not transferable.* Operating permits issued under this part shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized thereby, the permit shall thereupon automatically terminate.

(b) *Corporations.* In the case of a corporation holding an operating permit under this part, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, such permit may remain in effect with respect to the operation covered thereby until the expiration of 30 days after such change, whereupon such permit shall automatically terminate. However, if within such 30 day period an application for a new permit covering such operation is made, then the outstanding operating permit may remain in effect with respect to the continuation of the operation covered thereby until final action is taken on such application. When such final action is taken, such outstanding operting permit shall thereupon automatically terminate.

(c) *Basic permits.* The termination of basic permits is governed by the provisions of 27 CFR part 1.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.182 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall file application to amend the registration and to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new name prior to

approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.183 Change of trade name.

If there is to be a change in, or addition of, a trade name, the proprietor shall file application to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new trade name prior to issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, (26 U.S.C. 5271))

§ 19.184 Changes in stockholders.

Changes in the list of stockholders furnished under the provisions of § 19.167(c)(1) may, in lieu of submission within 30 days of the change under the provisions of § 19.180, be submitted annually by the proprietor on May 1 or other date approved by the regional director (compliance), except where the sale or transfer of capital stock results in a change in the control or management of the business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.185 Changes in officers and directors.

Where there is any change in the list of officers and directors furnished under the provisions of § 19.167(a)(2), the proprietor shall submit, within 30 days of any such change, an application on Form 5110.41 for amended registration, supported by a new list of officers and directors and a statement of the changes reflected in such list. Where the proprietor has shown to the satisfaction of the regional director (compliance) that certain corporate officers listed on the original appplication have no responsibilities in connection with the operations covered by the registration, the regional director (compliance) may waive the requirements for submitting applications for amended registration to cover changes of such corporate officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.186 Change in proprietorship.

(a) *General*. If there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 19.211, and the successor shall, before commencing operations, apply for and obtain the required permits, file the required bonds, and file application for and receive notice of registration of the plant in the same manner as a person qualifying as the proprietor of a new plant, except that the successor may, in the manner provided in § 19.187, adopt the approved formulas (5150.9) of the predecessor. Spirits may be transferred from an outgoing proprietor of a plant to a successor in the manner provided in § 19.201.

(b) *Fiduciary*. If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, he shall comply with the provisions of paragraph (a) of this section except that he may, in lieu of filing a new bond, furnish consent of surety extending the terms of the predecessor's bond, and he may also incorporate by reference in the application for registration on Form 5110.41 any pertinent information contained in the predecessor's notice of registration. The fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing qualification as such fiduciary. The effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for him to assume control. If the fiduciary was not appointed by a court, the date of assuming control shall coincide with

the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 19.187 Adoption of formulas.

(a) *Forms 5110.38*. The adoption by a successor of approved Forms 5110.38 (27–B Supplemental) shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by (1) formula number, (2) name of product, and (3) date of approval. The application shall clearly show that the predecessor has authorized the use of its previously approved formulas by the successor.

(b) *Form 5150.19*. The adoption by a successor of approved Form 5150.19 (or previously approved Form 1479–A) shall be in accordance with § 20.63 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985]

§ 19.188 Partnerships.

If under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the plant under the prior qualification of the partnership, provided a consent of surety is filed, wherein the surety and the surviving partner agree to remain liable on the operations or unit bond. If such surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 19.186(a). The rule set forth in this section shall also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.189 Change in location.

Where there is a change in the location of the plant, the proprietor shall file applications to amend the registration of the plant and the operating and/or basic permit, and either a new bond or a consent of surety on Form 1533. Operation of the plant may not be commenced at the new location prior to approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349 as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.190 Changes in premises.

Except as provided in §§ 19.202, 19.203, 19.204, and 19.205, where bonded premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file an application for registration, Form 5110.41, to cover such extension or curtailment. Premises and equipment to be included by extension or to be excluded by curtailment shall not, prior to approval by the regional director (compliance) of the requried documents, be used for other than previously approved purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.191 Change in operations.

If the proprietor proposes to conduct a new business or operation involving spirits, he shall file applications to amend the registration of the plant and the operating and/or basic permit. If the proprietor desires to engage, on the plant premises, in other businesses, as provided in subpart D, he shall submit an application to amend the registration of the plant to include the information required under § 19.152(l)(4). The additional operation or business may not be carried on prior to approval of the amended registration and (if required) issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.192 Change in production procedure.

If the proprietor desires to produce a new product or make a change in a production procedure which would affect the designation, or substantially affect the character of his product, the proprietor shall file an application to amend the registration of the plant to include the amended or new statement of production procedure. The new or changed procedure may not be used prior to approval of the amended registration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172))

§ 19.193 Changes in construction or use of buildings and equipment.

(a) *Changes.* When a material change, affecting the accuracy of the notice of registration, is to be made in the construction or use of buildings or equipment of a plant, other than a change covered by §§ 19.190, 19.202, 19.203, 19.204, or 19.205, the proprietor shall, before making such change, submit a letterhead notice to the regional director (compliance) through the area supervisor.

(b) *Letterhead notice.* The letterhead notice shall:

(1) Describe the proposed change in detail;

(2) Be kept on file with the proprietor's current notice of registration; and

(3) After completion of the change, be incorporated in the next amendment of the notice of registration on Form 5110.41, unless the regional director (compliance) requires immediate amendment.

(c) *Emergency changes.* The proprietor may make emergency material changes without prior notification, but when such emergency changes are made, the proprietor shall promptly report such changes to the area supervisor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172))

OPERATIONS BY ALTERNATING PROPRIETORS

§ 19.201 Procedure for alternating proprietors.

(a) *General.* A plant, or any part thereof which is suitable for qualification as a separate plant, may be operated alternately by proprietors who have filed and received approval of the necessary bonds and applications for registration, and have otherwise qualified under the provisions of this subpart. Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas, rooms or buildings or combination thereof, which will be alternated, and shall be accompanied by special diagrams designating the parts of the plant which are to be alternated. A special diagram shall be submitted for each arrangement under which the premises will be operated. Once such qualifying documents have been approved, and initial operations have been conducted thereunder, the plant, or parts thereof, may be alternated by the proprietor filing notices on Form 5110.34 with the regional director (compliance). Any transfer of spirits, idenatured spirits, and wines shall be indicated on Form 5110.34 filed by each proprietor.

(b) *Production.* Distilling materials and unfinished spirits in any bonded areas, rooms or buildings to be alternated shall be processed to completion by the outgoing proprietor unless transferred to the incoming proprietor. All finished spirits shall be marked and removed by the outgoing proprietor in the name in which produced, before production gauge is made of any spirits by the incoming proprietor.

(c) *Storage.* Spirits and wines in any bonded areas, rooms, or buildings to be alternated shall be transferred in bond to the incoming proprietor. The outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue in effect the operations or unit bond whenever operation of the areas, rooms, or buildings is to be resumed by him following suspension of operations by an alternate proprietor.

(d) *Processing*. Spirits, denatured spirits, wines and articles in any rooms, areas, or buildings to be alternated shall be processed to completion and removed from the affected areas, rooms, or buildings by the outgoing proprietor prior to the effective date and hours given in the notice unless transferred or retained in locked tanks as provided in this paragraph. Spirits, denatured spirits, and wines may be transferred to the incoming proprietor. Further, the outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue in effect the operations or unit bond whenever operation of the affected areas, rooms, or buildings is to be resumed by him following suspension of operations by the alternate proprietor. Denatured spirits and articles may be retained in tanks locked by approved locks, the keys to which are in the custody of the outgoing proprietor. In this case, the outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue liability on the operations or unit bond for the tax on such denatured spirits or articles retained in such tanks, notwithstanding the change in proprietorship.

(e) *Records*. Each proprietor shall maintain separate records and submit separate reports. Records kept by the outgoing proprietor for spirits, wines, and alcoholic flavoring materials may be used by the incoming proprietor. All transfers of distilling materials, unfinished spirits, spirits, denatured spirits, and wines shall be reflected in the records of each proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

ALTERNATE OPERATIONS

§ 19.202 Alternate use of premises and equipment for customs purposes.

(a) *General*. The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the facilities of the distilled spirits plant to be used temporarily by customs officers, under applicable customs law and regulations, for the purpose of gauging or processing distilled spirits. The use of the excluded portion of the premises for customs purposes is subject to the approval of the district director of customs. When it is necessary to convey spirits in customs custody across the premises of a distilled spirits plant, the proprietor shall comply with the provisions of § 19.99. When a portion of the distilled spirits plant premises is first to be excluded as provided in this section, the proprietor shall file with the regional director (compliance) (1) an application for registration, Form 5110.41, to cover alternate curtailment and extension of premises, and (2) a special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence. Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits from the premises or equipment affected by the notice prior to the effective date and hours of the notice. However, on release by customs, spirits being transferred to bonded premises under 26 U.S.C. 5232, may remain on the premises to be reincluded in bonded premises.

(b) *Separation of premises*. The portion of the premises which is to be excluded from the distilled spirits plant premises as provided in this section shall be separated from the remaining portion of the distilled spirits plant premises in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(c) *Exception*. Notwithstanding the provisions of paragraphs (a) and (b) of this section, the bonded premises may be used temporarily without filing Form 5110.41 or Form 5110.34, for the sole purpose of gauging bulk distilled

spirits to effect their transfer from customs custody to ATF bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1358, as amended (26 U.S.C. 5172, 5178))

§ 19.203 Alternation of distilled spirits plant and bonded wine cellar premises.

(a) *General*. A proprietor of a distilled spirits plant operating a contiguous bonded wine cellar desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional director (compliance).

(b) *Qualifying documents*. The proprietor shall file with the regional director (compliance):

(1) Form 5110.41 and Form 5120.25 to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility*. After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34 each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits, denatured spirits, articles, and wines from the distilled spirits plant premises alternated to bonded wine cellar premises. Any wine on bonded wine cellar premises shall be removed prior to alternation to distilled spirits plant premises unless wine is being simultaneously transferred in bond to the distilled spirits plant.

(d) *Separation of premises*. Separation of distilled spirits plant premises from bonded wine cellar premises after alternation shall be in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 19.204 Alternation of distilled spirits plant and taxpaid wine bottling house premises.

(a) *General*. A proprietor of a distilled spirits plant operating a contiguous taxpaid wine bottling house desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional director (compliance).

(b) *Qualifying documents*. The proprietor shall file with the regional director (compliance):

(1) Form 5110.41 and Form 5120.25 to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility*. After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34 each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits, denatured spirits, articles, and wines from the distilled spirits plant premises alternated to taxpaid wine bottling house premises. Any wine on taxpaid wine bottling house premises shall be removed prior to alternation to distilled spirits plant premises.

(d) *Separation of premises*. Separation of distilled spirits plant premises from taxpaid wine bottling house premises after alternation shall be in a manner which satisfies the regional director

(compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

(a) *General*. The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the bonded premises of the distilled spirits plant to be used temporarily as general premises, or to permit the general premises of a distilled spirits plant to be used temporarily as bonded premises.

(b) *Qualifying documents*. When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional director (compliance)—

(1) An application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, and

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence.

(c) *Proprietor's responsibility*. Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits, denatured spirits, articles, and wines from the premises or equipment affected by the notice prior to the effective date and hour of the notice, except that—

(1) Bonded spirits on portions of bonded premises that are to be curtailed to general premises need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and

(2) Taxpaid spirits on portions of general premises to be curtailed to bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of subpart U of this part.

(d) *Separation of premises*. The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.206 Curtailment and extension of plant premises for the manufacture of eligible flavors.

(a) *General*. The premises of a distilled spirits plant may be alternately curtailed and extended, as provided in this section, to permit the use of the facilities for the manufacture of eligible flavors.

(b) *Qualifying documents*. When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional director (compliance)—

(1) An application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, and

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence.

(c) *Proprietor's responsibility*. Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used

for purposes other than as set forth in the current notice. The proprietor shall remove all spirits, denatured spirits, articles, and wines from the premises or equipment which are to be curtailed from bonded premises or are to be included by extension of bonded premises prior to the effective date and hour of the notice, except that—

(1) Bonded spirits on portions of bonded premises that are to be curtailed need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and

(2) Taxpaid spirits which are on portions of premises to be included by extension of bonded premises and which have not been used in the manufacture of a nonbeverage product need not be removed if the spirits are to be dumped immediately and returned to bond under the provisions of subpart U of this part.

(d) *Separation of premises*. The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

[T.D. ATF–297, 55 FR 18063, Apr. 30, 1990]

§ 19.207 Alternate use of distilled spirits plant and volatile fruit-flavor concentrate premises.

If a proprietor of distilled spirits plant wishes to use all or a portion of such premises alternately as a volatile fruit-flavor concentrate plant or vice-a-versa, the proprietor must comply with the requirements of §§ 18.39 and 18.41 through 18.43 of this title.

[T.D. ATF–455, 66 FR 29482, May 31, 2001]

PERMANENT DISCONTINUANCE OF BUSINESS

§ 19.211 Notice of permanent discontinuance.

When the proprietor permanently discontinues any or all of the operations listed in the notice of registration, he shall file a Form 5110.41 to show the discontinuance. Form 5110.41 shall be accompanied (a) by all permits issued to the proprietor under this subpart covering the discontinued operations, and by the proprietor's request that such permits be canceled; (b) by the proprietor's written statement disclosing, as applicable, whether (1) all spirits, denatured spirits, articles, wines, liquor bottles, and other pertinent items have been lawfully disposed of, (2) any spirits, denatured spirits, wines, or liquor bottles are in transit to the premises, (3) all approved applications for transfer of spirits and denatured spirits to the premises have been secured and returned to the regional director (compliance) for cancellation; and (c) by pertinent reports covering the discontinued operations (each report shall be marked ''Final Report'').

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

Subpart H—Bonds and Consents of Surety

§ 19.231 Filing of operations or unit bonds.

Every person intending to establish a distilled spirits plant shall file an operations or unit bond as prescribed in this subpart, covering distilled spirits operations at such plant, with the regional director (compliance), at the time of filing the original application for registration of the plant, and at such other times as are required by this part. Such bond shall be conditioned that he shall faithfully comply with all provisions of law and regulations relating to activities covered by such bond, will pay all taxes imposed by 26 U.S.C. Chapter 51, and shall pay all penalties incurred or fines imposed for violation of any such provisions. The regional director (compliance) may require, in connection with any operations or unit bond, a statement, executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 19.237(a)(1) or has been convicted of any offense set forth

in § 19.237(a)(2). In the event the above statement contains an affirmative answer, the applcant shall submit a statement describing in detail the circumstances surrounding such conviction or compromise. No person shall comence or continue distilled spirits operations at such plant unless he has a valid operations or unit bond (and consent of surety, if necessary), as required in respect of such operations by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.232 Additional condition of operations bond.

In addition to the requirements of § 19.231, the operations bond shall be conditioned on payment of the tax now or hereafter in force, except as provided by law, including taxes on all unexplained shortages of bottled distilled spirits.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.233 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 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 yearly 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.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 as amended (31 U.S.C. 9304, 9306))

§ 19.234 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.

(Ch. 390, Pub. L. 80–280, 61 Stat. 650 (31 U.S.C. 9301, 9303))

§ 19.235 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.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.236 Filing and execution of powers of attorney.

(a) *Filing*. 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 require additional evidence of the authority of the agent or officer to execute the bond or consent.

(b) *Execution*. 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.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 (31 U.S.C. 9304, 9306))

§ 19.237 Disapproval of bonds or consents of surety.

(a) *Disapproval*. The regional director (compliance) may disapprove any bond or consent of surety submitted in respect to the operations of a distiller, warehouseman, or processor, 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—

(1) 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 an offense shall have been compromised with the person on payment of penalties or otherwise, or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal.* Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal to the Director, who will hear such appeal. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§§ 19.238–19.240 [Reserved]

§ 19.241 Operations bond—distilled spirits plant and adjacent bonded wine cellar.

(a) *General.* A wine cellar under the provisions of 27 CFR part 24 shall be treated as being adjacent to a distilled spirits plant if—

(1) Such distilled spirits plant is qualified under subpart G for the production of distilled spirits; and

(2) Such wine cellar and distilled spirits plant are operated by the same person (or in the case of a corporation, by such corporation and its controlled subsidiaries). For the purpose of this section a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation.

(b) *Bond in lieu of wine cellar bond.* In the case of an adjacent bonded wine cellar, a bond furnished under this subpart which covers operations at such bonded wine cellar shall be in lieu of any bond which would otherwise be required under 26 U.S.C. 5354 with respect to such wine cellar (other than supplemental bonds required under the second sentence of 26 U.S.C. 5354) and the operations bond listed in § 19.245(a)(1).

(c) *Liability.* Bonds given under this section shall contain the terms and conditions of the bonds in lieu of which they are given. The total amount of such operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–299, 55 FR 24989, June 19, 1990]

§ 19.242 Area operations bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating more than one plant in a region may give an area operations bond covering the operation of any two or more of such plants, and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered by an operations bond. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. Bonds given under this section shall be in lieu of the bonds which would be required under § 19.245(a) and shall contain the terms and conditions of such bonds. If the area operations bond covers the operations of more than one corporation, each corporation shall be shown as principal, and the bond shall be signed for each corporation. The total amount of the area operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.243 Withdrawal bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating one or more distilled spirits plants within a region and who intends to withdraw spirits from bond on determination, but before payment, of the tax shall, before making any such withdrawal, furnish a withdrawal bond to secure payment of the tax on all spirits so withdrawn. Such bond shall be in addition to the operations bond, and if the distilled spirits are withdrawn under the withdrawal bond, the operations

bond shall no longer cover liability for payment of the tax on the spirits withdrawn. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. The bond, if it covers more than one plant, shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for each such plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (where the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, withdrawals from such plant shall not exceed the quantity permissible, as reflected by the penal sum in the bond for such plant. Such withdrawal bond 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.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.244 Unit bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) who would otherwise be required to give bonds for both operations at one or more distilled spirits plants (and any adjacent bonded wine cellars) and withdrawals from one or more distilled spirits plants within a reigon may, in lieu of furnishing separate bonds for operations and withdrawals, furnish a unit bond containing the terms and conditions of the bonds in lieu of which it is given. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. The unit bond shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for operations at and withdrawals from each plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (if the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, operations at and/or withdrawals from such plant shall not exceed the quantity permissible as reflected by the penal sum in the bond for such plant. The unit bond 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.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.245 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

PENAL SUM

Type of bond	Basis	Minimum	Maximum
(a) Operations bond:			
(1) One plant bond—			
(i) Distiller	The amount of tax on spirits produced during a period of 15 days.	$5,000	$100,000
(ii) Warehouseman:			
(A) General	The amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises.	5,000	200,000
(B) Limited to storage of spirits in packages to a total of not over 50,000 proof gallons.	.....do	5,000	50,000
(iii) Distiller and warehouseman.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits and wines deposited, in stored on, and in transit to bonded premises.	10,000	200,000
(iv) Distiller and processor.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	200,000

PENAL SUM—Continued

Type of bond	Basis	Minimum	Maximum
(v) Warehouseman and processor:			
(A) General	The amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	250,000
(B) Limited to storage of spirits or denatured spirits in packages to a total of not over 50,000 proof gallons, and processing of spirits or denatured spirits so stored.	.....do	10,000	50,000
(vi) Distiller, warehouseman, and processor.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to bonded premises.	15,000	250,000
(2) Adjacent bonded wine cellars—			
(i) Distiller and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(i) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	6,000	150,000
(ii) Distiller, warehouseman and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(iii) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iii) Distiller, processor and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(iv) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iv) Distiller, warehouseman, processor and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(vi) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	16,000	300,000
(b) Area operations bond:	The penal sum shall be calculated in accordance with the following table:		
Total penal sums as determined under (a)	Requirements for penal sum of area operations bond		
Not over $300,000	100 percent.		
Over $300,000 but not over $600,000.	$300,000 plus 70 percent of excess over $300,000.		
Over $600,000 but not over $1,000,000.	$510,000 plus 50 percent of excess over $600,000.		
Over $1,000,000 but not over $2,000,000.	$710,000 plus 35 percent of excess over $1,000,000.		
Over $2,000,000	$1,060,000 plus 25 percent of excess over $2,000,000.		
(c) Withdrawal bond:			
(1) One plant qualified for distilled spirits operations.	The amount of tax which, at any one time, is chargeable against such bond but has not been paid.	1,000	1,000,000
(2) Two or more plants in a region qualified for distilled spirits operations.	Sum of the penal sums for each plant calculated in (c)(1) of this section.	(1)	(2)
(d) Unit bond:			
(1) Both operations at a distilled spirits plant (and any adjacent bonded wine cellar) and withdrawals from the bonded premises of the same distilled spirits plant.	Total penal sums of (a) and (c)(1) of this section	6,000	1,300,000

PENAL SUM—Continued

Type of bond	Basis	Minimum	Maximum
(2) Both operations at two or more distilled spirits plants (and any adjacent bonded wine cellar) within the same region and withdrawals from the bonded premises of the same distilled spirits plants.	Total penal sums of (b) and (c)(2) of this section in lieu of which given.	([3])	([4])

[1] Sum of the minimum penal sums required for each plant covered by the bond.
[2] Sum of the maximum penal sums required for each plant covered by the bond. (The maximum penal sum for one plant is $1,000,000.)
[3] Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.
[4] Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.246 Strengthening bonds.

In all cases when 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.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

NEW OR SUPERSEDING BONDS

§ 19.247 General.

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. When, under the provisions of § 19.250, 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 of 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.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1394, as amended (26 U.S.C. 5175, 5176, 5551); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.248 New or superseding bond.

(a) *Operations bond.* When a new or superseding operations bond is not given as required in § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates.

(b) *Withdrawal bond.* When a new or superseding withdrawal bond is not given as required by § 19.247, the principal may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(c) *Unit bond.* When a new or superseding unit bond is not given as required by § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates and may not withdraw any distilled spirits from bonded premises (other than distilled spirits

withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

TERMINATION OF BONDS

§ 19.249 Termination of bonds.

Operations, withdrawal, or unit bonds may be terminated as to liability for future withdrawals and/or to future production or deposits.

(a) Pursuant to application of the surety as provided in § 19.250.

(b) On approval of a superseding bond.

(c) On notification by the principal that he has discontinued withdrawals under the bond if such bond was filed solely as a withdrawal bond, or

(d) On notification by the principal that he has discontinued business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.250 Application of surety for relief from bond.

A surety on any operations, withdrawal, or unit bond 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 10 days after the date the notice is received by the regional director (compliance) in the case of a withdrawal bond, and not less than 90 days after the date the notice is received in the case of an operations or unit bond. 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 § 19.251.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.251 Relief of surety from bond.

(a) *General*. The surety on an operations, withdrawal, or unit bond who has filed application for relief from liability as provided in § 19.250 shall be relieved from liability under such bond as set forth in this section.

(b) *Operations or unit bonds*. Where a new or superseding bond is filed, the surety shall be relieved of future liability with respect to production and deposits wholly subsequent to the effective date of the new or superseding bond. Notwithstanding such relief, the surety shall remain liable for the tax on all distilled spirits or wines produced, or for other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety shall, in addition to the continuing liabilities above specified, remain liable under the bond for all spirits or wines on hand or in transit to the bonded premises or bonded wine cellar, as the case may be, on the date named in the notice until all such spirits or wines have been lawfully disposed of, or a new bond has been filed by the principal covering the same.

(c) *Withdrawal or unit bonds*. The surety shall be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5176,); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.252 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 19.234 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.

(Ch. 290, Pub. L. 80–280, 61 Stat. 650 (31 U.S.C. 9301, 9303))

Subpart I—Construction, Equipment and Security

§ 19.271 Construction of buildings

Buildings in which spirits, denatured spirits, articles, or wines are produced, stored, or processed shall be constructed with substantial material (e.g., masonry, concrete, wood, metal, etc.), and arranged, equipped, and protected to provide adequate security to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended) (26 U.S.C. 5178))

§ 19.272 Equipment.

The proprietor shall provide equipment suitable for the operations conducted on the distilled spirits plant. The equipment shall also meet the needs for revenue protection.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended) (26 U.S.C. 5178))

§ 19.273 Tanks.

(a) *General*. (1) Tanks used as receptacles for spirits, denatured spirits, or wines shall be located, constructed, and equipped to be suitable for the intended purpose and to allow ready examination.

(2) An accurate means of measuring the contents of each tank shall be provided by the proprietor.

(3) When a means of mearuring is not a permanent fixture of the tank, the tank shall be equipped with a fixed device to allow the approximate contents to be determined readily.

(4) Tanks used for determining the tax imposed by 26 U.S.C. 5001 shall be mounted on scales and an additional suitable device shall be provided so that the volume of the contents can be quickly and accurately determined.

(5) The proprietor shall install walkways, landings and stairways which will permit safe access to all parts of a tank.

(6) Tanks in which gauges required by this part are to be made shall not be used until they are accurately calibrated and a statement of certification of accurate calibration is included in the notice of registration.

(7) If tanks or their fixed gauging devices are moved in location or position subsequent to original calibration, the tanks shall not be used until recalibrated.

(8) All tanks shall be equipped or situated so that they may be locked or otherwise secured.

(9) Any tank vents, flame arresters, foam devices, or other safety devices shall be constructed to prevent extraction of spirits or wines.

(b) *Scale tanks*. (1) Beams or dials of scale tanks used for determining the tax imposed by 26 U.S.C. 5001 shall have minimum graduations not greater than the following:

Quantity to be weighed	Minimum graduation
Not exceeding 2,000 pounds	½ pound;
Between 2,000 and 6,000 pounds	1 pound;
Between 6,000 and 20,000 pounds	2 pounds;
Between 20,000 and 50,000 pounds	5 pounds;
Over 50,000 pounds	10 pounds.

(2) For scales having a capacity greater than 2,000 pounds, the minimum quantity which may be entered onto the weighing tank scale for gauging for tax determination shall be the greater of

(i) 1,000 times the minimum graduation of the scale or

(ii) 5 percent of the total capacity of the weighing tank scale.

(3) The weighing of lesser quantities for determination of tax may be authorized by the regional director (compliance) where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales break accurately at each graduation.

(4) Lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(c) *Testing of scale tanks*. (1) Proprietors shall ensure the accuracy of scales used for weighing lots of spirits or denatured spirits through tests conducted at intervals of not more than 6 months, and whenever scales are adjusted or repaired.

(2) Proprietors shall also test, at least once a month, the gallonage represented to be in a scale tank against the gallonage indicated by volumetric determination of the contents of the tank. However, if the scale is not used during a month the volumetric determination need only be verified at the next time actually used.

(3) The volumetric determination shall be made in accordance with 27 CFR part 30, and if the variation exceeds 0.5 percent of the quantities shown to be in the tank, the proprietor shall take appropriate steps to have the accuracy of the scale verified.

(4) When an ATF officer determines that a tank scale may be inaccurate, the proprietor shall have the accuracy of the scale tested.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended, 1391, as amended (26 U.S.C. 5006, 5204, 5505))

§ 19.274 Pipelines.

(a) *General.* (1) Pipelines for the conveyance of spirits, denatured spirits, articles, or wines shall be of permanent character and constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. However, the regional director (compliance) may approve pipelines which may not be readily examined if no jeopardy to the revenue is created.

(2) Where a pipeline connection must be flexible, a hose may be used if connected and secured so as to protect the revenue.

(b) *Identification.* The regional director (compliance) may require permanent pipelines for conveyance of spirits or denatured spirits to be color coded to provide identification.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.275 Continuous distilling system.

The distilling system shall be continuous, and designed, constructed, and connected in such a manner as to prevent the unauthorized removal of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.276 Package scales.

Proprietors shall ensure the accuracy of scales used for weighing packages of spirits through tests conducted at intervals of not more than 6 months or whenever scales are adjusted or repaired. However, if the scales are not used during such period, the scales need only be tested prior to use. Scales used to weigh packages designed to hold 10 wine gallons or less shall indicate weight in ounces or in hundredths of a pound.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.277 Measuring devices and proofing instruments.

(a) *General.* Proprietors shall provide for their own use accurate hydrometers, thermometers, and other necessary equipment to determine proof or volume.

(b) *Instruments.* Hydrometers and thermometers used by proprietors to gauge spirits shall show subdivisions or graduations of proof and temperature which are at least as delimitated as those prescribed in 27 CFR part 30. Proprietors shall make frequent tests of their hydrometers and thermometers, and, if they appear to be in error in excess of one subdivision, the instruments shall not be used until they are further tested and certified as accurate by the manufacturer or another qualified person.

(c) *Meters.* The regional director (compliance) may approve applications to measure spirits by meter for purposes other than tax determination. Applications shall include sufficient technical data, such as the make, model and accuracy tolerance, to enable the regional director (compliance) to evaluate the suitability of the meter for its intended use. Corrections for temperature of the spirits being measured shall be made in conjunction with the volumetric measurement of spirits by meter. If a meter does not have a temperature compensating feature, temperature correction shall be ascertained and made from a representative sample taken from the spirits being measured.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.278 Identification of structures, areas, apparatus, and equipment.

(a) Each room or enclosed area where spirits, denatured spirits, articles, wine, distilling or fermenting materials, or containers are held, and each building, within the plant, shall be appropriately marked with a distinguishing number or letter.

(b) Each tank or receptacle for spirits, denatured spirits, or wine shall be marked to show a unique serial number and capacity.

(c) Each still, fermenter, cooker, and yeast tank shall be numbered and marked to show its use.

(d) All other major equipment used for processing or containing spirits, denatured spirits, or wine, or distilling or fermenting material, and all other tanks, shall be identified as to use unless the intended purpose is readily apparent.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.279 Office facilities.

(a) If the regional director (compliance) assigns on a continuing basis an ATF officer to a plant to supervise operations, the proprietor shall provide an office at the distilled spirits plant for the exclusive use of ATF officers in performing their duties. The office shall be provided with adequate office furniture, lighting, ventilation, heating, and toilet and lavatory facilities. A secure cabinet, fitted for locking with a Government lock and of adequate size, shall also be provided by the proprietor. The office, facilities, and equipment provided by the proprietor shall be subject to the approval of the regional director (compliance). Where suitable facilities are otherwise available, the regional director (compliance) may waive the requirements for a separate Government office.

(b) If an ATF officer is not assigned to a plant on a continuing basis, the regional director (compliance) may require the proprietor to provide for Government use a cabinet as specified in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.280 Signs.

The proprietor shall place and keep conspicuously on the outside of his place of business a sign showing the name of the proprietor and denoting the business, or businesses, in which engaged.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5180))

§ 19.281 Security.

(a) *General.* The proprietor shall provide adequate security measures at the distilled spirits plant to protect the revenue.

(b) *Buildings.* The buildings, rooms, and partitions shall be constructed of substantial materials. Doors, windows, or any other openings to the building shall be secured or fastened during times when distilled spirits plant operations are not being conducted.

(c) *Outdoor tanks.* Outdoor tanks containing spirits, denatured spirits, or wine shall be individually locked or locked within an enclosure when they are not in use.

(d) *Indoor tanks.* Indoor tanks containing spirits, denatured spirits, or wines or the rooms or buildings in which they are housed, shall be equipped so that they may be secured.

(e) *Approved locks.* (1) Approved locks shall be used to secure:

(i) Outdoor tanks containing spirits in the storage account or on an enclosure around such tanks;

(ii) Indoor tanks containing spirits in the storage account or on the door from which access may be gained from the outside to the rooms or buildings in which such tanks are housed; and

(iii) Any doors from which access may be gained from the outside to rooms or buildings containing spirits in portable bulk containers in the storage account.

(2) Approved locks shall meet the following minimum specifications:

(i) Corresponding serial number on the lock and on the key, except for master key locking systems;

(ii) Case hardened shackle at least one-fourth inch in diameter, with heel and toe locking;

(iii) Body width of at least 2″;

(iv) Captured key feature (key may not be removed while shackle is unlocked);

(v) Tumbler with at least 5 pins; and

(vi) Lock or key contains no bitting data.

Master key locking systems may be used at the option of the proprietor. Locks meeting the specifications in this section are approved locks for the purpose of 26 U.S.C. 5682. Proprietors

who wish to use locks of unusual design, which do not meet the specifications in this part, shall submit an example or prototype of the lock to the Director, through the regional director (compliance), with a request that the lock be approved for use. The Director may require submission of the lock for testing prior to approval.

(f) *Additional security*. Where the regional director (compliance) finds the construction, arrangement, equipment, or protection inadequate, additional security shall be provided (i.e., fences, flood lights, alarm systems, guard services) or changes in construction, arrangement, or equipment shall be made to be extent necessary to protect the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1410, as amended (26 U.S.C. 5178, 5682); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

§ 19.282 Breaking Government locks.

Where affixed, Government locks shall not be removed without the authorization of the area supervisor or an ATF officer, except where a person or property is in imminent danger from a disaster or other emergency. When a disaster or other emergency occurs, and it is impractical to first obtain authorization from an ATF officer, Government locks may be removed, by the proprietor, or by police or firefighters. When such action is taken, the proprietor shall see that security measures are taken to prevent illegal removal of spirits and, as soon as practical, shall notify the area supervisor of the action taken and submit within 5 days a written report, executed under the penalties of perjury, describing the emergency and the action.

(Sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

Subpart J—Production

§ 19.311 Notice by proprietor.

(a) *Commencement of operations*. The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file a notice on Form 5110.34 with the area supervisor, specifying the date on which he desires to commence or resume operations for the production of spirits. The notice shall be filed in accordance with the instructions on the form. The proprietor shall not commence or resume operations prior to the time specified in the notice.

(b) *Suspension of operations*. Any proprietor desiring to suspend production operations for a period of 90 days or more shall file notice on Form 5110.34 with the area supervisor specifying the date on which he will suspend operations. The notice shall be filed in accordance with instructions on the form. In case of an accident which makes it apparent that operations cannot be conducted for 90 days or more, the proprietor shall give immediate notice of suspension on Form 5110.34.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1364, as amended (26 U.S.C. 5221))

§ 19.312 Receipt of materials.

The quantities of fermenting and distilling materials (including nonpotable chemical mixtures containing spirits produced in accordance with § 19.67), and of spirits, denatured spirits, articles, and spirits residues, for redistillation, received on bonded premises shall be determined by the proprietor, and reported as provided in subpart W of this part. Fermented material (except apple cider exempt from tax under 26 U.S.C. 5042(a)(1)) to be used in the production of spirits shall be produced on the bonded premises where used or must be received on the premises from (a) a bonded wine cellar, in the case of wine, or (b) a contiguous brewery where produced, in the case of beer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222, 5223))

§ 19.313 Use of materials in production of spirits.

The proprietor may produce spirits from any suitable material in accordance with statements of production procedure in his notice of registration. The distillation of nonpotable chemical mixtures received pursuant to application as provided in § 19.67 shall be deemed to be the original and continuous distillation of the spirits in such mixtures and to constitute the production of spirits. Materials from which

alcohol will not be produced may be used in production only if the use of the materials is described in approved statements of production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.314 Removal of fermenting material.

Material received for use as fermenting material may be removed from or used on bonded premises for other purposes. A record of use or removal shall be kept as provided in subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.315 Removal or destruction of distilling material.

Except as provided in this section, distilling material shall not be removed from bonded premises before being distilled. The proprietor may remove mash, wort, wash or other distilling material—(a) to plant premises, other than bonded premises for use in such businesses as may be authorized under § 19.72; (b) to other premises for use in processes not involving the production of (1) spirits, (2) alcoholic beverages, or (3) vinegar by the vaporizing process; or (c) for destruction. The residue of distilling material not introduced into the production system may be removed from the premises if the liquid is expressed from the material before removal and such liquid is not received at any distilled spirits plant or bonded wine cellar. Residue of beer used as distilling material may be returned to the producing brewery. Distilling material produced and wine and beer received for use as distilling material may be destroyed. A record of removal or destruction shall be kept as provided in subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1381, as amended (26 U.S.C. 5222, 5370))

§ 19.316 Distillation.

The distillation of spirits shall be such that the spirits pass through a continuous system from the first still or other production equipment where access to the system would constitute a jeopardy to the revenue until the production of the spirits is completed. The distiller may, in the course of production, convey the product through as many distilling or other production operations as desired, provided the operations are continuous. Distilling operations are continuous when the spirits are conveyed through the various steps of production as expeditiously as plant operation will permit. The collection of unfinished spirits for the purpose of redistillation is not deemed to be a break in the continuity of the distilling procedure. However, the quantity and proof of any unfinished spirits produced from distilling materials, the quantity of which was ascertained in the manner authorized in § 19.732(c) for such materials, shall be determined and recorded before any mingling with other materials or before any further operations involving the unfinished spirits outside the continuous system. Spirits may be held, prior to the production gauge, only for so long as is reasonably necessary to complete the production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1362, as amended, 1365, as amended (26 U.S.C. 5178, 5211, 5222))

§ 19.317 Treatment during production.

Spirits may, in the course of original and continuous distillation, be purified or refined through, or by use of, any material which will not remain incorporated in the finished product. Juniper berries and other natural aromatics, or the extracted oils of such, may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips which have not been treated with any chemical. Materials used in treatment of spirits, and which do not remain in the spirits, shall be destroyed or so treated as to preclude the extraction of potable spirits therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.318 Addition of caramel to rum or brandy and addition of oak chips to spirits.

Caramel possessing no material sweetening properties may be added to rum or brandy on bonded premises prior to production gauge. Oak chips

which have not been treated with any chemical may be added to packages prior to or after production gauge; however, notation to that effect shall be made on the record of production gauge as provided in § 19.319.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.319 Production gauge.

(a) *General*. All spirits shall be gauged by determining quantity and proof within a reasonable time after production is completed. Except as otherwise specifically provided in this section, quantities may be determined by volume or by weight, by approved meter, or, when approved by the Director, by other devices or methods which accurately determine the quantities. If caramel is added to brandy or rum, the proof of the spirits shall be determined after the addition. Spirits in each receiving tank shall be gauged before reduction in proof and both before and after each removal of spirits therefrom. The gauges shall be recorded by the proprietor in the records required by § 19.736.

(b) *Tax to be determined on production gauge*. Tax may be determined on the basis of the production gauge if:

(1) Spirits are weighed into bulk conveyances;

(2) Spirits are uniformly filled by weight into metal packages; or

(3) Spirits are filled by weight into packages for immediate withdrawal from bonded premises and the details of the gauge for each package are recorded on a package gauge record according to § 19.769.

Transaction records shall be marked ''Withdrawal on Production Gauge.''

(c) *Tax not to be determined on production gauge*. If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and the containers are filled to capacity, and the tax is not to be determined on the basis of the production gauge, the gauge may be made by:

(1) Weighing in a tank, converting the weight into proof gallons, and determining the average content of each container; or

(2) Measuring volumetrically, in a calibrated tank, converting the wine gallons determined into proof gallons, and determining therefrom the average content of each container; or

(3) Converting the rated capacity into proof gallons to determine the average content of each container; or

(4) Determining by a device or method approved under the provisions of paragraph (a) of this section, the total quantity filled into containers, and determining therefrom the average content of each container. Rated capacity of new cooperage shall be as prescribed by specifications of the manufacturer, or in the case of used cooperage, as determined by the proprietor.

(d) *Records of production gauge*. In computing the production gauge on the basis of average content of packages as provided in paragraph (c) of this section, fractional proof gallons shall be rounded to the nearest one-tenth and the average content so determined and the number of packages filled shall be used in computing the quantity produced. A separate gauge record, as prescribed in § 19.768, shall be prepared for each lot of packages filled (see § 19.593(b)) and for each removal by pipeline or bulk conveyance for deposit in bond on the same plant premises. The gauge record shall indicate ''Deposit in storage'' or ''Deposit in processing.'' If spirits are to be transferred in bond, or withdrawn from bond, as authorized by this part, the production gauge shall be made on the form or record required by this part for the transaction (accompanied by a package gauge record, if required). Each transaction form or record and each package gauge record, if any, shall show:

(1) The real name (or basic operating name as provided in § 19.280) of the producer, and, if the spirits are produced under a trade name, the trade name under which produced.

(2) For each remnant container, the actual proof gallons in the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 19.320 Identification of spirits.

At the time of production gauge, containers of spirits shall be identified by the proprietor in accordance with subpart R of this part. When the proprietor desires to enter spirits into bonded

storage for subsequent packaging in wooden packages, he may identify such spirits with the specific designation to which they would be entitled if drawn into wooden packages, followed by the word ''Designate,'' for example, ''Bourbon Whisky Designate.''

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.321 Entry.

Pursuant to the production gauge, the proprietor shall make appropriate entry for (a) deposit of the spirits on bonded premises for storage or processing, (b) withdrawal of the spirits on determination of tax, (c) withdrawal of the spirits free of tax, (d) withdrawal of the spirits without payment of tax, or (e) transfer of the spirits for redistillation. Entry for deposit on the bonded premises of the same plant premises shall be made on a gauge record, prepared according to § 19.768. When spirits are entered for deposit on another plant premises or are entered for withdrawal or redistillation, the applicable provisions of subpart K or subpart P of this part shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5211))

§ 19.322 Distillates containing extraneous substances.

(a) *Use in production*. Distillates containing substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system prior to the production gauge for addition to fermenting or distilling material at the distillery where produced. Distillates removed from the distilling system under the provisions of this paragraph shall be added promptly to the fermenting or distilling material.

(b) *Use at bonded wine cellar*. Distillates containing aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use therein for fermentation of wine to be used as distilling material at the distilled spirits plant from which the distillates were removed. The gauge and removal of distillates to an adajcent bonded wine cellar shall be in accordance with applicable provisions of subpart P of this part relating to withdrawal of wine spirits for use in wine production and the receipt and use of such distillates at an adjacent bonded wine cellar shall be in accordance with the provisions of 27 CFR part 240.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5201, 5222, 5373))

FORMULA

§ 19.324 Statement of production procedure or Form 5110.38.

(a) A statement of production procedure is required as provided in § 19.170 for the production of spirits from original sources or substances.

(b) As provided in 27 CFR 5.27, an approved formula on Form 5110.38 is required for the redistillation of spirits in the production account.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended, 1395, as amended (26 U.S.C. 5201, 5222, 5223, 5555))

CHEMICAL BY-PRODUCTS

§ 19.326 Spirits content of chemicals produced.

All chemicals produced, including chemical by-products of the spirits production system, shall be substantially free of spirits before being removed from bonded premises. Except as authorized by the Director, the spirits content of such chemicals to be removed from bonded premises shall not exceed 10 percent by volume. Proprietors shall test chemicals for spirits content. Records of the tests will be maintained according to § 19.736.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.327 Disposition of chemicals.

Chemicals meeting the requirements in § 19.326 may be removed from bonded premises by pipeline or in such containers as the proprietor may desire. The quantities of such chemicals removed from bonded premises shall be determined by the proprietor and records of removals maintained according to § 19.736. Packages of such chemicals shall be appropriately marked by the proprietor to show the nature of

the contents. Samples of such chemicals may be secured by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222))

§ 19.328 Wash water.

Water used in washing chemicals to remove spirits therefrom may be run into a wash tank or a distilling material tank, or otherwise properly destroyed or disposed of on the premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1356, as amended (26 U.S.C. 5008, 5201))

INVENTORIES

§ 19.329 Production inventories.

Each distiller shall take a physical inventory of the spirits and denatured spirits in tanks and other vessels in the production account at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The inventory shall show separately spirits and denatured spirits received for redistillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart K—Redistillation

§ 19.331 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Certain products may only be redistilled pursuant to an approved formula on Form 5110.38, as specified in 27 CFR 5.27.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.332 Receipts for redistillation.

Proprietors may receive and redistill spirits or denatured spirits which (a) have not been removed from bond; (b) have been withdrawn from bond on payment or determination of tax, and are eligible for return to bond as provided in subpart U of this part; (c) have been withdrawn from bond free of tax or without payment of tax, and are eligible for return to bond as provided in subpart U; or (d) have been abandoned to the United States and sold to the proprietor without the payment of tax. Proprietors may also receive and redistill recovered denatured spirits and recovered articles returned under the provisions of § 19.683, and articles and spirits residues received under the provisions of § 19.684.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended 1370, as amended (26 U.S.C. 5201, 5223, 5243); sec. 807, Pub. L. 96–93 Stat. 285 (26 U.S.C. 5215))

§ 19.333 Redistillation.

Spirits shall not be redistilled at a proof lower than that prescribed for the class and type at which such spirits were originally produced, unless the redistilled spirits are to be used in wine production, to be used in the manufacture of gin or vodka, or to be designated as alcohol. Different kinds of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced. However, such restriction shall not apply when (a) brandy is redistilled into ''spirits-fruit'' or ''neutral spirits-fruit'' (not for use in wine production), (b) whiskey is distilled into ''spirits-grain'' or ''neutral spirits-grain'', (c) spirits originally distilled from different kinds of material are redistilled into ''spirits-mixed'' or ''neutral spirits-mixed'', or (d) the spirits are redistilled into alcohol. All spirits redistilled subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and 26 U.S.C. Chapter 51 (including liability for tax attaching to spirits at the time of production) applicable to the original production of spirits shall be applicable thereto, except that spirits recovered by redistillation of denatured spirits, articles, or spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. Nothing in this section shall be construed as affecting any provision of this chapter or of 27 CFR part 5 relating to the labeling of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

Subpart L—Storage

§ 19.341 General.

Proprietors who are qualified as warehousemen as provided in this part, and who have otherwise complied with the requirements of this part for the storage of bulk distilled spirits and wines, shall conduct such operations pursuant to the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.342 Receipt and storage of bulk spirits and wines.

(a) *Deposit.* All spirits entered for deposit in the storage account after production as provided in subpart J shall be deposited on the bonded premises designated in the entry for deposit. Spirits withdrawn from customs custody without payment of tax under the provisions of this part shall be received on the bonded premises to which so withdrawn and (unless to be immediately redistilled) shall be deposited on such premises. Spirits transferred in bond as provided in subpart P shall be deposited on the bonded premises designated on the transfer record.

(b) *Tanks.* If spirits or wines are being deposited in a partially filled tank in storage on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits or wines into and out of the tank isbeing measured by meters or other devices approved by the regional director (compliance) which permit a determination of the quantity being deposited and the quantity being removed. Proprietors shall maintain records of spirits or wines in tanks in accordance with subpart W of this part.

(c) *Storage.* Spirits or wines may be held in the storage account in tanks or portable bulk containers on the bonded premises. When used for such storage, containers shall be kept so that they can be readily inspected or inventoried by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended, 1366, as amended, 1398, as amended (26 U.S.C. 5201, 5211, 5212, 5232, 5601); sec. 806(a), Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202); sec. 807(a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5231))

§ 19.343 Addition of oak chips to spirits and addition of caramel to brandy and rum.

Oak chips which have not been treated with any chemical may be added to packages either prior to or after filling. When oak chips are added to packages, notation of such fact shall be made on all transaction records. Caramel possessing no material sweetening properties may be added to rum or brandy in packages or tanks.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

FILLING AND CHANGING PACKAGES

§ 19.344 Filling of packages from tanks.

Spirits or wines may be drawn into packages from storage tanks on bonded premises. The spirits or wines in the tank shall be gauged prior to filling of packages, and when only a portion of the contents of the tank is packaged, the spirits or wines remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor in records required by §§ 19.740 and 19.768. The provisions of § 19.319 regarding the filling of packages and the taking of production gauges of packages shall be applicable to the filling and gauging of packages of spirits under this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.345 Change of packages.

Spirits or wines in storage may be transferred from one package to another. Except in the case of spirits of 190 degrees or more proof, each new

package shall contain spirits from only one package. Packages shall be marked as provided in subpart R of this part. In the case of wines, each package shall bear the same marks as the package from which the wine was transferred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

MINGLING OR BLENDING OF SPIRITS

§ 19.346 Mingling or blending of spirits for further storage.

The following mingling or blending operations are permissible in the storage account of a warehouseman:

(a) *Mingling of spirits distilled at 190 degrees or more of proof.* Spirits distilled at 190 degrees or more of proof, whether or not subsequently reduced, may be mingled in storage.

(b) *Mingling of spirits distilled at less than 190 degrees of proof.* Spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if—

(1) In the case of domestic spirits:

(i) Such spirits are of the same kind; and

(ii) Such spirits were produced in the same State.

(2) In the case of imported spirits:

(i) Such spirits are of the same kind;

(ii) Such spirits were produced in the same foreign country; and

(iii) Such spirits were treated, blended, or compounded in the same foreign country and the duty was paid at the same rate.

(3) In the case of imported spirits which are recognized as distinctive products in 27 CFR part 5:

(i) Such spirits are of the same kind;

(ii) Such spirits were produced by the same proprietor in the same foreign country; and

(iii) Such spirits were treated, blended, or compounded by the same proprietor in the same foreign country and the duty was paid at the same rate.

(c) *Permissible blending of beverage rums or brandies.* Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be blended with each other, or with any blend of such fruit brandies in storage. Rums may, for the sole purpose of perfecting them according to commercial standards, be blended with each other, or with any blend of rums.

(d) *Packaging of mingled spirits or blended rums and brandies.* Packaging after mingling or blending shall be conducted under the provisions of § 19.344. If so desired, the mingled or blended spirits may be returned to the packages from which they were dumped for mingling or blending, or as many of such packages as are necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended (26 U.S.C. 5201, 5214))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–259, 52 FR 41423, Oct. 28, 1987]

§ 19.347 Packages dumped for mingling.

When dumping packages of spirits of less than 190 degrees of proof for mingling in the storage account, the proprietor shall record such mingling on the tank record prescribed in § 19.742 covering such tank. When packages of spirits of 190 degrees or more of proof are to be mingled, the proprietor shall record such mingling in the tank summary record prescribed in § 19.743 for all tanks of spirits of 190 degrees or more of proof. Each package of spirits to be mingled under this subpart shall be examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, such package shall not be dumped until the area supervisor has been notified.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.348 Determining age of mingled spirits.

When spirits are mingled, the age of the spirits for the entire lot shall be the age of the youngest spirits contained in the lot.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.349 Mingled spirits or wines held in tanks.

When spirits of less than 190 degrees of proof or wines are mingled in a tank, the proprietor shall gauge the spirits or wines in the tank and record the

mingling gauge on the tank record prescribed in § 19.742.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

INVENTORIES

§ 19.353 Storage inventories.

Each warehouseman shall take a physical inventory of all spirits and wines held in the storage account in tanks and other vessels (except packages) at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The inventory shall separately identify spirits and wines. The results of the inventory shall be recorded in accordance with subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

§ 19.371 General.

Proprietors, who are qualified as processors as provided in this part, shall conduct operations relating to the manufacture, treatment, mixing or bottling of distilled spirits on bonded premises pursuant to the provisions of this subpart. Proprietors, who conduct operations relating to the denaturation of spirits or the manufacture of articles on bonded premises, pursuant to the provisions of subpart N of this part, shall be qualified as processors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

RECEIPT AND USE OF SPIRITS, WINES AND ALCOHOLIC FLAVORING MATERIALS

§ 19.372 Receipt of spirits, wines and alcoholic flavoring materials for processing.

(a) Proprietors may receive into the processing account—

(1) Bulk spirits (i) from the production or storage account at the same plant, (ii) by transfer in bond from another distilled spirits plant, or (iii) on withdrawal from customs custody under 26 U.S.C. 5232;

(2) Wines (i) from the storage account at the same plant, or (ii) by transfer in bond from a bonded wine cellar or another distilled spirits plant;

(3) Spirits returned to bond under the provisions of 26 U.S.C. 5215; or

(4) Alcoholic flavoring materials.

(b) Spirits and wines received in bulk containers or conveyances shall be recorded as dumped on receipt, but may be retained in the containers or conveyances in which received until used. Spirits and wines received by pipeline shall be deposited in tanks, gauged by the proprietor, and recorded as dumped. Alcoholic flavoring materials may be retained in the containers in which received or may be transferred to another container if the proprietor marks or otherwise indicates thereon, the full identification of the original container, the date of receipt, and the quantity deposited. Alcoholic flavoring materials and nonalcoholic ingredients shall be considered dumped when mixed with spirits or wines. The proof gallon content of spirits, wines, and alcoholic flavoring materials shall be determined at the time of dumping.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.373 Use of spirits, wines and alcoholic flavoring materials.

A proprietor shall prepare a dump/batch record according to § 19.748 for spirits, wines, alcoholic flavoring materials, and nonalcoholic ingredients used in the manufacture of a distilled spirits product as follows:

(a) *Dump record.* When spirits, wines, or alcoholic flavoring materials are dumped for use in the manufacture of a distilled spirits product, and when spirits are dumped for redistillation in the processing account, the proprietor shall prepare a dump record.

(b) *Batch record.* The proprietor shall prepare a batch record to report:

(1) The dumping of spirits which are to be used immediately and in their entirety in preparing a batch of a product manufactured under an approved formula;

(2) The use of spirits or wines previously dumped, reported on dump records and retained in tanks or receptacles; and

(3) Any combination of ingredients in paragraphs (b) (1) and (2) of this section used in preparing a batch of a product

manufactured under an approved formula.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.374 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131–5134, may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises. For purposes of computing an effective tax rate, flavors manufactured on either the bonded or general premises of a distilled spirits plant are not eligible flavors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–297, 55 FR 18063, Apr. 30, 1990]

OBSCURATION

§ 19.376 Determining obscuration.

Proprietors may determine the proof obsecuration as prescribed in 27 CFR § 30.32 of spirits to be bottled on the basis of a representative sample taken: (a) from a storage tank incident to the transfer of the spirits to the processing account, or (b) from a tank after the spirits have been dumped for processing, whether or not combined with other alcoholic ingredients. The obscuration shall be determined after the sample has been reduced to within one degree of the proof at which the spirits will be bottled. Only water may be added to a lot of spirits to be bottled for which the determination of proof obscuration is made from a sample under this section. The proof obscuration for products gauged pursuant to this section shall be frequently verified by testing samples taken from bottling tanks prior to commencement of bottling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

FORMULAS

§ 19.378 Formula requirements.

An approved formula on ATF Form 5110.38 must be secured for spirits for domestic use or export as provided in 27 CFR 5.26—5.27 before processors may blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits including redistillation as provided in § 19.331, and the production of gin or vodka by other than original and continuous distillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1395, as amended (26 U.S.C. 5201, 5555))

BOTTLING, PACKAGING, AND REMOVAL OF PRODUCTS

§ 19.381 Removals from processing.

Spirits shall not be transferred from processing to the storage account. Processors may remove—

(a) Spirits upon tax determination or withdrawal under the provisions of 26 U.S.C. 5214 or 26 U.S.C. 7510;

(b) Spirits to the production account at the same plant for redistillation;

(c) Bulk spirits by transfer in bond to the production or the processing account at another distilled spirits plant for redistillation or further processing;

(d) Spirits or wines for authorized voluntary destruction; or

(e) Wines by transfer in bond to a bonded wine cellar or to another distilled spirits plant. However, wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine. Spirits may be bottled and cased for removal. Spirits or wines may be removed in any approved bulk container, by pipeline or in bulk conveyances on compliance with the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1320, as amended, 1323, as amended, 1356, as amended, 1360, as amended, 1362, as amended, 1365, as amended, 1380, as amended (26 U.S.C. 5001, 5006, 5008, 5201, 5206, 5212, 5214, 5223, 5362))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–230, 51 FR 21748, June 16, 1986]

§ 19.382 Bottling tanks.

All spirits shall be bottled from tanks listed and certified as accurately calibrated in the notice of registration. However, the regional director (compliance) may authorize bottling from original packages or special containers where it is impracticable to use a bottling tank. Bottlers desiring to bottle from packages or special containers shall file notice with the area supervisor. The notice shall show the necessity for the operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.383 Bottling tank gauge.

When a distilled spirits product is to be bottled or packaged, the proprietor shall gauge the product, on completion of any filtering, reduction, or other treatment, and prior to commencement of bottling or packaging. Any gauge made under this section shall be made at labeling or package marking proof while the product is in the tank from which it is to be bottled or packaged, and the details of the gauge shall be entered on the bottling and packaging record prescribed in § 19.749.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.384 Preparation of bottling or packaging record.

The proprietor shall prepare a record for each batch of spirits bottled or packaged according to the specifications in § 19.749.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.385 Labels to agree with contents of tanks and containers.

Labels affixed to containers shall agree in every respect with the spirits in the tanks from which the containers were filled. If they do not the proprietor shall relabel such spirits with a proper label. The proprietor's records shall be such that they will enable ATF officers to readily determine, by case or package serial number, which label was used on any given filled container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.386 Alcohol content and fill.

(a) *General.* (1) At representative intervals during bottling operations, proprietors shall test and examine bottled spirits to determine whether those spirits agree in alcohol content and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure label accuracy of the bottled product, the regional director may require corrective measures.

(b) *Variations in alcohol content and fill.* The proprietor shall rebottle, recondition, or relabel spirits if the bottle contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled; and/or

(2) Alcohol content, subject to a normal drop in alcohol content which may occur during bottling operations not to exceed:

(i) 0.25 percent alcohol by volume for products containing solids in excess of 600 mg per 100 ml, or

(ii) 0.25 percent alcohol by volume for all spirits products bottled in 50 or 100 ml size bottles, or

(iii) 0.15 percent alcohol by volume for all other spirits and bottle sizes.

For example, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume.

(c) *Records.* Proprietors shall record the results of all tests of alcohol content and quantity (fill) in the record required by § 19.750.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1394, as amended (26 U.S.C. 5201, 5301)

[51 FR 36395, Oct. 10, 1986, as amended by T.D. ATF–288, 54 FR 47770, Nov. 17, 1989]

§ 19.387 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close

of the day, the bottler shall make entries on the bottling and packaging record covering the total quantity bottled that day from the tank. Entries shall be made not later than the morning of the following business day unless the bottler maintains auxiliary or supplemental records as provided in § 19.731.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.388 Cases.

(a) *General.* (1) On completion of bottling, the filled bottles with labels and properly affixed closures or other devices shall be placed in cases, and the cases shall be sealed.

(2) Each case of spirits filled shall be marked as prescribed by subpart R of this part before removal from such premises.

(b) *Unsealed cases.* (1) Cases may be temporarily retained on bonded premises without being sealed pending the affixing to bottles of any required labels, State stamps, or seals.

(2) Unsealed cases containing bottles without labels shall be marked in accordance with subpart R of this part, and segregated from other cases on bonded premises pending affixing of the labels, State stamps, or seals.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.389 Remnants.

Where incident to bottling there remain bottles less than the number necessary to fill a case, the bottles, after being affixed with closures or other devices and labeled, may be marked as a remnant case as provided in subpart R of this part or kept uncased on the bonded premises until spirits of the same kind are again bottled. Appropriate notation shall be made on the bottling and packaging record to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent bottling and packaging record showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for together with appropriate notation explaining the transactions.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.390 Filling packages.

Spirits may be drawn into packages from a tank (conforming to the requirements of § 19.273). Such packages shall be gauged by the proprietor, and he shall report the details of such gauge on a package gauge record, according to § 19.769, and attach a copy of the package gauge record to each copy of the bottling and packaging record covering the product. Such packages shall be marked as prescribed by subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.391 Removals by bulk conveyances or pipelines.

When the spirits in the processing accounts are to be removed in bulk conveyances or by pipeline, the proprietor shall record the filling of the conveyance or the transfer by pipeline on the bottling and packaging record. The spirits shall be removed from bonded premises in accordance with subpart P of this part. The cosignor shall forward to the consignee a statement of composition or a copy of any formula under which such spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product. Bulk conveyances shall be marked as provided in subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.392 Rebottling.

When the spirits are dumped for rebottling, the proprietor shall prepare a bottling and packaging record, appropriately modified. If the spirits were originally bottled by another proprietor, a statement from the original

bottler consenting to the rebottling must be secured by the proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.393 Reclosing and relabeling.

The proprietor may reclose or relabel distilled spirits, either before removal from bonded premises or after return thereto. The reclosing or relabeling of spirits returned to bonded premises shall be done immediately, and the spirits promptly removed. When spirits were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling. When spirits are relabeled, the proprietor shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR part 5 for labels used on relabeled spirits. The proprietor shall prepare a separate record according to § 19.747 to cover the relabeling or reclosing. For spirits returned to bond under 26 U.S.C. 5215(c), the proprietor shall annotate such information on the record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5205); sec. 807, Pub. L. 96–39, 93 Stat. 280 (26 U.S.C. 5215))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.394 Bottled-in-bond spirits.

Spirits which are labeled as bottled-in-bond for domestic consumption shall meet the requirements in 27 CFR part 5 and shall bear a closure or other device as required by subpart T of this part.

(Approved by the Office of Management and Budget under control number 1512–0189)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.395 Labels for export spirits.

All bottles containing spirits bottled for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;

(b) Percent-alcohol-by-volume of the spirits;

(c) Net contents, unless the markings on the bottle indicate such contents; and

(d) The name (or, if desired, the trade name) of the bottler.

The bottler may place on the label any additional information that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the proprietor maintains on file an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the proprietor maintains a record of the equivalent units as they would be required to be expressed if bottled for domestic consumption. The Director may waive the requirement of showing any of the information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information. With respect to kind of spirits, the Director may waive the designation required by 27 CFR 5.22, only to the extent that the label need not bear the word ''diluted'' on distilled spirits bottled below the minimum bottling proof, provided this is in accordance with the rules of the countries to which such product is to be exported.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1374, as amended (26 U.S.C. 5201, 5301))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–237, 51 FR 36395, Oct. 10, 1986; T.D. ATF–283, 54 FR 11704, Mar. 22, 1989]

§ 19.396 Spirits removed for shipment to Puerto Rico.

Spirits removed for shipment to Puerto Rico with benefit of drawback or without payment of tax under the provisions of 27 CFR part 252 are subject to the provisions of 27 CFR part 5 in respect to labeling requirements and standards of fill for bottles.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201))

§ 19.397 Spirits not originally intended for export.

Spirits manufactured, produced, bottled in bottles, packed in containers, or which are packaged in casks or other bulk containers in the United States, originally intended for domestic use may be exported with benefit of drawback or without payment of tax if the cases or bulk containers are marked as required by 27 CFR part 252. The proprietor may relabel the spirits to show any of the information provided for in § 19.395. When the proprietor desires to file a claim for drawback on spirits prepared for export under this section, the provisions of 27 CFR 252.195b shall be followed. When the proprietor desires to withdraw spirits without payment of tax, he shall file a notice in accordance with 27 CFR 252.92.

(Approved by the Office of Management and Budget under control number 1512–0189)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1358, as amended, 1362, as amended (26 U.S.C. 5062, 5205, 5214))

[T.D. ATF–206, 50 FR 23951, June 7, 1985]

§ 19.398 Alcohol.

(a) *Containers.* Subject to the provisions of subpart R of this part, alcohol for industrial use may be put in bottles, packages, or other containers. Proprietors shall comply with the provisions in subpart S of this part when alcohol for nonindustrial domestic use is bottled.

(b) *Closures.* Closures or other devices shall be affixed to containers of alcohol as provided in subpart T of this part.

(c) *Bottle labels.* All bottles of alcohol for industrial use shall have affixed thereto a label showing ''Alcohol'' and the name and plant number of the bottler. The bottler may place on the label additional information, if it is not inconsistent with the required information.

(d) *Case marks.* Each case of bottled alcohol shall bear the marks prescribed therefor in subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1369, as amended (26 U.S.C. 5201, 5206, 5235, 5301))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23952, June 7, 1985]

RECORDS

§ 19.400 Daily summary record of spirits bottled or packaged.

The proprietor shall maintain a separate daily summary record of spirits bottled or packaged as provided in § 19.751.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

INVENTORIES

§ 19.401 Inventories of wines and bulk spirits (except in packages) in processing account.

Each proprietor shall take a physical inventory of wines and bulk spirits (except in packages) in the processing account at the close of each calendar quarter, and at such other time as the regional director (compliance) may require. The results of the inventory shall be recorded in accordance with subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.402 Inventories of bottled and packaged spirits.

(a) *Physical inventories.* (1) Physical inventories of bottled and packaged spirits in the processing account shall be taken for the return periods ending June 30 and December 31 of each year, and for other return periods as may be required by the regional director (compliance).

(2) Physical inventories may be taken within a period of a few days before or after June 30 or December 31 (or other dates approved by the regional director (compliance), if:

(i) Such period does not include more than one complete weekend; and

(ii) Necessary adjustments are made to reflect pertinent transactions, so that the recorded inventories will agree with the actual quantities of bottled or packaged spirits on hand in processing at the prescribed times.

(3) On approval of an application filed with the regional director (compliance), required physical inventories may be taken on dates other than June 30 and December 31 if the dates established for taking such inventories:

(i) Coincide with the end of a return period, and

(ii) Are approximately six months apart.

(4) On approval of the application, the designated inventory dates shall take effect with the first inventory scheduled to be taken within six months of the previous June 30 or December 31 inventory.

(b) *Waiver of physical inventory.* (1) The regional director (compliance), on receipt of an application, may relieve a proprietor of the requirement of taking the June 30 or December 31 physical inventory, (or other date approved under paragraph (a) of this section) if he finds that only one such inventory during any 24 consecutive return periods is necessary.

(2) The regional director (compliance) may reimpose the requirement for the waived inventory if he finds that it is necessary for law enforcement or protection of the revenue.

(c) *Notification of physical inventory.* Whenever a physical inventory of bottled or packaged spirits is to be taken, the proprietor shall, at least 5 business days in advance, notify the area supervisor of the date and time he will take such inventory.

(d) *Supervision of physical inventories.* Physical inventories required under the provisions of this section shall be taken under such supervision, or verified in such manner, as the regional director (compliance) may require.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart N—Denaturing Operations and Manufacture of Articles

§ 19.451 General.

Authorized proprietors who are qualified as processors may conduct denaturing operations or manufacture articles pursuant to the provisions of this part. Proprietors shall not conduct denaturing operations or manufacture articles except as provided in this part. Records of denaturing operations and the manufacture of articles shall be maintained in accordance with § 19.752 and § 19.753.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); sec. 807(a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

DENATURATION

§ 19.452 Formulas.

Spirits shall be denatured in accordance with formulas as authorized in 27 CFR part 21 or their alternatives. Denaturing materials shall be thoroughly mixed with the spirits being denatured.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.453 Testing of denaturants.

(a) *Testing.* Proprietors shall ensure that the materials they receive for use in denaturing conform to the specifications prescribed in 27 CFR part 21. The regional director (compliance) may require the testing of denaturants at any time.

(b) *Samples.* Samples of denaturants shall be taken in such manner as to represent a true composite of the total lot being sampled. When samples are tested by persons other than a proprietor, a copy of the analysis or a statement, signed by the chemist performing the test, shall be secured and filed by the proprietor for each test. Samples of denaturants may be taken by ATF officers at any time for testing by Government chemists.

(c) *Conformity.* When a denaturant does not conform to the specifications prescribed under 27 CFR part 21, the proprietor shall not use the material unless he treats or manipulates the denaturant to make it conform to such specifications. Such treated or manipulated denaturant shall again be tested.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.454 Gauge for denaturation.

The proprietor shall gauge spirits before denaturation and after denaturation and record each gauge on the record of denaturation as prescribed in § 19.752(b). However, spirits dumped from previously gauged containers or spirits transferred directly to mixing tanks from gauge tanks where they were gauged, need not again be gauged. Measurements of spirits and denaturants shall be made by volume, weight, by approved meter, or, when

approved by the Director, other devices or methods.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.455 Dissolving of denaturants.

Denaturants which are difficult to dissolve in spirits at usual working temperatures, which are highly volatile, or which become solid at such usual temperatures may be liquefied or dissolved in a small quantity of spirits or water in advance of their use in the production of specially denatured spirits, pursuant to the prescribed formula, so long as the proof of the denatured spirits manufactured does not fall below the proof prescribed for the applicable formula in 27 CFR part 21. Any spirits used in dissolving denaturants and contained in the resulting solution shall be included as part of the total quantity of spirits denatured in each batch.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.456 Adding denaturants.

Denaturants and spirits shall be mixed in packages, tanks, or bulk conveyances on bonded premises. The regional director (compliance) may, on written application, authorize other methods of mixing denaturants and spirits if he deems such denaturation will not hinder effective administration of this part or jeopardize the revenue. If requested by the regional director (compliance), the proprietor shall submit a flow diagram of the intended process or method of adding denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.457 Neutralizing denatured spirits.

Proprietors may add trace quantities of compounds such as caustics or acids to certain formulas of denatured spirits to neutralize such spirits, if the intended effect of the denaturants is not reduced. Proprietors who neutralize denatured spirits must record, for each formula the kinds and quantities of compounds used, and the formula number of the denatured spirits neutralized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.458 Restoration and redenaturation of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles received on bonded premises, as provided in subpart U of this part, for restoration (including redistillation, if necessary) and/or redenaturation may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. If the recovered or restored denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, a notation to that effect will be made on the record of denaturation required by § 19.752(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.459 Mixing of denatured spirits.

(a) Denatured spirits produced under the same formula may be mixed on bonded premises.

(b) Denatured spirits of different formulas may be mixed on bonded premises for immediate redistillation at the same plant or at another plant in accordance with the provisions of subpart K of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.460 Conversion of denatured alcohol formulas.

(a) *Conversion of Formula No. 1.* Any specially denatured alcohol, except Formulas No. 3–A and No. 30, may be converted into specially denatured alcohol, Formula No. 1, by the addition of methyl alcohol and either denatonium benzoate, N.F., methyl isobutyl ketone, mixed isomers of nitropropane, or methyl *n*-butyl ketone in accordance with the formulation prescribed in § 21.32 of this chapter. For specially denatured alcohol Formulas No. 3–A and No. 30, the methyl alcohol content shall be reduced to the level

prescribed for specially denatured alcohol Formula No. 1 by the addition of ethyl alcohol before adding one of the other ingredients prescribed in § 21.32 of this chapter.

(b) *Conversion to Formula No. 29.* Any specially denatured alcohol may be converted to specially denatured alcohol, Formula No. 29, by the addition of acetaldehyde or ethyl acetate, in accordance with the formulations prescribed in 27 CFR 21.56.

(c) *General rule.* In addition to the conversions provided in paragraphs (a) and (b) of this section, any specially denatured alcohol may be converted to another specially denatured alcohol formula, if the resultant alcohol-denaturant mixture contains only the alcohol and denaturant or denaturants in the proportions authorized in 27 CFR part 21 for the formula to which converted. Specially denatured alcohol which is converted under this paragraph may only be used as authorized in 27 CFR part 21 for the formula to which converted.

(d) *Conditions governing conversion and use.* The quantities of denaturants required for conversions authorized in paragraphs (a), (b) and (c) of this section shall be determined on the basis of the alcohol in the formulations. Specially denatured alcohol converted to Formula No. 29 may be used as authorized in 27 CFR 21.56(b) except that it shall not be used in the manufacture of vinegar, drugs, or medicinal chemicals, and the conditions governing use provided in 27 CFR 21.56(c) shall apply.

(e) *Conversion to other formulations.* Proprietors desiring to convert specially denatured alcohol other than as provided in paragraphs (a), (b), and (c) of this section shall obtain approval from the Director prior to such conversion.

(f) *Conversion to completely denatured alcohol.* Any specially denatured alcohol not containing methanol or wood alcohol may be converted to any one of the completely denatured alcohol formulas, prescribed in 27 CFR part 21, by adding the required denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985; T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 19.461 Receipt and storage of denatured spirits.

(a) *Deposit.* Denatured spirits produced, received in bond as provided in subpart P or returned to bonded premises as provided in subpart U of this part, shall be deposited on the bonded premises.

(b) *Tanks.* Proprietors shall maintain a record in accordance with § 19.752 for tanks in which denatured spirits are stored.

(c) *Storage.* Denatured spirits may be stored on bonded premises in any container into which denatured spirits may be filled on bonded premises. Such containers shall be so stored that they can be readily inspected by ATF officers and inventoried. The provisions of § 19.133 are applicable to storage of denatured spirits in portable containers. However, upon application, the regional director (compliance) may authorize the proprietor to store packages and cases in any manner which safeguards the interests of the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.462 Filling of containers from tanks.

Denatured spirits may be drawn into portable containers from tanks on bonded premises. The denatured spirits in the tanks shall be gauged prior to filling of the containers, and when only a portion of the contents of the tank is drawn into containers, the denatured spirits remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor. The provisions of paragraph (a) and (c) of § 19.319 shall be applicable to the filling and gauging of portable containers, and denatured spirits may be withdrawn from bonded premises for any lawful purpose on the filling gauge.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.463 Containers for denatured spirits.

Packaging of denatured spirits and the marking of portable containers of

such denatured spirits shall be in accordance with requirements of subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

INVENTORIES

§ 19.464 Denatured spirits inventories.

Each proprietor shall take a physical inventory of all denatured spirits in the processing account at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The results of the inventory shall be recorded as provided in subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

ARTICLES

§ 19.471 Manufacture of articles.

Proprietors shall manufacture, label, mark, and dispose of articles as provided in 27 CFR part 20.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985]

Subpart O—Spirits from Customs Custody

§ 19.481 General.

Spirits imported or brought into the United States in bulk containers may be withdrawn by proprietors from customs custody and transferred in such bulk containers or by pipeline without payment of tax to the bonded premises of their distilled spirits plant. Spirits received on bonded premises as provided in this section may be (a) redistilled or denatured only if 185 degrees or more of proof, and (b) withdrawn for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232))

§ 19.482 Age and fill date.

For the purpose of this part, the age and fill date for spirits that are imported or brought into the United States shall be:

(a) *Age*. The claimed age, which is supported by the documentation required in 27 CFR part 5.

(b) *Fill date*. The date that packages of spirits are released from customs custody or filled on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.483 Recording gauge.

(a) When packages of spirits are received from customs custody in the storage account, the proprietor shall use the last official gauge to compute and record on the deposit records prescribed in § 19.740 for each entry the average content of the packages being received which shall also provide the basis for entries on the package summary records prescribed in § 19.741. If the last official gauge indicates a substantial variation in the contents of the packages, the proprietor shall group the packages into lots according to their approximate contents, and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(b) When packages of spirits are received from customs custody in the processing account, the proprietor shall determine the proof gallons of spirits received in each package. The determination may be made by use of the last official gauge.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5232))

IMPORTED SPIRITS

§ 19.484 Marks on containers of imported spirits.

(a) *General*. Each portable bulk container of spirits shall, when received on bonded premises under the provisions of § 19.481, or when filled on bonded premises, be marked with:

(1) The name of the importer;

(2) The country of origin;

(3) The kind of spirits;

(4) The package identification number as provided in § 19.593 or the package serial number as provided in § 19.594;

(5) If filled on bonded premises, the date of fill;

(6) The proof; and

(7) The proof gallons of spirits in the package. Package identification numbers or package serial numbers shall be preceded by the symbol ''IMP'' and any distinguishing prefix or suffix used as provided in § 19.594. The proprietor who receives packages of imported spirits under the provisions of § 19.481 shall be responsible for having the required marks placed on such packages. Package identification numbers assigned under the provisions of this section to packages of spirits received from customs custody shall be recorded on the deposit records by the proprietor who receives the spirits.

(b) *Exception*. Proprietors are relieved from placing prescribed marks on packages when the spirits will be removed from the packages within 30 days of the date of receipt at the distilled spirits plant. Packages not dumped as provided in this paragraph within the time prescribed must be promptly marked in the manner required by § 19.595. The provisions of this section shall not be construed to waive, or authorize the waiver of, the requirements of this part for the assigning of package identification numbers or for the recording of such package identification numbers on deposit records, and the required recording of lot identification numbers and related information on other transaction forms, records, or reports.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

PUERTO RICAN AND VIRGIN ISLANDS SPIRITS

§ 19.485 Marks on containers of Puerto Rican and Virgin Islands spirits.

(a) *Packages received in bond*. (1) When packages of Puerto Rican spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by 27 CFR 26.40, modified to show the serial number of the Form 5110.31 prefixed by ''Form 5110.31'', rather than the serial number and identification of the Form 487–B, shall be accepted in lieu of the markings prescribed in § 19.484. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages of spirits the date of fill as provided in § 19.482, and the words ''Puerto Rican'' or the abbreviation ''P.R.''.

(2) When packages of Virgin Islands spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by 27 CFR 26.206 that are on such packages shall be accepted in lieu of the markings prescribed in § 19.484. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages of spirits the date of fill as provided in § 19.482, and the words ''VIRGIN ISLANDS'' or the abbreviation ''V.I.''

(b) *Portable bulk containers*. Portable bulk containers of Puerto Rican or Virgin Islands spirits filled in ATF bond shall, in addition to the required marks prescribed in § 19.596, be marked to show the serial number of the approved formula under which produced, and with the words ''PUERTO RICAN'' or ''VIRGIN ISLANDS'' or the abbreviation thereof. Portable bulk containers containing spirits received in ATF bond under the provisions of this subpart shall, in addition to other required marks, be marked with the words ''PUERTO RICAN'' or ''VIRGIN ISLANDS'' or the abbreviation thereof.

(c) *Cases of bottled alcohol*. In addition to other mandatory marks prescribed by § 19.608 for cases of bottled alcohol, the words ''PUERTO RICAN'' or ''VIRGIN ISLANDS'', as appropriate, or the abbreviation ''P.R.'' or ''V.I.'' shall precede or follow the word ''alcohol'' on cases of alcohol from Puerto Rico or the Virgin Islands that are bottled and cased on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1369, as amended (26 U.S.C. 5206, 5235))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–459, 66 FR 38549, July 25, 2001]

§ 19.486 Additional tax on nonbeverage spirits.

The additional tax imposed by 26 U.S.C. 5001(a)(9), on imported spirits withdrawn from customs custody without payment of tax and thereafter withdrawn from bonded premises for beverage purposes, and the related

provisons of § 19.518, are not applicable to Puerto Rican or Virgin Islands spirits brought into the United States and transferred to bonded premises under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.487 Abatement, remission, credit or refund.

The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit or refund for loss or destruction of distilled spirits, shall apply to spirits brought into the United States from Puerto Rico or the Virgin Islands, with respect to the following:

(a) Spirits lost while in ATF bond;

(b) Voluntary destruction of spirits in bond;

(c) Spirits returned to bonded premises after withdrawal from bonded premises without payment of tax; and

(d) Spirits returned to bonded premises after withdrawal from bonded premises upon tax determination.

Claims relating to spirits lost in bond, in addition to the information required by § 19.41, shall show the name of the producer, and the serial number and date of the formula, where required, under which produced.

(Sec. 201, Pub. L. 95–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

Subpart P—Transfer and Withdrawals

GENERAL

§ 19.501 Authority to withdraw.

Spirits, denatured spirits, and wines shall be removed from bonded premises as provided in this subpart. Spirits entered into bonded storage for subsequent packaging in wooden packages, as provided in § 19.320, which have not been drawn into such packages at the time of withdrawal from bond shall be redesignated to conform to the classes and types set out in subpart R of this part and in 27 CFR part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended (26 U.S.C. 5201, 5212, 5214); sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.502 Withdrawal of spirits on production or filling gauge.

When the production or filling gauge is made under the provisions of § 19.319(b), spirits may be withdrawn from bonded premises for any lawful purpose on the production or filling gauge. When the production or filling gauge is made under § 19.319(c), spirits may be withdrawn without payment of tax for export on the production or filling gauge. When spirits which are to be withdrawn on determination of tax on the original gauge are transferred in bond, all copies of the transfer record prescribed in § 19.770 shall be marked by the proprietor ''Withdrawal on Original Gauge''.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.503 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, actual tare shall be determined in accordance with 27 CFR part 30.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

TRANSFERS BETWEEN BONDED PREMISES

§ 19.505 Authorized transfers.

(a) *Spirits*. Bulk spirits or denatured spirits may be transferred in bond between the bonded premises of plants qualified under 26 U.S.C. 5171 or 26 U.S.C. 5181, in accordance with §§ 19.506 and 19.998, respectively.

(b) *Wine*. (1) Wines may be transferred (i) from a bonded wine cellar to the bonded premises of a distilled spirits plant, (ii) from the bonded premises of a distilled spirits plant to a bonded wine cellar, or (iii) between the bonded premises of distilled spirits plants.

(2) Wines transferred to the bonded premises of a distilled spirits plant may be used in the manufacture of a distilled spirits product, and may not be removed from such bonded premises for consumption or sale as wine.

(c) *Alcohol for industrial purposes*. Alcohol bottled for industrial purposes, as provided in § 19.398, may be transferred between the bonded premises of distilled spirits plants in accordance with the procedures prescribed in

§§ 19.506 through 19.510 for bulk distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5212, 5362); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–297, 55 FR 18064, Apr. 30, 1990]

§ 19.506 Application to receive spirits in bond.

When a proprietor qualified under 26 U.S.C. 5171 desires to have spirits or denatured spirits transferred to him in bond which shall not include spirits withdrawn from customs custody under 26 U.S.C. 5232, he shall make application for such transfer to the regional director (compliance) on Form 5100.16. Application to receive such spirits by transfer in bond shall not be approved unless the applicant's operations or unit bond is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the tax on the spirits or denatured spirits to be transferred in addition to all other liabilities chargeable against such bond. The applicant shall deliver one of the approved copies of the application to the consignor proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended (26 U.S.C. 5005, 5112))

§ 19.507 Termination of application.

A proprietor may terminate an approved application, Form 5100.16, at any time by

(a) Retrieving the consignor's copy, and

(b) Returning this copy, together with his own to the regional director (compliance) for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 U.S.C. 5005))

§ 19.508 Consignor premises.

(a) *General.* (1) A transfer record shall be prepared according to § 19.770 by (i) the consignor proprietor of a distilled spirits plant (A) to cover the transfer of spirits or denatured spirits in bond to another distilled spirits plant, pursuant to an approved application on Form 5100.16, (B) to cover the transfer in bond of spirits or denatured spirits to an alcohol fuel plant, or (C) to cover the transfer of wine in bond to the bonded premises of a distilled spirits plant or bonded wine cellar; or (ii) the consignor proprietor of an alcohol fuel plant to cover the transfer of spirits to the bonded premises of a distilled spirits plant pursuant to an approved application on Form 5100.16. Except as otherwise provided herein, a transfer record shall be prepared for each conveyance. The proprietor shall also enter on the transfer record the serial numbers of any seals or other devices affixed to a conveyance used for shipment of spirits, or denatured spirits. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record and one copy of any accompanying document for his files and forward the original of the transfer record and any accompanying document to the consignee (to accompany the shipment, if by truck).

(2) Spirits or denatured spirits produced from petroleum, natural gas, or coal may not be transferred to alcohol fuel plants qualified under 26 U.S.C. 5181.

(3) The consignor proprietor may cover on one transfer record all packages of spirits shipped by truck on the same day from his bonded premises to the bonded premises of another plant. In such case, the proprietor shall prepare a shipment and delivery order for each shipment, showing the number of packages, their package identification or serial numbers, the name of the producer, warehouseman, or processor, and the serial numbers of the seals or other devices (if any) applied to the truck. Such shipping and delivery order shall be properly authenticated and shall consititute a complete record of the spirits so transferred in each truck each day. A copy of each shipping and delivery order shall be retained by the consignor. On completion of the lading of the last truck for the day, the proprietor shall retain one copy of the transfer record and one copy of any accompanying document for his files and forward the original of the transfer record and any accompanying document to the consignee.

(b) *Packages.* When spirits are to be transferred in bond in packages, the

consignor proprietor shall weigh each package, except (1) when the transfer is to be made in a secured conveyance, (2) when the individual packages have been securely sealed by the proprietor, or (3) when this requirement has been waived by the regional director (compliance) on a finding that, because of the location of the premises and the proposed method of operation, there will be no jeopardy to the revenue. When packages are weighed at the time of shipment, the proprietor shall assign temporary serial numbers to the packages and show for each package its gross shipment weight on a package gauge record prepared according to § 19.769. A copy of the package gauge record shall accompany each copy of the transfer record.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are to be transferred in bond in bulk conveyances or by pipelines, the consignor shall gauge the spirits, denatured spirits, or wines and record the quantity so determined on the transfer record prescribed in § 19.770. Bulk conveyances of spirits or denatured spirits shall be secured by the proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.509 Reconsignment.

Where, prior to or on arrival at the premises of a consignee, spirits, denatured spirits, or wines transferred in bond are found to be unsuitable for the purpose for which intended, were shipped in error, or, for any other bona fide reason, are not accepted by such consignee, or are not accepted by a carrier, they may be reconsigned, by the consignor, to himself, or to another consignee. In such case, application to receive spirits or denatured spirits by transfer in bond (on Form 5100.16) shall have been previously approved for the consignee (not required in the case of wines or in the case of alcohol fuel plants receiving spirits or denatured spirits) and the bond of the proprietor to whom the spirits, denatured spirits, or wines are reconsigned shall cover such spirits, denatured spirits, or wines while in transit after reconsignment. Notice of cancellation of the shipment shall be made by the consignor to the consignee. Where the reconsignment is to another proprietor, a new transfer record shall be prepared and prominently marked with the word ''Reconsignment''.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.510 Consignee premises.

(a) *General.* When spirits, denatured spirits, or wines are received by transfer in bond, the consignee proprietor shall examine each conveyance to determine whether the securing devices, if any, are intact upon arrival at his premises. If the securing devices are not intact, he shall immediately notify the area supervisor before removal of any spirits from the conveyance. The proprietor shall follow the provisions of subpart Q of this part to determine, record, and report losses, if any. After execution on the transfer record as prescribed in § 19.770 or Form 703, as appropriate, of his receipt of the shipment of spirits, denatured spirits, or wines, the consignee shall retain the original of the transfer record and any accompanying documents for his files, or dispose of Form 703 (in the case of wines from a bonded wine cellar), as provided in the instructions on the form. Retained copies of transfer records and Forms 703 shall become deposit records. Spirits which are produced at alcohol fuel plants shall be separately identified and accounted for as for fuel use, and may not be withdrawn, used, sold or otherwise disposed of for other than fuel use.

(b) *Packages.* When spirits are received in packages, the consignee proprietor shall weigh each package, except: (1) when the transfer is made in a secured conveyance and the securing devices are intact on arrival, (2) when the individual packages have been sealed by the consignor proprietor and are intact on arrival, or (3) when the requirement for weighing the packages at the consignor premises has been waived under the provisions of § 19.508(b)(3). The proprietor shall record the receiving weight of each package on the accompanying package gauge record or on a list with temporary package serial numbers prepared by the consignor. A copy of such

package gauge record or list shall remain with the original of the transfer record.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits, denatured spirits, or wines and record the gauge on the transfer record prescribed in § 19.770 or, in the case of wines received from a bonded wine cellar, on Form 703. The consignee shall ensure that each conveyance emptied has been thoroughly drained. The regional director (compliance) may waive the requirement for gauging spirits, denatured spirits, or wines on receipt by pipeline if he finds that because of the location of the premises, there will be no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1380, as amended (26 U.S.C. 5204, 5362); sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

WITHDRAWALS ON DETERMINATION AND PAYMENT OF TAX

§ 19.515 Determination and payment of tax.

(a) *General.* Distilled spirits may be withdrawn from bonded premises on determination of tax in approved containers, or, to the contiguous premises of a manufacturer of nonbeverage products, by pipeline. All tax which is to be prepaid or deferred shall be determined prior to the physical removal of the spirits from bonded premises. The proprietor shall record the results of each tax determination on a record of tax determination as required by § 19.761.

(b) *Payment of tax.* The tax on the spirits shall be prepaid on Form 5000.24 before removal of the spirits from bonded premises unless the proprietor has furnished a withdrawal or unit bond to secure payment of the tax. Where such bond is in less than the maximum penal sum, the proprietor shall prepay the tax for any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage under the bond.

(Sec. 807, Pub. L. 96–39, 93 Stat. (26 U.S.C. 5213))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985]

§ 19.516 Bond account.

Where the proprietor has furnished a withdrawal or unit bond to cover the tax on spirits withdrawn on determination of tax, and such bond is in less than the maximum penal sum, he shall maintain an account of his bond and he shall charge the bond with the amount of liability incurred on each withdrawal on determination of tax. He shall credit the bond on payment of the amount of tax required to be remitted with a return and by authorized credits taken on a return. Where a bond in less than the maximum penal sum has been allocated among two or more plants, as provided in §§ 19.243 and 19.244, the proprietor shall maintain an account at each plant of that part of the penal sum allocated to that plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.517 Gauge for tax determination.

(a) *Packages.* When spirits in packages are to be withdrawn from bonded premises on determination of tax on the basis of an individual package gauge, each package shall be gauged unless the tax is to be determined on the production or filling gauge. When packages are gauged, the proprietor shall prepare a package gauge record, according to § 19.769, and attach it to the record of tax determination prescribed in § 19.761.

(b) *Tanks.* Spirits in tanks which are to be withdrawn on determination of tax shall be gauged (by weighing and proofing) as prescribed in § 19.93, and the elements of the gauge shall be recorded on the record of tax determination or on a separate record of the gauge for attachment to the record of tax determination.

(c) *Cases.* Cases of distilled spirits to be withdrawn from bonded premises

shall be tax determined on the basis of the contents thereof. The proof gallonage contained in cases shall be determined in accordance with 27 CFR part 30 and the method prescribed in § 19.722.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358 (26 U.S.C. 5204); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.518 Imported spirits.

When spirits which have been imported for nonbeverage purposes and transferred to bonded premises pursuant to 26 U.S.C. 5232 are withdrawn for beverage purposes, there shall be paid, in addition to the internal revenue tax imposed by 26 U.S.C. 5001, a tax equal to the duty which would have been paid had the spirits been imported for beverage purposes, less the duty already paid thereon. The additional tax shall be referred to as ''additional tax—less duty'', and shall be paid at the time and in the manner that the basic tax is paid. The total quantity in proof gallons withdrawn shall be the basis of computing the tax at the rates indicated. The amount of the ''additional tax—less duty'' shall be stated separately and identified as such on the tax return.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.519 Methods of tax payment.

The tax on spirits shall be paid pursuant to a return on Form 5000.24, filed as provided in § 19.523 or § 19.524 and § 19.525. Except for remittance to be effected by electronic fund transfer under § 19.524, remittance for the tax in full shall accompany the return and may be in any form which the regional director (compliance) is authorized to accept under the provisions of § 70.61 (Payment by check or money order) and which is acceptable to him. However, where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the regional director (compliance)), 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 a money order, as provided in § 70.61. Checks and money orders shall be made payable to ''Bureau of Alcohol, Tobacco and Firearms''.

(Act of August 16, 1954, Ch. 736, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985; T.D. ATF–251, 52 FR 19313, May 22, 1987; T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

§ 19.520 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each return on Form 5000.24 filed pursuant to the provisions of this part. Failure of the taxpayer 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.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985; T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

§ 19.521 Application for employer identification number.

(a) An employer identification number will be assigned pursuant to application on Form SS–4 filed by the taxpayer. Form SS–4 may be obtained from the director of the service center or from the district director.

(b) An application on Form SS–4 for an employer identification number shall be made by every taxpayer who files a return on Form 5000.24, but who prior to the filing of his first return on Form 5000.24 has neither secured an employer identification number nor made application therefor. Such application on Form SS–4 shall be filed on or before the seventh day after the date

on which such first return on Form 5000.24 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a tax return under the provisions of this part.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985]

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a semimonthly return on Form 5000.24. Except as provided in section 19.523(c), the periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. A return, Form 5000.24, shall be executed and filed for each semimonthly return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his semimonthly return on Form 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(b) *Conditions under which deferral is denied.* Notwithstanding the posting of a withdrawal or unit bond by the proprietor, the tax shall be prepaid as provided in paragraph (c) of this section—

(1) Where a proprietor 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 deferral; or

(2) Where a proprietor, who, after having been notified of his deficiency by the regional director (compliance) (i) fails to maintain records required by this part to substantiate the correctness of his tax returns or (ii) otherwise fails to comply with any provisions of this part, is so notified by the regional director (compliance).

(c) *Prepaid taxes.* The tax on distilled spirits shall be paid pursuant to a prepayment return on Form 5000.24 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single prepayment return on Form 5000.24 may cover one or more transactions. The proprietor shall note the serial number of the Form 5000.24 and the date and time such prepayment return was filed on the individual record of tax determination.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1395, as amended (26 U.S.C. 5061, 5555))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985; T.D. ATF–365 60 FR 33668, June 28, 1995]

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) 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 (c)(3) of this section.

(b) *Payment pursuant to prepayment return.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the regional director (compliance) as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return on Form 5000.24, and remittance as required by

§ 19.524 or § 19.525, before removal of the spirits.

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) 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 proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 19.524, 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 proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) 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 (c)(1)(ii) 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.

(3) *Last day for payment.* If the required taxpayment due date 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.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor 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.

(ii) *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 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). 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 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

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

[T.D. ATF–219, 50 FR 51387, Dec. 17, 1985, as amended by T.D. ATF–246, 52 FR 668, Jan. 8, 1987; T.D. ATF–365, 60 FR 33668, June 28, 1995]

§ 19.524 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 26 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of distilled spirits taxes during the succeeding calendar year. Payment of distilled spirits

taxes by cash, check, or money order, as described in § 19.525, 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 distilled spirits 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. 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, ATF F 5000.24, for each distilled spirits plant from which spirits 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 distilled spirits taxes during the previous calendar year, combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, shall notify 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 § 19.523. 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 during the preceding calendar year, combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, 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 § 19.525. 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 F 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 F 5000.24, information about remitting the tax for that return by EFT and shall file the return with ATF, in accordance with the instructions on ATF F 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. 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.

(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–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; 50 FR 23949, June 7, 1985, as amended by T.D. ATF–219, 50 FR 51388, Dec. 17, 1985; T.D. ATF–245, 52 FR 532, Jan. 7, 1987; T.D. ATF–251, 52 FR 19313, May 22, 1987; T.D. ATF–262, 52 FR 47559, Dec. 15, 1987; T.D. ATF–459, 66 FR 38549, July 25, 2001]

§ 19.525 Manner of filing returns.

(a) Each return on Form 5000.24 shall be filed with the ATF, in accordance with the instructions on the form. If the return and remittance are to be filed with a designated ATF Officer, the proprietor shall file the return and remittance no later than 2:00 p.m. on the date the return is required to be filed.

(b) When the proprietor sends the return on Form 5000.24 by U.S. mail, 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 remittance. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor. When the proprietor sends the 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 return and, if accompanied, of the remittance.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51388, Dec. 17, 1985; T.D. ATF–251, 52 FR 19313, May 22, 1987]

§ 19.526 Removal of spirits on tax determination.

No spirits shall be removed from bonded premises, except as otherwise provided by law, unless the tax thereon has been paid or determined. A record of tax determination shall be prepared for each removal of spirits as provided in § 19.76.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

WITHDRAWAL OF SPIRITS WITHOUT PAYMENT OF TAX

§ 19.531 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax for:

(a) Export, as authorized under 26 U.S.C. 5214(a)(4);

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;

(e) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9);

(f) Use in wine production, as authorized under 26 U.S.C. 5373;

(g) Transfer to any university, college of learning, or institution of scientific research for experimental or research use as authorized under 26 U.S.C. 5312(a);

(h) Research, development or testing, as authorized under 26 U.S.C. 5214(a)(10). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in 27 CFR part 252; or,

(i) Use in the production on bonded wine cellar premises of wine and wine products which will be rendered unfit for beverage use, as authorized by 26 U.S.C. 5362(d). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in part 252 of this chapter.

(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, 1375, as amended, 1382, as amended (26 U.S.C. 5214, 5312, 5373); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–227, 51 FR 13216, Apr. 18, 1986]

§ 19.532 Withdrawals of spirits for use in wine production.

Wine spirits may be withdrawn to a bonded wine cellar without payment of tax for use in wine production. When wine spirits are consigned, the proprietor shall prepare a transfer record according to § 19.770. Unless wine spirits in packages are to be withdrawn on the production or filling gauge, the proprietor shall prepare a package gauge record according to § 19.769 and attach it to the transfer record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5214, 5373))

§ 19.533 Withdrawal of spirits without payment of tax for experimental or research use.

Any scientific university, college of learning, or institution of scientific research (which has qualified under the provisions of § 19.71 to withdraw spirits from a bonded premises), desiring to withdraw a specific quantity of spirits for experimental or research use, shall file a letterhead application with the regional director (compliance) of the region in which the applicant's premises are located.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.534 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

Spirits withdrawn without payment of tax may be removed, pursuant to the provisions of part 24 of this chapter, to a bonded wine cellar for use in the production of nonbeverage wine and nonbeverage wine products. (Sec. 455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

[T.D. 372, 61 FR 20724, May 8, 1996]

WITHDRAWAL OF SPIRITS FREE OF TAX

§ 19.536 Authorized withdrawals free of tax.

Pursuant to the regulations in this chapter, spirits may be withdrawn from bonded premises free of tax—

(a) On receipt of a signed photocopy of a permit, issued under part 22 of this chapter, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in 26 U.S.C. 5214(a)(3);

(b) On receipt of a signed photocopy of a permit, issued under part 22 of this chapter, to procure spirits by and for the use of the United States or any governmental agency, any State, any political division of a State, or the District of Columbia, for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2);

(c) On receipt of a valid permit, issued under this part, to procure spirits by and for the use of the United States, under the provisions of 26 U.S.C. 7510, for purposes other than as provided in paragraph (b) of this section and 26 U.S.C. 5214(a)(2);

(d) After being specially denatured—

(1) On receipt of a signed photocopy of a permit to procure specially denatured spirits, issued under part 20 of this chapter.

(2) For export;

(e) After being completely denatured, for any lawful purpose;

(f) When contained in an article.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9160, Mar. 6, 1985]

§ 19.537 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 19.536 (a), (b), or (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. Unless the spirits are in cases or are to be withdrawn on the

production or filling gauge, the proprietor shall gauge each container. If the spirits are in packages which are to be gauged, the proprietor shall prepare a package gauge record according to § 19.769, and attach it to the record of shipment. For each shipment the proprietor shall prepare a record of shipment (shipping invoice, bill of lading, or another document intended for the same purpose) and forward the original to the consignee, in accordance with § 19.779. Bulk conveyances used to transport spirits withdrawn free of tax under this section shall be secured in accordance with § 19.96.

(Approved by the Office of Management and Budget under control number 1512–0334)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF–199, 50 FR 9160, Mar. 6, 1985]

§ 19.538 Withdrawal of spirits by the United States.

(a) *Nonbeverage use.* (1) Government agencies of the United States, intending to procure specially denatured spirits or spirits free of tax for nonbeverage purposes, shall make application for and receive a permit, Form 5150.33, from the Director. Permits may be issued to Government agencies of the United States for:

(i) Withdrawal and use of specially denatured spirits, in accordance with part 20 of this chapter;

(ii) Withdrawal and use of alcohol free of tax for nonbeverage purposes, in accordance with part 22 of this chapter; or

(iii) Importation and use of alcohol free of tax for nonbeverage purposes, in accordance with part 251 of this chapter.

(2) All permits previously issued to Government agencies of the United States for use of spirits or specially denatured spirits on Form 1444 shall remain valid and will be regulated by the same provisions of this chapter as it refers to permits on Form 5150.33.

(3) A Government agency shall forward a signed copy of its permit, Form 5150.33, for retention by the proprietor of the distilled spirits plant for the initial purchase. Subsequent orders with the same vendor shall refer to the permit number.

(4) In the case of a Government agency holding a single permit for use of other sub-agencies, the signed copy of the permit shall contain an attachment listing all other locations authorized to procure spirits under that permit.

(5) For each shipment under this section, the proprietor shall prepare a record of shipment and forward the original to the consignee agency, in accordance with § 19.779.

(b) *Beverage use.* (1) Distilled spirits may be withdrawn free of tax, under 26 U.S.C. 7510, for use for beverage purposes by Government agencies of the United States on receipt of a proper Government purchase order signed by the head of the agency, or an authorized delegate.

(2) For each withdrawal under paragraph (b)(1) of this section, each case removed shall be plainly marked ''For Use of the United States'' in addition to the marks required by subpart R of this part.

(3) For each withdrawal under paragraph (b)(1) of this section, the proprietor shall prepare a record containing the information required by § 19.761 for a record of tax determination. The proprietor shall mark this record ''Free of Tax For Use of the United States.''

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

[T.D. T.D. ATF–199, 50 FR 9160, Mar. 6, 1985]

§ 19.539 Disposition of excess spirits.

Upon discontinuance of use of spirits or specially denatured spirits withdrawn free of tax under § 19.538, a Government agency may dispose of excess spirits (a) to another Government agency (the receiving agency is required to have a permit under part 20 or 22 if the spirits were withdrawn for nonbeverage purposes), (b) by returning the spirits to the proprietor of a distilled spirits plant, or (c) in any manner authorized by the Director. In no case may such spirits be disposed of to

the general public, or otherwise than as provided in this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

[T.D. ATF–199, 50 FR 9161, Mar. 6, 1985]

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* (1) Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approved containers to the consignee designated on the permit. If such spirits are for export or for transfer to a foreign-trade zone for export or for storage pending exportation, they shall be withdrawn under the applicable provisions of part 252 of this chapter.

(2) Domestic specially denatured spirits may be transferred to qualified users located in a foreign-trade zone for use in the manufacture of articles under the applicable provisions of part 20 of this chapter. The alcohol, as defined in 27 CFR part 20, in domestic specially denatured spirits must be produced entirely in the United States, including Puerto Rico.

(3) When specially denatured spirits are shipped to a qualified user, dealer, or an applicant or prospective applicant under paragraph (c)(2)(ii) of this section, the proprietor shall prepare a record of shipment in accordance with § 19.779. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely, denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.* (1) The proprietor may take samples of denatured spirits free of tax which may be necessary for the conduct of business.

(2) The proprietor may furnish samples of specially denatured spirits:

(i) To dealers in, and users of, specially denatured spirits in advance of sales; or

(ii) To applicants or prospective applicants for permits to use specially denatured spirits, for experimental purposes or for use in preparing samples of a finished product for submission on request by the Director.

(A) Proprietors shall maintain records to ensure that samples of specially denatured spirits dispensed to a nonpermittee do not exceed five gallons per calendar year. Records of samples of less than five gallons shall be maintained as provided in § 19.766.

(B) Samples in excess of five gallons may be furnished to nonpermittees only after the consignee provides the proprietor with a letterhead application approved by the regional director (compliance) under § 20.252 of this chapter. The proprietor shall retain the approved letterhead application on file as a part of the record of transaction.

(C) For each shipment of a sample in excess of five gallons under paragraph (c)(2)(ii)(B) of this section, the proprietor shall prepare a record of shipment and forward the original to the consignee, in accordance with § 19.779.

(3) Each sample of specially denatured spirits withdrawn under the provisions of paragraph (c)(2) of this section shall have a label affixed showing the following information:

(i) The word ''Sample'', and the words ''Specially Denatured Alcohol'', or ''Specially Denatured Rum'', whichever is applicable;

(ii) The name, address, and plant number of the proprietor; and

(iii) The formula number.

(d) *Articles.* Removal of articles from bonded premises shall be in accordance with the provisions of part 20 of this chapter.

(Approved by the Office of Management and Budget under control number 1512–0337)

(48 Stat. 999, as amended, 72 Stat. 1362, as amended, 1370, as amended (19 U.S.C. 81c; 26 U.S.C. 5214, 5271))

[T.D. ATF–199, 50 FR 9161, Mar. 1, 1985; 50 FR 20099, May 14, 1985, as amended by T.D. ATF–274, 53 FR 25156, July 5, 1988]

§ 19.541 Reconsignment.

(a) *Reconsignment.* When, prior to or on arrival at the consignee's premises, spirits or specially denatured spirits withdrawn free of tax under § 19.536 are not accepted by the consignee or by a carrier, the spirits may be reconsigned (1) to the consignor, (2) to another proprietor for return to the bonded premises under the provisions of § 19.685, or

(3) to another permittee holding a valid permit issued under part 20 or 22 of this chapter, as applicable.

(b) *Consent of surety*. In case of reconsignment to bonded premises, the provisions of § 19.685, relating to consent of surety in respect to return of spirits or specially denatured spirits withdrawn free of tax, are applicable.

(c) *Records of reconsignment*. In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if shipment is to another permittee or proprietor. The new record of shipment shall be marked ''Reconsignment.'' File copies of the canceled and the new record of shipment will be annotated to cross reference each other.

(Records relating to tax-free alcohol 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)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–199, 50 FR 9161, Mar. 6, 1985]

Subpart Q—Losses and Shortages

LOSSES

§ 19.561 Losses in general.

(a) *Allowable losses*. Except as provided in paragraph (b) of this section, tax shall not be collected or, if paid, the tax shall be refunded when spirits, denatured spirits or wines are lost or destroyed while in bond.

(b) *Exceptions*. Tax shall be collected in the case of:

(1) Theft, unless the regional director (compliance) finds that the theft occurred without connivance, collusion, fraud or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(2) Voluntary destruction carried out other than as provided in subpart U of this part;

(3) Unexplained shortage of bottled spirits.

(c) *Burden of proof*. When it appears that a loss occurred due to theft, the burden of proof shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the regional director (compliance) that the loss did not result from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(d) *Claims* for losses allowable under this section shall be filed in accordance with applicable provisions of subpart C of this part.

(e) *Limitations*. The abatement, remission, credit, or refund of taxes on spirits, denatured spirits, or wines lost by theft shall be allowed only to the extent that the claimant is not indemnified against or recompensed for the taxes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.562 Determination of losses in bond.

(a) *General*. (1) Losses (whether by theft, unauthorized voluntary destruction, or otherwise) of spirits, denatured spirits, and wines shall be determined by the proprietor:

(i) Each time a tank or bulk conveyance is emptied;

(ii) On the basis of required physical inventories; and

(iii) Upon discovery of accidents or unusual variations in gauges.

(2) When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss shall be taxpaid or the container shall be segregated (as necessary) with the loss reported promptly to the area supervisor.

(3) In any instance in which spirits, denatured spirits or wines are lost or destroyed in bond, whether by theft, unauthorized voluntary destruction, or otherwise, the regional director (compliance) may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with § 19.41.

(b) *Missing packages*. Whenever any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises cannot be located or otherwise accounted for, the proprietor shall promptly report such fact to the area

supervisor, and the proprietor shall either pay the tax on the lost spirits, denatured spirits, or wines, or file a claim with respect thereto under the provisions of § 19.41.

(c) *Tampering, material deficiency, or loss of proof.* When it is found that spirits, denatured spirits, or wines in a container have been tampered with, or when a material deficiency in the recorded quantity of such products is found without evidence of loss by leakage or casualty, or when there is a loss of proof of such products not attributable to variations in gauging, the proprietor shall segregate the container (as necessary) and shall promptly report such fact to the area supervisor, unless the proprietor acknowledges liability for the tax on the loss and elects to pay the tax on the quantity lost.

(d) *Excessive in-transit losses.* Losses of spirits, denatured spirits, or wines received in bond in bulk conveyances which exceed one percent of the quantity of a product consigned shall be considered as excessive in-transit losses. However, in the case of transcontinental transfers in bond of wine, only losses in excess of two percent of the quantity of wine consigned shall be considered as excessive in-transit losses. The proprietor shall promptly report all such excessive in-transit losses to the area supervisor.

(e) *Storage account loss limitation.* When the quantity of spirits lost from all the storage tanks and bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and bulk conveyances during the calendar quarter, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 19.41 and is allowed by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.563 Loss of spirits from packages.

(a) *Original quantity.* Where there is evidence satisfactory to the regional director (compliance) that any loss of spirits (including denatured spirits) from any package deposited on bonded premises is due to theft (except where the regional director (compliance) has made the finding provided for in § 19.561(b)) or is due to unauthorized voluntary destruction, the regional director (compliance) may require the immediate tax payment of the quantity of spirits so lost, except where the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the regional director (compliance), the regional director (compliance) may credit the tax on the loss so established against the tax on the original quantity.

(b) *Alternative method.* Where there is evidence satisfactory to the regional director (compliance) that there has been access, other than as authorized by law, to the contents of packages entered for deposit on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the regional director (compliance) may (in lieu of the procedure prescribed in paragraph (a) of this section) assess an amount equal to the tax on 5 proof gallons of spirits on each of the total number of such packages as determined by him.

(c) *Applicability to packages filled after entry.* The provisions of this section apply to spirits (including denatured spirits) which are filled into casks or packages as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from tanks, mingling, or otherwise. The quantity filled into those casks or packages is considered to be the original quantity for the purpose of this section in the case of loss from those casks or packages.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.564 Losses after tax determination.

(a) *Applicability.* Pursuant to a claim, the tax on spirits which are lost after determination of tax and before completion of physical removal from bonded premises, may be abated or remitted or refunded or credited without interest to the proprietor of the bonded premises where the loss occurred.

(b) *Conditions.* (1) Claims for losses under this section shall be filed in accordance with subpart C of this part.

(2) This section shall not apply if the tax would have been collectible by reason of 26 U.S.C. 5008(a)(1) if the loss occurred on bonded premises before determination of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

SHORTAGES

§ 19.565 Shortages of bottled distilled spirits.

An unexplained shortage of bottled distilled spirits shall be taxpaid: (a) Immediately on a prepayment return on Form 5000.24, or (b) on the semimonthly return on Form 5000.24 for the return period during which the shortage was ascertained. Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by § 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51388, Dec. 17, 1985]

Subpart R—Containers and Marks

CONTAINERS

§ 19.581 Authorized containers.

(a) *General.* Proprietors shall use for any purpose of containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits under this part only containers which are authorized by, or under the provisions of this part for such purpose, and a container so authorized will be deemed to be an approved container for such purpose. Except where stated otherwise, the provisions of part 20 of this chapter apply to containers used for containing, storing and shipping of articles, and the provisions of 27 CFR part 24 apply to containers used for storage or transfer of wine. Except for liquor bottles, this subpart does not regulate or prohibit the use on plant premises of any container for purposes other than containing alcoholic substances.

(b) *Alternate containers.* In addition to the types of containers specifically authorized by this part for a particular purpose, a container of another type may be authorized for that purpose by the Director on a finding by him that the use of such container will afford protection to the revenue equal to or greater than that afforded by the containers specifically authorized by this part, and that the use will not cause administrative difficulty. If another container is so authorized by the Director, he shall prescribe the detail and manner in which such container shall be constructed, protected, and marked, consistent with the provisions of this part and the extent of such use. Similarly, where a container authorized for a particular purpose is required by this subpart to be made of specified materials, the Director may authorize the use of containers made of other materials which he has found to be suitable for the intended purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1374, as amended (26 U.S.C. 5206, 5212, 5214, 5301); sec. 805, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5002); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; T.D. 372, 61 FR 20724, May 8, 1996]

§ 19.582 Spirits for nonindustrial use.

(a) *Determination of use.* Containers of spirits of a capacity of 1 gallon (3.875 liters) or less are considered to be for nonindustrial use, except for those which contain:

(1) Anhydrous alcohol; or

(2) Alcohol which may be withdrawn from bond free of tax.

(b) *Containers.* If not inconsistent with the provisions in 27 CFR part 5, spirits for nonindustrial use may be filled into:

(1) Packages, or

(2) Other containers which are filled during processing operations and contain not more than 10 gallons.

(c) *Bottles and labels*. The provisions of subpart S of this part govern the liquor bottles and labels to be used in bottling spirits for nonindustrial domestic use.

(d) *Cases*. Spirits for nonindustrial use in containers with a capacity of 1 gallon or less shall be placed in cases which afford reasonable protection against breakage. Such cases shall not be transferred in bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5212, 5301))

§ 19.583 Spirits for industrial use.

(a) *Containers*. (1) Denatured spirits may be filled into glass or metal containers of a capacity not greater than 10 gallons.

(2) Other spirits for industrial use may be filled into

(i) Containers of 1 gallon or less; or

(ii) Glass or metal containers of a capacity of 1 gallon but not greater than 10 gallons.

(b) *Encased containers*. Unlabeled containers holding from 1 to 10 gallons of denatured spirits and spirits of 190 degree proof or more for industrial use may be encased in wood, fiberboard, or similar material if:

(1) The cases are constructed so that the surface, including the opening, of the container is not exposed;

(2) Required marks are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading ''Do not remove inner container until emptied'' or of similar meaning is placed on the portion of the case bearing the marks.

(c) *Cases*. Except for encased containers, containers for denatured spirits and spirits for industrial use of a capacity of 1 gallon or less shall be placed in cases which afford reasonable protection against breakage.

(d) *Articles*. Articles shall be packaged and labeled in accordance with the provisions of 27 CFR part 20.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5301))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.584 Packages.

Packages may be used on bonded premises for original entry of spirits, and for packaging from tanks, storing, transferring in bond, and withdrawing from bonded premises of spirits and denatured spirits. Packages shall be constructed so as to be capable of secure closure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.585 Bulk conveyances.

Bulk conveyances which conform to the requirements of § 19.588 may be used on bonded premises for original entry of spirits, and for filling from tanks, storing, transferring in bond, and withdrawing taxpaid spirits and denatured spirits. Spirits may be withdrawn free of tax, pursuant to the provisions of this part, in a bulk conveyance only for use of the United States, or if the Director has authorized the proprietor, as provided in § 19.581, to so withdraw such spirits to a specified consignee. Spirits may be withdrawn without payment of tax, pursuant to the provisions of this part, in bulk conveyances for the purposes provided in § 19.531 (a), (b), (c), (e), and (f).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.586 Tanks.

Tanks which conform to the requirements of § 19.273 may be used on bonded premises as containers for distilled spirits, denatured spirits, articles, and wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.587 Pipelines.

Pursuant to the provisions of this part, pipelines which conform to the requirements of § 19.274 may be used for (a) the conveyance on bonded premises of spirits, denatured spirits, articles, and wines, and (b) the conveyance to and from bonded premises of spirits, denatured spirits, articles, and wines.

(Sec. 201, Pub. L 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.588 Construction of bulk conveyances.

(a) *Construction*. All bulk conveyances authorized by this part shall conform to the following:

(1) If the conveyance consists of two or more compartments, each shall be so constructed or arranged that emptying of any compartment will not afford access to the contents of any other compartment.

(2) The conveyance (or in the case of compartmented conveyances, each compartment) shall be so arranged that it can be completely drained.

(3) Each tank car or tank truck shall have permanently and legibly marked thereon its number, capacity in wine gallons, and the name or symbol of its owner.

(4) If the conveyance consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) A route board, or other suitable device, for carrying required marks or brands shall be provided on each bulk conveyance.

(6) Calibrated charts showing the capacity of each compartment in wine gallons for each inch of depth, shall be available for use in measuring the contents of each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility*. Before filling any bulk conveyance, the proprietor shall examine it to ascertain that it meets the requirements of this section and is otherwise suitable for receiving the spirits, denatured spirits, or wines, and he shall refrain from, or discontinue, using any such conveyance found by him or by an ATF officer to be unsuitable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5212, 5214); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.589 Restrictions on disposition of bulk spirits.

(a) *For nonindustrial use*. Spirits for nonindustrial use may be sold or disposed of in containers holding more than 1 wine gallon only to the persons and for the purposes set forth in 27 CFR part 3.

(b) *For industrial use*. Shipment or delivery of spirits (other than alcohol or neutral spirits) withdrawn from bond in containers holding more than 1 wine gallon for industrial use shall, as provided in 27 CFR part 3, be made directly to the user of the spirits.

(Sec. 201, Pub. L. 85–895, 72 Stat. 1356, as amended (26 U.S.C. 5201))

MARKS

§ 19.592 General.

Proprietors shall mark, identify, and label all containers of spirits or denatured spirits as provided by this part. Containers of wine shall be marked in accordance with 27 CFR part 24. Containers of articles shall be marked in accordance with 27 CFR part 211.

(Sec. 201 Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended (26 U.S.C. 5204, 5206))

[T.D. ATF–206, 50 FR 23952, June 7, 1985, as amended by T.D. 372, 61 FR 20724, May 8, 1996]

§ 19.593 Package identification numbers in production and storage.

(a) *General*. Packages of spirits filled during production or storage operations after December 31, 1979, shall be marked with a lot identification representing the date the package is filled, and consisting, in the order shown, as follows:

(1) The last two digits of the calendar year;

(2) An alphabetical designation from ''A'' through ''L'', representing January through December, in that order;

(3) The digits corresponding to the day of the month; and

(4) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix, in alphabetical order, with ''A'' representing the second lot, ''B'' representing the third lot, and so forth.

The first three lots filled into packages on January 2, 1980, would be identified as ''80A02'', ''80A02A'', ''80A02B''.

(b) *Packages constituting a lot.* Packages of spirits received from customs custody or filled during any one day shall be given the same lot identification subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantity by weight or other method provided in § 19.319;

(2) They are filled with spirits of the same kind and same proof;

(3) They are filled with spirits which are mingled in accordance with § 19.346; and

(4) They are filled with imported spirits, Puerto Rican spirits, or Virgin Islands spirits, as applicable. Any remnant package shall itself constitute a lot.

(c) *Serial numbers.* The regional director (compliance) may require serial numbers on packages of spirits within the same lot in conjunction with the lot identification, at the time of filling, receipt on bonded premises, or withdrawal from bond. Proprietors shall assign temporary serial numbers to packages for control purposes when they are transferred in bond in an unsecured conveyance or gauged after being tampered within the storage account.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 19.594 Numbering of packages and cases in processing.

(a) *General.* Packages of spirits and denatured spirits filled during processing operations and cases containing bottles or other containers of spirits and denatured spirits shall, when filled, be consecutively numbered in a separate series by the proprietor commencing with ''1'' in each series of serial numbers, except that any series of such numbers in use may be continued. When the numbering in any series reaches ''1,000,000'', the proprietor may recommence the series. However, a new series for packages of spirits and denatured spirits filled during processing operations shall be given an alphabetical prefix or suffix. For additional identification, separate series of serial numbers, distinguished from each other by the use of alphabetical prefixes or suffixes, may be established to identify size of bottles, brand names, or other information, on written notice to the regional director (compliance). Remnant cases shall be given the serial number of the last full case followed by the letter R. Where there is a change in the individual, firm, corporate name, or trade name, all series in use at that time shall be continued. However, for a change in proprietorship, a new series shall be commenced.

(b) *Alternative method for spirits, including denatured spirits, for industrial use.* Instead of the numbering required by paragraph (a) of this section, packages and cases of spirits, including denatured spirits, for industrial use filled in processing may be marked with lot identification numbers provided in § 19.593.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.595 Specifications for marks.

(a) *Manner.* (1) The proprietor shall place the prescribed marks on cases, encased containers, and packages of spirits and denatured spirits so that they are:

(i) Of sufficient size to be easily read;

(ii) Of a color distinctly in contrast to that of the background;

(iii) Legible; and

(iv) Durable.

(2) Cases, encased containers or packages may be marked by the use of labels which are legible and securely affixed.

(b) *Location*. The required marks shall be placed on one side or head, as applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.596 Marks on packages of spirits filled on bonded premises.

(a) *Packages filled in production or storage*. Except as otherwise provided in this part, packages of spirits filled in production or storage shall be marked with:

(1) The name of the producer, or his trade name as required by paragraph (c) of this section;

(2) The plant number of the producer, such as ''DSP–KY–708'';

(3) The kind of spirits or, in the case of distillates removed under § 19.322, the kind of distillates such as ''Grape distillate'', ''Peach distillate'', etc.;

(4) The package identification number;

(5) ''BSA'' or ''OC'' when spirits are treated with caramel or oak chips, as the case may be;

(6) The rated capacity of the package in gallons shown as ''RC—G''.

(7) If packages of spirits of 190 degrees or more of proof are filled by other than the producer, the name (or trade name) and plant number of the packaging proprietor shall be substituted for that of the producer.

(b) *Packages filled in processing*. Except as otherwise provided in this part, packages of spirits filled in processing shall be marked with:

(1) The name of the processor, or his trade name;

(2) The plant number of the processor, such as ''DSP–KY–708'';

(3) The kind of spirits (in the case of an intermediate, the product name shown on Form 5110.38);

(4) The serial number or lot identification number, as applicable, and date of filling;

(5) Proof of spirits; and

(6) If manufactured under an approved formula, the serial number of the formula.

(c) *Real or trade names*. The producer's real name or any trade name authorized (as provided in § 19.165), at the time of production, may be placed on any package filled at the time of production gauge, or at the time of original packaging of the spirits in wood when, as provided in § 19.320, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled under § 19.346, the proprietor may use any of the names represented in the mingled spirits, but no other name, as the name of the producer to be marked on packages filled with such mingled spirits. However, if the proprietor was the actual producer of the spirits, he may in any case use his real name. The processor's real name or any trade name authorized (as provided in § 19.165) may be placed on any package filled with spirits during processing operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.597 Kind of spirits.

(a) *Designation*. The designations as to kind of spirits required by § 19.596 shall be in accordance with the classes and types of spirits set out in 27 CFR part 5, except that:

(1) Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character, may be designated as ''Alcohol''. When alcohol is withdrawn on determination of tax, the designation shall consist of the word ''Alcohol'' preceded or followed by a word or phrase descriptive of the material from which the alcohol was produced.

(2) The designations for vodka, neutral spirits, or gin shall include a word or phrase descriptive of the material from which the spirits so designated were produced.

(3) Spirits distilled at less than 190 degrees of proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, may be designated ''Spirits'', preceded or followed by a word or phrase descriptive of the material from which produced. However, spirits distilled on or after July 1, 1972, as provided in this paragraph may not be designated ''Spirits grain'' or ''Grain spirits''.

(4) Spirits distilled from fruit at or above 190 degrees of proof, if intended

for use in wine production, shall be designated ''Neutral Spirits—Fruit'', preceded or followed by the name of the fruit from which produced.

(5) Spirits distilled at not more than 160 degrees of proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, may be designated ''Whisky'' if further qualified with the words ''Distilled from rye mash'' (or bourbon, wheat, malt, or rye malt mash, as the case may be). However, such spirits shall, if distilled from a fermented mash of not less than 80 percent corn, be designated ''Corn Whisky.''

(b) *Change of designation.* A proprietor may, on written application to, and approval of the regional director (compliance), change the original designation for spirits at any time, before their withdrawal from bonded premises, to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If the proprietor proposes to produce spirits for which a designation has not been prescribed, he shall first make written application to the Director for a designation for such spirits and such spirits shall be branded accordingly.

(d) *Spirits for nonindustrial use.* The provisions of this section shall not be construed as authority for applying designations to spirits withdrawn for nonindustrial use which designations do not comply with provisions of 27 CFR part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.598 [Reserved]

§ 19.599 Change of packages in storage.

When spirits are transferred from one package to another as authorized in § 19.345, each new package shall be given the same package identification number and marks as the original package. The proprietor shall prepare and sign a label to be affixed to the head of each new package in the manner prescribed for affixing distilled spirits stamps. The label shall be in the following form:

The spirits in this _____, (kind of cooperage)_____, (Barrel or drum) package identification No._____, were transferred from a_____, _____, (kind of cooperage)_____, (Barrel or drum) on_____, (Date),

_____

(Proprietor)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.600 [Reserved]

§ 19.601 Marks on containers of specially denatured spirits.

(a) *General.* Each package, case, and encased container of specially denatured spirits filled on bonded premises shall be marked or labeled to show:

(1) Quantity in gallons;

(2) Serial number or lot identification number;

(3) Plant number of the proprietor;

(4) Designation or abbreviation of the specially denatured spirits by kind (alcohol or rum);

(5) Formula number; and

(6) Proof of spirits which were denatured at other than 190 degrees of proof.

(b) *Bottles.* Each bottle shall be marked or labeled to show the information prescribed in paragraph (a) (1), (3), (4), (5), and (6) of this section.

(c) *Alternate formulations.* When spirits are denatured under a formula authorizing a choice of types and quantities of denaturants, the container or case shall be marked to show actual types and quantities of denaturants used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.602 Marks on containers of completely denatured alcohol.

Each container of completely denatured alcohol, except pipelines and bulk conveyances, shall have marked on the head of the package, or side of the can or carton, the name of the proprietor by whom the containers were filled, the plant number where filled, the contents in wine gallons, the apparent proof, the words ''Completely

Denatured Alcohol'', and the formula number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended) (26 U.S.C. 5206))

§ 19.603 [Reserved]

§ 19.604 Caution label.

Each container of completely denatured alcohol containing five gallons or less, sold or offered for sale, shall be labeled to show, in plain, legible letters, the words ''Completely Denatured Alcohol'' and the following statement ''Caution—contains poisonous ingredients.'' The name and address of the denaturer may be printed on such label, but no other extraneous matter will be permitted thereon without the approval of the Director. The word ''pure'', qualifying denatured alcohol, will not be permitted to appear on the label or the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.605 Additional marks on portable containers.

(a) In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits or denatured spirits to be withdrawn from the bonded premises:

(1) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft, shall be marked as provided in 27 CFR part 252; or

(2) Tax-free alcohol shall be marked with the word ''Tax-Free.''

(b) The proprietor may show other information such as brand or trade name; caution notices and other material required by Federal, State, or local law or regulations; wine or proof gallons; and plant control data. However, marks or attachments shall not conceal, obscure, interfere with or conflict with the markings required by this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.606 Marks on bulk conveyances.

(a) The proprietor shall securely attach to the route board, or other suitable device, of each bulk conveyance used to transport spirits or denatured spirits, a label to identify each conveyance or compartment as follows:

(1) Name, plant number, and location of the consignor;

(2) Name, plant number, permit number, or registry number (as applicable), and location of the consignee;

(3) Date of shipment;

(4) Quantity (proof gallons for spirits, wine gallons for denatured spirits); and

(5) Formula number for denatured spirits.

(b) The provisions of paragraph (a) of this section shall not apply when the conveyance is accompanied by documentation which contains the information required by paragraph (a) of this section.

(c) In addition, export shipments shall conform to the requirements of 27 CFR part 252.

(d) Bulk conveyances used to transport articles or wine shall conform to the requirements of part 20 or 240 of this chapter, as applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.607 Marks on cases.

(a) *Mandatory marks.* Except for cases marked as provided in § 19.608, the following information shall be plainly marked on each case of spirits filled in processing:

(1) Serial number;

(2) Kind of spirits;

(3) Plant number where bottled;

(4) Date filled;

(5) Proof; and

(6) Liters or proof gallons.

Cases removed for export, transfer to customs bonded warehouses or customs manufacturing bonded warehouses, transfer to foreign-trade zones, or for use as supplies on certain vessels and aircraft, shall bear the additional marks required by 27 CFR part 252.

(b) *Other marks*. In addition to the required marks on cases filled in processing, the proprietor may include other marks such as;

(1) Name or trade name, and location of desired, of the bottler, and in conjunction therewith the word ''Bottler'';

(2) For products actually distilled or processed by the proprietor, his name or trade name, and location, if desired, and in conjunction therewith the words ''Distiller'' or ''Processor'' as applicable;

(3) For products actually imported and bottled by the proprietor, the words ''Imported and Bottled By'', followed by his name or trade name, and location if desired;

(4) For products bottled for a dealer, the words ''Bottled For'', followed by the name of such dealer;

(5) Other material required by Federal or State law and regulations; or

(6) Labels or data describing the contents for commercial identification or accounting purposes, or indicating payment of State or local taxes.

The marks authorized by this paragraph shall not interfere with or detract from the mandatory marks prescribed in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206); sec. 3(a), Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.608 Cases of industrial alcohol.

(a) *Mandatory marks*. Each case, including encased containers, of alcohol bottled for industrial use in accordance with subpart M of this part shall be marked as applicable, to show—

(1) ''Alcohol'';

(2) Serial number or lot identification number;

(3) Plant number;

(4) Proof;

(5) Proof gallons;

(6) ''Tax-Free''; and

(7) Information required by 27 CFR part 252, for cases withdrawn for export, transferred to customs bonded warehouses, transferred to foreign-trade zones, or supplies for certain vessels and aircraft.

(b) *Other marks*. Cases may be marked with other marks which do not interfere with or detract from mandatory case marks in the manner permitted by § 19.607.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1369, as amended (26 U.S.C. 5206, 5235))

§ 19.609 [Reserved]

§ 19.610 Obliteration of marks.

Except as provided in § 19.597(b), the marks required by this part to be placed on any container or case shall not be destroyed or altered before the container or case is emptied.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5206))

[T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.611 Relabeling and reclosing off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, or reclose bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the plant, if such wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. If products which are relabeled under this section were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.612 Authorized abbreviations to identify marks.

In addition to the abbreviations and symbols which are authorized in this part for use in marking containers, the following abbreviations may be used to identify certain marks:

Mark	Abbreviation
Completely Denatured Alcohol	CDA
Distilled Spirits Stamps	DSS
Gallon or Wine Gallon	WG
Gross Weight	G
Proof	P
Specially Denatured:	
Alcohol	SDA
Rum	SDR
Tare	T
Tax Determined	TD
Wine Spirits Addition	WSA

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

Subpart S—Liquor Bottle and Label Requirements

§ 19.631 Scope of subpart.

The provisions of §§ 19.632 through 19.639 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. The provisions of §§ 19.641 through 19.650 of this subpart shall apply to all liquor bottles, regardless of size.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5301))

LIQUOR BOTTLE REQUIREMENTS

§ 19.632 Bottles authorized.

Liquor bottles for domestic use shall conform to the applicable standards of fill provided in subpart E of 27 CFR part 5, including those for liquor bottles of less than 200 ml capacity. The use of any bottle size other than as authorized in subpart E of 27 CFR part 5 is prohibited for the bottling of nonindustrial distilled spirits for domestic purposes.

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

§ 19.633 Distinctive liquor bottles.

(a) *Application.* A proprietor desiring approval of domestic liquor bottles of distinctive shape or design, including bottles of less than 200 ml capacity, or, to use such distinctive liquor bottles, shall submit ATF Form 5100.31 to the Director for approval. The applicant 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 for approval of distinctive liquor bottles shall be approved by the Director if the bottles are found 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.

(c) *Cross reference.* For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

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

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–242, 51 FR 39525, Oct. 29, 1986; T.D. ATF–406, 64 FR 2134, Jan. 13, 1999]

§ 19.634 Receipt and storage of liquor bottles.

No proprietor shall accept shipment or delivery of liquor bottles except from the manufacturer thereof, a supplier abroad, or another proprietor. However, the regional director (compliance) may, pursuant to letterhead application, authorize a proprietor to receive and reuse liquor bottles assembled for such proprietor as provided in 27 CFR 194.263. Liquor bottles, including those of less than 200 ml capacity, shall be stored in a safe and secure place, either on the proprietor's qualified premises or at another location.

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

§ 19.635 Bottles to be used for display purposes.

Liquor bottles may be furnished to liquor dealers for display purposes, provided that each bottle is marked to show that it is to be used for such purpose. The disposition of such bottles,

showing names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles, shall be included in the records required under § 19.747.

(Approved by the Office of Management and Budget under control number 1512–0198)

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

[T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.636 Bottles for testing purposes.

Proprietors may ship liquor bottles to persons for testing. The disposition of such bottles, showing the name and address of the person to whom the bottles are shipped, date of shipment, and the size and number of bottles shipped, shall be included in the records required under § 19.747.

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

§ 19.637 Bottles not consitituting approved containers.

The Director shall disapprove for use as a liquor bottle any bottle, including a bottle of less than 200 ml capacity, which he determines to be deceptive. Any such bottle is not an approved container for the purposes of § 19.581 of this part, and shall not be used for packaging distilled spirits for domestic purposes.

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

§ 19.638 Disposition of stocks of liquor bottles.

When a proprietor discontinues operations, or permanently discontinues the use of a particular size or type of liquor bottle, the stocks of such bottles on hand shall either be disposed of to another person authorized to receive liquor bottles, or destroyed, including disposition for purposes which will render them unusable as bottles. However, on approval of a written application by the regional director (compliance) of the region in which the proprietor's plant is located, liquor bottles may be otherwise disposed of.

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

§ 19.639 Use and resale of liquor bottles.

No proprietor shall use any liquor bottle except for packaging distilled spirits, or dispose of any empty liquor bottle except to another person authorized to receive liquor bottles or as provided in § 19.638. Bottles may be furnished to others for display and testing purposes as provided in §§ 19.635 and 19.636, respectively.

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

BOTTLE LABEL REQUIREMENTS

§ 19.641 Certificate of label approval or exemption.

(a) *Requirement.* Proprietors are required by 27 CFR part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–406, 64 FR 2134, Jan. 13, 1999]

§ 19.642 Statements required on labels under an exemption from label approval.

All labels to be used on bottles of spirits for domestic use under an exemption from label approval shall contain the applicable information required in §§ 19.643 through 19.650. Where a statement of age or age and percentage is required, it shall have the meaning given, and be stated in the manner provided in 27 CFR part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

(a) *Brand name and kind.* The label of distilled spirits shall state the brand name and kind, as set out in 27 CFR part 5.

(b) *Alcohol content*—(1) *Mandatory statement*. The label of distilled spirits shall state the alcohol content in percent-alcohol-by-volume. Products such as ''Rock and Rye'' or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: ''Bottled at _____ percent-alcohol-by-volume.''

(2) *Optional statement*. In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(c) *State of distillation*—(1) *Mandatory statement*. If a whisky produced in the United States was not produced in the State shown on the label, the label shall show the State of distillation, except as provided by paragraph (c)(2) or (c)(3) of this section. The Director may, however, require the State of distillation to be shown on the label or permit such other. labeling as may be necessary to preclude any misleading or deceptive impression which might otherwise be created as to the actual State of distillation.

(2) *Exceptions*. The State of distillation is not required to be shown on labels of ''blended whisky'', ''a blend of straight whiskies'', ''spirit whisky'', ''light whisky'', or ''blended light whisky''. The State of distillation may be prohibited on certain labels of ''light whisky'' or ''blended light whisky'', in accordance with paragraph (c)(3) of this section.

(3) *Prohibited statement*. The State of distillation may not be shown, except as part of the name and address required by 27 CFR 5.36(a), on labels of ''light whisky'' or ''blended light whisky'' produced in a State which the Director finds to be associated by consumers with an American type whisky.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201)

§ 19.644 Net contents.

The net contents of liquor bottles shall be shown on the label, unless the statement of the net contents is permanently marked on the side, front, or back of the bottle.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as ameded (26 U.S.C. 5201))

§ 19.645 Name and address of bottler.

There shall be stated on the label of distilled spirits the phrase ''Bottled by'', ''packed by'', or ''Filled by'' immediately followed by the name (or trade name) of the bottler and the place where such spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants. However:

(a) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase ''Bottled by'', ''Packed by'', or ''Filled by'', followed by the bottler's name (or trade name) and address, the phrase ''Distilled by'', followed by the name (or trade name) under which the particular spirits were distilled, or any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller;

(b) Where ''straight whiskies'' of the same type which have been produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as ''straight whisky,'' such ''straight whisky'' shall be labeled in accordance with the requirements of the first paragraph of this section. Where such ''straight whisky'' is bottled by or for the distillers thereof, there may be stated on the label, in lieu of the requirements of the first paragraph of this section, the phrase ''distilled by,'' followed by the names (or trade names) of the different distillers who distilled a portion of the ''straight whisky,'' the addresses of the

distilleries where the ''straight whisky'' was distilled, and the percentage of ''straight whisky'' distilled by each distiller (with a tolerance of plus or minus 2 percent). In the case where ''straight whisky'' is made up of a mixture of ''straight whiskies'' of the same type from two or more different distilleries of the same proprietor located within the same State, and where the ''straight whisky'' is bottled by or for the proprietor thereof, such ''straight whisky'' may be labeled, in lieu of the requirements of the first paragraph of this section, with the phrase ''distilled by'' followed by the name (or trade name) of the proprietor and the addresses of the different distilleries which distilled a portion of the ''straight whisky.''

(c) Where distilled spirits are bottled by or for the proprietor of a distilled spirits plant, there may be stated, in lieu of the phrase ''Bottled by'', ''Packed by'', or ''Filled by'', followed by the bottler's name (or trade name) and address, the phrase ''Blended by'', ''Made by'', ''Prepared by'', ''Manufactured by'', or ''Produced by'' (whichever may be appropriate to the process involved), followed by the name (or trade name) and the address (or addresses) of the distilled spirits plant proprietor;

(d) On labels of distilled spirits bottled for a retailer or other person who is not the actual distilled spirits plant proprietor of such distilled spirits, there may also be stated the name and address of such retailer or other person, immediately preceded by the words ''Bottled for'', or ''Distributed by'', or other similar statement; and

(e) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or processing operation occurred, if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle. The coding system employed will permit an ATF officer to determine where the operation stated on the label occurred. Prior to using a coding system, the distilled spirits plant proprietor shall send a notice explaining the coding system to the regional director (compliance) of each region where a label code is used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–259, 52 FR 41423, Oct. 28, 1987; T.D. ATF–260, 52 FR 42101, Nov. 3, 1987]

§ 19.646 Age of whisky containing no neutral spirits.

In the case of whisky containing no neutral spirits, statements of age and percentage shall be stated on the label as provided in 27 CFR part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.647 Age of whisky containing neutral spirits.

In the case of whisky containing neutral spirits, the age of the whisky or whiskies and the respective percentage by volume of whisky or whiskies and neutral spirits, shall be stated on the label as provided in part 5 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.648 Age of brandy.

If brandy is aged for a period of less than two years, the age thereof shall be shown on the label.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.649 Presence of neutral spirits and coloring, flavoring, and blending materials.

The presence of neutral spirits or coloring, flavoring, or blending materials shall be stated on labels in the manner provided in 27 CFR part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.650 Country of origin.

On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form: ''Product of _____,'' the blank to be filled in with the name of the country or origin.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart T—Closures

SOURCE: T.D. ATF–206, 50 FR 23952, June 7, 1985.

§ 19.661 General.

Each bottle or other container of spirits having a capacity of one gallon (3.785 liters) or less shall bear a closure or other device affixed in accordance with § 19.662. The closure or other device shall be affixed to the container prior to withdrawal from bond or customs custody.

(Approved by the Office of Management and Budget under control number 1512–0461)

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

§ 19.662 Affixing closures.

Closures or other devices on containers having a capacity of one gallon (3.785 liters) or less shall be securely affixed to the containers so as to leave a portion remaining on the container when the container 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))

§ 19.663 Reclosing.

Bottles of distilled spirits filled on bonded premises may be reclosed under the provisions of subpart M of this part. Bottles of distilled spirits to which closures or other devices have been affixed may also be reclosed under the provisions of § 19.611.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5215))

Subpart U—Return of Spirits to Bonded Premises and Voluntary Destruction

RETURNS

§ 19.681 Return of taxpaid spirits to bonded premises.

(a) *General*. This section and § 19.682 pertain only to taxpaid spirits returned to bonded premises under 26 U.S.C. 5215(a). The return of taxpaid bottled spirits to bonded premises solely for relabeling or reclosing is covered in § 19.393.

(b) *Return*. Distilled spirits on which the tax has been paid or determined may only be returned to the bonded premises of a distilled spirits plant under this section for:

(1) Destruction, in accordance with § 19.691;

(2) Denaturation, in accordance with subpart N;

(3) Redistillation, in accordance with subpart K;

(4) Reconditioning; or

(5) Rebottling.

(c) *Claims*. Claims for credit or refund of tax on spirits returned to bonded premises shall be filed as provided in, and accompanied by the information prescribed by, § 19.42.

(d) *Applicability of 26 U.S.C. Chapter 51*. All provisions of 26 U.S.C. Chapter 51 and this part, applicable to spirits in ATF bond, shall be applicable to spirits when returned to bonded premises under this section. The provisions of this subpart do not apply to taxpaid bottled spirits returned to bond solely for relabeling or reclosing and under the provisions of subpart M of this part.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.682 Receipt and gauge of returned taxpaid spirits.

(a) *Dump*. Unless returned in the sealed metal drums in which they were withdrawn, spirits returned to bonded premises shall be immediately dumped.

(b) *Gauge*. Spirits returned under § 19.681 shall be gauged upon receipt on bonded premises. Such gauge may be established on the basis of case markings and label information, as provided in § 19.91.

(c) *Supporting documents*. (1) Proprietors must have on file at the plant where spirits are returned to bond such documentation as is necessary to establish the amount of tax for which a claim for credit or refund may be allowed. Proprietors shall maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(2) If the spirits contain eligible wine or eligible flavors, the proprietor shall also have on file a copy of the record of tax determination prescribed by § 19.761, or other documentation which establishes the amount of tax for which a claim for credit or refund may be allowed. In lieu of establishing the actual effective tax rate of a product, the proprietor may claim refund or credit based on the lowest effective tax rate applied to the product.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215); Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); 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–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–297, 55 FR 18064, Apr. 30, 1990]

§ 19.683 Return of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles may be returned for restoration or redenaturation to the bonded premises of any plant authorized to denature spirits, in accordance with the provisions of 27 CFR part 20. If restoration requires redistillation, the recovered denatured spirits or recovered articles may be returned for that purpose to bonded premises of a plant authorized to produce or process spirits. Recovered denatured spirits or recovered articles shall be gauged on receipt.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1363, as amended, 1372, as amended (26 U.S.C. 5223, 5273))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.684 Articles and spirits residues received for redistillation.

Articles manufactured under 27 CFR part 20, and spirits residues of manufacturing processes related thereto, may be received on the bonded premises of a distilled spirits plant authorized to produce or process distilled spirits, for the recovery by redistillation of the distilled spirits contained in those materials. The proprietor shall gauge the materials when received.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.685 Return of recovered tax-free spirits, and spirits and denatured spirits withdrawn free of tax.

(a) *General.* Specially denatured spirits withdrawn free of tax under the applicable provisions of 27 CFR part 252 for exportation or for deposit in a foreign-trade zone, and spirits or denatured spirits withdrawn free of tax under the applicable provisions of 27 CFR part 20 or 22, may be returned: (1) To bonded premises of any distilled spirits plant authorized to produce or process distilled spirits, for redistillation; or (2) To any bonded premises of a distilled spirits plant pending subsequent lawful withdrawal free of tax. Recovered tax-free spirits may, as provided in 27 CFR part 22, be returned for redistillation to bonded premises of any distilled spirits plant authorized to produce or process distilled spirits or to any bonded premises of a distilled spirits plant for restoration (not including redistillation). The return shall be made under the applicable provisions of this part and 27 CFR part 20, 22, or 252, as appropriate.

(b) *Bonding requirements.* Before spirits or denatured spirits are returned to bonded premises, except spirits or denatured spirits returned for redistillation, the proprietor shall file a consent of surety on Form 1533 to extend the terms of the operations or unit bond to cover the return of the spirits. The proprietor may file one consent of surety on the bond to extend the terms thereof to cover all spirits which may be returned.

(c) *Procedure.* When recovered tax-free spirits, spirits, or denatured spirits are received, they shall be gauged. When containers of spirits removed for export are returned to bond, pending subsequent removal for a purpose other

than export, the export marks shall be obliterated.

(Sec. 3, Act of June 13, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1365, as amended (26 U.S.C. 5001, 5223))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.686 Return of spirits withdrawn without payment of tax.

(a) *Spirits withdrawn for export.* Spirits lawfully withdrawn without payment of tax under the provisions of 27 CFR part 252 for exportation, or for transfer to a customs bonded warehouse or a customs manufacturing bonded warehouse, or for deposit in a foreign-trade zone, or for use on vessels and aircraft, and not so exported, transferred, deposited, or used (or laden for use) on a vessel or aircraft, may be returned, under the applicable provisions of this part and 27 CFR part 252: (1) To the bonded premises of any plant authorized to produce or process distilled spirits, for redistillation; or (2) To the bonded premises from which withdrawn pending subsequent removal for a lawful purpose.

(b) *Spirits withdrawn for use in wine production.* Wine spirits withdrawn under § 19.532 for use in wine production, and not so used, may be returned to the bonded premises of a distilled spirits plant. The consignee proprietor shall obtain approval, as provided in § 19.506. The wine spirits shall be removed from the winery in accordance with the provisions of 27 CFR part 240.

(c) *Spirits withdrawn for research, development, or testing.* Spirits withdrawn without payment of tax, under the provisions of subpart V of this part, for research, development, or testing may be returned to the bonded premises of the distilled spirits plant from which withdrawn. After returning these spirits to bonded premises, they shall be destroyed, returned to containers, or returned to vessels in the distilling system containing similar spirits.

(d) *Procedure.* When spirits are received, they shall be gauged by the proprietor. When spirits which were removed for exportation are returned to bonded premises pending subsequent removal for a purpose other than exportation, all export marks on the containers in which the spirits are returned shall be obliterated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5214, 5223, 5373); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23952, June 7, 1985]

§ 19.687 Return of spirits withdrawn for export with benefit of drawback.

Subject to the provisions of 27 CFR 252.197 through 252.199, whole or partial shipments of spirits withdrawn for export with benefit of drawback may be returned to: (a) The bonded premises of the distilled spirits plant, pursuant to § 19.681, or (b) to a wholesale liquor dealer or taxpaid storeroom. Claims filed by proprietors on ATF Form 5110.30 which include the returned spirits shall be reduced by the amount of tax paid or determined on the returned spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.688 Abandoned spirits.

Spirits abandoned to the United States may be sold, without payment of the tax, to a proprietor of a plant for denaturation or for redistillation and denaturation, if the plant is authorized to denature or redistill and denature spirits. These spirits shall be kept apart from all other spirits or denatured spirits until denatured. The receipt and gauging provisions of § 19.683 are applicable to these spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5243))

VOLUNTARY DESTRUCTION

§ 19.691 Voluntary destruction.

(a) *General.* Spirits, denatured spirits, articles, or wines in bond may be voluntarily destroyed as provided in this section. The tax liability on spirits, denatured spirits, articles, or wines so destroyed is extinguished.

(b) *Wine notice.* Wine may be destroyed in bond only after the proprietor has filed notice with the regional director (compliance) stating the kind

and quantity of wine to be destroyed and the date and manner in which the wine is to be destroyed. The wine may be destroyed after such notice has been filed.

(c) *Gauging*. A proprietor shall gauge spirits, denatured spirits, articles, or wines to be destroyed. Gauges of spirits in bottles may be established on the basis of legible case markings and label information when:

(1) The bottles are full;

(2) There is no evidence that the bottles have been tampered with.

(d) *Off bonded premises*. Spirits, denatured spirits, articles or wines may be removed and destroyed at a location off bonded premises if the proprietor has filed a consent of surety to cover such removal. If the destruction is accomplished off plant premises, the proprietor shall ensure compliance with applicable Federal, State, and local environmental laws and regulations.

(e) *Record of destruction*. The proprietor shall record the destruction of spirits, denatured spirits, articles, or wines as provided in § 19.767.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

Subpart V—Samples of Spirits

§ 19.701 Spirits withdrawn from bonded premises.

(a) *Samples withdrawn from bonded premises*. The proprietor may withdraw spirits without payment of tax, or wine spirits or brandy free of tax, to the proprietor's laboratory, the laboratory of an affiliated or subsidiary corporation, or, if approved by the regional director (compliance), to a recognized commercial laboratory for testing or analysis (other than consumer testing or other market analysis) to determine the quality or character of the finished product. The quantity of spirits so withdrawn shall not exceed the amount necessary for conduct of the proprietor's operations.

(b) *Customer samples*. A quantity of spirits not exceeding 1 liter may be furnished to a prospective purchaser for quality testing (other than consumer testing or other market analysis) only if a bona fide written or oral purchase agreement exists which is contingent upon quality approval by the prospective purchaser; except that a sample not to exceed 1 liter may be furnished to a prospective customer for quality testing in anticipation of a purchase agreement if the customer is authorized to receive bulk spirits for industrial use.

(c) *Research or development*. Spirits may be withdrawn without payment of tax for research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials or equipment relating to distilled spirits or distilled spirits plant operations. The amount withdrawn shall be limited to an amount necessary for conduct of the testing, research or development. If the testing, research or development is to be conducted by other than the proprietor, the proprietor shall secure a written statement, executed by the consignee, agreeing that he will maintain records of the receipt, use, and disposition of all spirits received by him and that those records and operations will be available during regular business hours for inspection by ATF officers.

(d) *Conditions*. (1) Records will be maintained in accordance with § 19.766 of all spirits taken or withdrawn under the provisions of this section.

(2) Remnants or residues of spirits withdrawn but not used during testing, research or development shall be destroyed or returned to the bonded premises for storage with similar products or entry in the continuous distilling system.

(e) *Limitation*. The regional director (compliance) shall proceed to collect the tax on any spirits withdrawn under this section which are found to have been withdrawn, used or disposed of in a manner not authorized by this section.

(f) *Losses*. When spirits are lost prior to being used for the authorized purpose, the proprietor shall either pay the tax or file a claim for remission of tax as prescribed by § 19.41.

(Sec. 201, Pub. L. 86–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5214, 5173))

§ 19.702 Samples used on bonded premises.

The proprietor may take samples of spirits for research, development, testing, or laboratory analysis conducted in a laboratory located on the bonded premises of the distilled spirits plant. The applicable purposes, conditions and limitations for samples taken pursuant to § 19.701 shall also apply to samples taken as authorized by this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5008))

§ 19.703 Taxpayment of samples.

When tax is required to be paid on samples:

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's semimonthly tax return on Form 5000.24.

(b) If the proprietor is not qualified to defer the payment of tax, the tax shall be paid on a prepayment tax return on Form 5000.24.

[T.D. ATF–219, 50 FR 51388, Dec. 17, 1985]

§ 19.704 Labels.

(a) On each container of spirits to be withdrawn under the provisions of § 19.701, the proprietor shall affix a label showing the following information:

(1) Purpose for which withdrawn;

(2) Kind of spirits;

(3) Size and the proof of the sample, if known;

(4) If the spirits are removed to other then adjacent or contiguous premises of the proprietor, the name and address of the consignee;

(5) The proprietor's name, and plant number; and

(6) The date taken.

(b) The labeling required by paragraph (a) of this section is not necessary when sample containers bear an approved label pursuant to 27 CFR Part 5 and subpart S of this part and the sample is removed from bonded premises to the general premises of the same distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5206, 5214, 5373))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23952, June 7, 1985]

Subpart W—Records and Reports

GENERAL

§ 19.721 Records.

(a) *In General.* (1) The records to be maintained by proprietors shall include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data utilized in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the proprietor's commercial documents, rather than records prepared expressly to meet the requirements of this part, if such documents contain all the details required by this part to be recorded, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Accounts.* The records required by this part to be maintained by proprietors shall be arranged into three primary operational accounts:

(1) Production,

(2) Storage, and

(3) Processing.

Records shall indicate receipts, movements between accounts, transfers in bond, or withdrawals of spirits, denatured spirits, articles, or wines.

(c) *Exceptions.* The term ''records'' as used in this subpart does not include copies of qualifying documents required under subpart G, or of bonds required under Subpart H of this part.

(d) *Special provisions.* See 27 CFR 70.22 for information with respect to ATF examination of financial records and books of account.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.722 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows: (a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded to the sixth decimal; or (b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded to the nearest hundredth. Once converted to wine gallons, the proof gallons of spirits in cases shall be determined as provided in 27 CFR 30.52.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.723 Maintenance and preservation of records.

(a) *Place of maintenance.* Records required by this part shall be prepared and kept by the proprietor at the plant where the operation or transaction occurs and shall be available for inspection by any ATF officer during business hours.

(b) *Reproduction of original records.* (1) Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the proprietor shall reproduce such record, by a process approved by the regional director (compliance) under § 19.725 for reproducing records, and such reproduction shall be treated and considered for all purposes as though it were the original record.

(2) All provisions of law applicable to the original record shall be applicable to such reproductions.

(c) *Retention of records.* (1) Records required by this part shall be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. However, the regional director (compliance) may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(2) The period for retention of records prescribed in paragraph (c)(1) of this section shall not apply to copies of outstanding approved formulas or to copies of formulas which form the basis for claims for credit or refund of taxes on spirits returned to bonded premises. A copy of any such formula shall be kept by the proprietor at the plant where spirits are processed subject to the formula or at the plant where such spirits are received.

(d) *Data processing.* (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the plant premises if the original transaction (source) records required by §§ 19.736–19.779 are kept available for inspection at the plant premises.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media must be retrievable within five business days.

(3) The applicable data processing program shall be made available for examination if requested by an ATF officer.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.724 Modified forms.

(a) *Application.* Proprietors desiring to modify prescribed forms shall submit an application to the Director, through the regional director (compliance). The application shall be accompanied by:

(1) A copy of each proposed form with typical entries; and

(2) A statement showing the need for use of the modified forms. Modified forms shall not be used until approved by the Director.

(b) *Restrictions.* The use of modified forms shall not relieve a proprietor from any requirement of this part. The Director may require a proprietor to immediately discontinue the use of any

modified form when such use is found to pose administrative problems.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.725 Photographic copies of records.

(a) *Application*. Proprietors who desire to record, copy or reproduce records, required by this part, by any process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall apply to the regional director (compliance) for permission to do so, describing:

(1) The records to be reproduced,

(2) The reproduction process to be employed,

(3) The manner in which the reproductions are to be preserved, and

(4) The provisions to be made for examining, viewing, and using such reproductions.

(b) *Approval*. The regional director (compliance) shall not approve any application unless the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are satisfactory.

(c) *Conditions*. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original shall be applicable to the reproduced record. As used in this section, ''original record'' shall mean the record required by this part to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended, (26 U.S.C 5555))

§ 19.726 Authorized abbreviations to identify spirits.

The following abbreviation may be used, either alone or in conjunction with descriptive words, to identify the kind of spirits on forms or records:

Kinds of spirits	Abbreviations
Alcohol	A
Brandy	BR
Bourbon Whisky	BW
Canadian Whisky	CNW
Completely Denatured Alcohol	CDA
Corn Whisky	CW
Grain Spirits	GS
Irish Whisky	IW
Light Whisky	LW
Malt Whisky	MW
Neutral Spirits	NS
Neutral Spirits Grain	NSG
Rye Whisky	RW
Scotch Whisky	SW
Specially Denatured Alcohol	SDA
Special Denatured Rum	SDR
Tequila	TEQ
Vodka	V
Whisky	W

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

RECORDS

§ 19.731 General.

(a) *Entries*. (1) Each entry required by this part to be made in daily records shall be made on the day on which the operation or transaction occurs.

(2) When the proprietor prepares supplemental or auxiliary records concurrent with the individual operation or transaction, and these records contain all the required information with respect to the operation or transaction, entries in daily records may be deferred not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(b) *Content*. (1) All entries in the daily records required by this subpart shall show the date of the operation or transaction.

(2) Daily records shall accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable:

(i) Identification and proper marking and labeling of spirits, denatured spirits, or wines;

(ii) Proprietors to prepare summaries, reports, and returns required by this part; and

(iii) ATF officers to:

(A) Verify and trace the quantity and movement of materials, spirits, denatured spirits, wines, or alcoholic flavoring materials involved in each transaction or operation;

(B) Verify tax determinations and claims; and

(C) Ascertain whether there has been compliance with law and regulations.

(c) *Format.* (1) Proprietor's copies of prescribed forms which bear all required details shall be utilized as daily records.

(2) In instances when a form is not prescribed, the records required by this subpart shall be those commercial records used by the proprietor in his accounting system and shall bear all required details.

(3) Daily records required by this part shall be so maintained that they clearly and accurately reflect all mandatory information. Where the format or arrangement of the daily records is such that the information is not clearly or accurately reflected, the regional director (compliance) may require a format or arrangement which will clearly and accurately reflect the information.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.732 Details of daily records.

The daily records required by this part shall conform to the following requirements:

(a) Spirits shall be recorded by kind and by quantity in proof gallons, except as provided in § 19.751.

(b) Denatured spirits shall be recorded by formula number and by quantity in wine gallons.

(c) Distilling materials produced on the premises shall be recorded by kind and by quantity in wine gallons. Chemical byproducts containing spirits, articles, spirits residues, and distilling materials received on the premises shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons. However, when nonliquid distilling materials which are not susceptible to such quantitative determination are received, the quantity of such materials may be determined by weight and shall be so recorded, and the alcohol content need not be recorded. When it can be shown that it is impractical to weigh or otherwise determine the exact quantity of such nonliquid materials, the proprietor may estimate the weight or volume of the material.

(d) Wines shall be recorded by kind, by quantity in wine gallons, and by percent of alcohol by volume.

(e) Alcoholic flavoring materials shall be recorded by kind, formula number (if any) and by quantity in proof gallons.

(f) Containers (other than those bearing lot identification numbers) or cases involved in each operation or transaction shall be recorded by type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. However, spirits withdrawn in cases may be recorded without the serial numbers of the cases, unless the regional director (compliance) requires such recording. Package identification numbers, number of packages, and proof gallons per package shall be recorded on deposit record in the storage account reflecting production gauges or filling of packages from tanks, however, only the lot identification, number of packages, and proof gallons per package need be shown for transactions in packages of spirits unless package identification numbers are specifically required by this part.

(g) Materials intended for use in the production of spirits shall be recorded by kind and by quantity, recording liquids in gallons and other materials in pounds, and giving the sugar content for molasses.

(h) The name and address of the consignee or consignor, and if any, the plant number or industrial use permit number of such person, shall be recorded for each receipt or removal of materials, spirits, denatured spirits, articles, spirits residues, and wine.

(i) The serial number of the tank used shall be recorded for each operation or transaction.

(j) The rate of duty paid on imported spirits shall be shown on the transaction forms or records.

(k) Records shall identify imported spirits, spirits from Puerto Rico, and spirits from the Virgin Islands, or the records shall show that a distilled spirits product contains such spirits.

(l) Records shall identify spirits that are to be used exclusively for fuel use.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

PRODUCTION ACCOUNT

§ 19.736 Daily production records.

(a) *Spirits production.* Each proprietor shall maintain daily production account records of production operations showing:

(1) The receipt of fermenting material or other nonalcoholic material intended for use in the production of spirits.

(2) The receipt and use of spirits, denatured spirits, articles, and spirits residues received for redistillation.

(3) The fermenting material set in each fermenter or other material used in the production of spirits.

(4) The distilling material produced, received for production, and used in production of spirits, or destroyed or removed from the premises before being distilled (including the residue of beer returned to the producing brewery).

(5) The gauge of spirits in each receiving tank, the production gauge (in proof gallons) of spirits removed from each tank, and the transaction form or record and its serial number covering each removal. The details of individual packages filled pursuant to production gauge for immediate withdrawal from bonded premises shall also be recorded.

(6) The fermenting materials or other nonalcoholic materials used or removed from the premises.

(7) The quantity and testing for alcoholic content of fusel oil or other chemicals removed from the production system and the disposition thereof with the name of the consignee, if any.

(8) The kind and quantity of distillates removed from the production system pursuant to § 19.322.

(9) The kind and quantity of spirits, lost or destroyed prior to production gauge. Records pertaining to the production account shall be maintained in such a manner that the spirits produced may be traced through the distilling system to the mash or other material from which produced, and the identity of the spirits thus traced may be clearly established.

(b) *Byproduct spirit production.* Each proprietor who manufactures substances other than spirits, in a process which produces spirits as a byproduct, shall maintain daily production records as to each such process showing:

(1) The kind and quantity of materials received, unless included in records maintained under paragraph (a) of this section.

(2) The spirits produced and disposed of.

(3) The kind and quantity of other substances produced.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

STORAGE ACCOUNT

§ 19.740 Daily storage records.

(a) *General.* Proprietors shall maintain daily records in the storage account which shall show for each kind of spirits or wine, as applicable:

(1) Spirits or wines received for deposit in storage;

(2) Spirits mingled;

(3) Spirits in tanks;

(4) Spirits or wines filled into packages from tanks and retained for storage;

(5) Spirits of less than 190 degrees of proof or wines transferred from one tank to another;

(6) Spirits returned to bond;

(7) Spirits or wines voluntarily destroyed;

(8) Spirits or wines lost during storage;

(9) The transfer of spirits or wine from one package to another;

(10) The addition of oak chips to spirits and the addition of caramel to brandy or rum; and

(11) The disposition of spirits or wines.

(b) *Records covering deposits.* The proprietor's copies of gauge records, transfer records, or tank records of wines or spirits of less than 190 degrees of proof covering: deposit in the storage account of spirits received from the production account, from customs custody, or by return to bond under subpart U of this part, or of wines or spirits from other bonded premises; packages of spirits or wines filled from tanks and retained in the storage account after mingling; and wines or spirits of less than 190 degrees of proof transferred from one tank to another,

shall be utilized by the proprietor to record wines or spirits deposited in the storage account. The proprietor shall enter the date of deposit of the spirits in storage on the record. Files of deposit records shall be maintained for spirits in packages and such files shall be arranged by producers (by warehouseman in the case of blended rums or brandies and for spirits of 190 degrees or more of proof, by the warehouseman who received the spirits from customs custody in the case of imported spirits, and by producer in the Virgin Islands or Puerto Rico in the case of Virgin Islands or Puerto Rican spirits), in chronological order according to the date of deposit in the storage account, and, when possible, in sequence by lot identification for packages. (For the purpose of records under this section spirits produced under trade names shall be treated as being produced under the real name of the proprietor [producer].) Also, files of deposit records shall be maintained, in the manner prescribed by 19.742, for wines and for spirits of less than 190 degress of proof in tanks in the storage account with a separate file for each tank of wines or spirits. In the case of spirits of 190 degrees or more of proof deposited in tanks in the storage account, the proprietor shall maintain a separate consolidated file of deposit records for all tanks, separately as to gin, vodka, and other spirits as applicable, of all such domestic spirits; all such imported spirits duty paid at the beverage rate; all such imported spirits duty paid at the nonbeverage rate; all such Virgin Islands spirits; and all such Puerto Rican spirits. Such files shall be arranged chronologically by date of deposit in the warehouse.

(c) *Records covering withdrawals.* When wines or spirits other than spirits of 190 degrees or more of proof in tanks in the storage account, are withdrawn from the storage account the proprietor shall note on the record of deposit, the date and disposition of the spirits so that the files shall currently reflect the spirits remaining in the storage account. When spirits of 190 degrees or more of proof are withdrawn from tanks in the storage account the record of deposit need not be noted, but semi-annually (as of June 30 and December 31) the proprietor shall remove from his consolidated files of active deposit records all such records in excess of those required to cover the quantity of spirits shown as remaining in tanks. The deposit records so removed shall be those covering spirits first deposited in the storage account.

(Sec. 807, Pub. L. 96–39 93 Stat. 284 (26 U.S.C. 5207))

§ 19.741 Package summary records.

(a) *General.* Each warehouseman shall keep current summary records for each kind of spirits or wines in packages, to show the spirits or wines deposited in, withdrawn from, and remaining in the storage account. Separate accounting records shall be kept for domestic spirits, imported spirits, Virgin Islands spirits, Puerto Rican spirits, and wine. Package accounts for spirits may be kept by either the season or the year the packages were filled with spirits.

(b) *Arrangement.* Package summary records shall be prepared and arranged separately:

(1) For domestic spirits of less than 190 degrees of proof, alphabetically by State and numerically by the plant number and name of the producer or warehouseman.

(2) For domestic spirits of 190 degrees or more of proof, alphabetically by State, and numerically by the plant number and name of the warehouseman.

(3) For imported spirits, alphabetically by State and numerically by the plant number and name of the warehouseman who received the spirits from customs custody.

(4) For Puerto Rican or Virgin Islands spirits, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands.

(5) For wine, by kind and tax rate imposed by 26 U.S.C. 5041.

(c) *Details.* Package summary records shall show the following details:

(1) The date the summarized transactions occurred;

(2) For spirits, the number of packages and the proof gallons contained therein;

(3) For wine, the number of packages and the wine gallons contained therein;

(4) Gains or shortages disclosed by inventory or when an account is closed; and

(5) Gallon balances on summary records for spirits and wines remaining in the account at the end of each month.

(d) *Summarization*. Package summary records shall be consolidated at the end of each month, or for lesser periods when required by the regional director (compliance), to show for all types of containers and kinds of spirits, the total proof gallons received in, withdrawn from, and remaining in the storage account.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.742 Tank record of wine or spirits of less than 190 degrees of proof.

(a) *General*. Proprietors shall keep a record for each tank (including bulk conveyance) containing wine or spirits of less than 190 degrees of proof to show deposits into, withdrawals from, and the balance remaining in each tank in the storage account. A new record shall be prepared each time wine or spirits are deposited in an empty tank. Except as otherwise provided in this section, each transaction shall be recorded on the day the transaction occurs.

(b) *Arrangement*. Tank records shall be prepared and arranged:

(1) For domestic spirits, alphabetically by State, and numerically by (i) the plant number and name of the producer, or, (ii) for blended rums or brandies, the plant number and name of the warehouseman;

(2) For imported spirits, alphabetically by State, and numerically by the plant number and name of the warehouseman;

(3) For Puerto Rican or Virgin Islands spirits, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands; and

(4) For wine, by kind and tax rate imposed by 26 U.S.C. 5041.

(c) *Details*. Tank records shall show the following details:

(1) Tank record serial number, beginning with ''1'' for each record initiated on or after January 1;

(2) Date of each transaction;

(3) Identification of the tank;

(4) Kind of wine or spirits;

(5) Number and average proof gallon content of packages of spirits dumped in the tank, or a notation indicating the deposit in the tank of spirits by pipeline;

(6) Wine gallons of wine, or proof gallons of spirits deposited;

(7) If subject to age, the age of the youngest spirits in years, months and days, each time spirits are deposited;

(8) Wine gallons of wine, or proof gallons of spirits withdrawn;

(9) Related transaction form or record and its serial number for deposits or withdrawals;

(10) Wine gallons of wine, or proof gallons of spirits remaining in the tank, recorded at the end of each calendar month; and

(11) Gain or loss disclosed by inventory or on emptying of the tank.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.743 Tank summary record for spirits of 190 degrees or more of proof.

(a) *General*. Proprietors shall keep a tank summary record for spirits of 190 degrees or more of proof held in tanks to show the proof gallons deposited into, withdrawn from, and remaining in tanks in the storage account. A separate tank summary record shall be prepared for each kind of spirits of 190 degrees or more of proof. Entries shall be made for each day in which a transaction occurs, and shall be recorded as a summary of the individual transactions shown on the deposit records.

(b) *Arrangement*. Tank summary records shall be prepared and arranged:

(1) For domestic spirits, alphabetically by State, and numerically by the plant number and name of the warehouseman;

(2) For imported spirits, alphabetically by State, and numerically by the plant number of the warehouseman who received the spirits from customs custody; and

(3) For spirits from Puerto Rico or the Virgin Islands, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands.

(c) *Details*. Tank summary records shall show the following details:

(1) Kind of spirits;

(2) Date of transactions summarized;

(3) Proof gallons deposited;

(4) Proof gallons withdrawn;

(5) Proof gallons remaining in tanks; and

(6) Gain or loss disclosed by inventory or on emptying of the tanks summarized on the record.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

PROCESSING ACCOUNT

§ 19.746 Processing.

Each processor shall maintain daily records of transactions and operations with respect to:

(a) Manufacture of distilled spirits products;

(b) Finished products;

(c) Denaturation of spirits; and

(d) Manufacture of articles.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.747 Records of manufacturing.

Each processor shall maintain daily records of the details of manufacturing operations, showing:

(a) The spirits, wines, and alcoholic flavoring materials received. The total receipts shall be summarized showing (1) the spirits received from storage or production at the same plant, (2) the spirits received from other plants by transfer in bond, (3) spirits received from customs custody, (4) wines received from the storage account at the same plant, (5) wines received by transfer in bond, and (6) alcoholic flavoring materials received.

(b) The spirits, wines, alcoholic flavoring materials, and other ingredients used in the manufacture of a distilled spirits products showing the serial number of the dump/batch record covering such dump.

(c) Bottling or packaging of each batch of spirits, showing the serial numbers of the bottling and packaging records covering such bottling or packaging.

(d) The results of bottling proof and fill tests as required by § 19.386.

(e) Receipt, use and disposition of liquor bottles.

(f) The rebottling, relabeling, and reclosing of bottled products as required by §§ 19.392 and 19.393.

(g) The spirits, wines, and alcoholic flavoring materials removed from the premises.

(h) The spirits moved to the production account for redistillation.

(i) Redistillation of spirits, including the production of gin and vodka by means other than original and continuous distillation.

(j) Record of alcoholic flavoring materials deposited into tanks prior to dumping showing the consignor, the date and quantity received, the name of the product, the date and quantity of each removal from the tank and losses.

(k) Spirits returned to bond.

(l) The voluntary destruction of spirits and wines.

(m) The losses as provided in subpart Q of this part.

The records required by paragraph (a) of this section shall also show the name and plant number of the producer or processor (warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees of more of proof received from storage) for domestic spirits, the name of the importer and the country of origin for imported spirits, and the name and address of the producer of wines and alcoholic flavoring materials.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 19.748 Dump/batch records.

(a) *Format of dump/batch records.* Proprietor's dump/batch records shall contain, as applicable, the following:

(1) Serial number;

(2) Name and distilled spirits plant number of the producer;

(3) Kind and age of spirits used with a notation to indicate treatment with oak chips, addition of caramel, imported spirits, and spirits from Puerto Rico and the Virgin Islands;

(4) Serial number of tank or container to which ingredients are added for use;

(5) Serial or identification number of tank or container from which spirits are removed;

(6) Quantity by ingredient of other alcoholic ingredients used, showing

wine in wine gallons, percentage of alcohol by volume and proof, and alcoholic flavoring materials in proof gallons;

(7) Serial number of source transaction record (e.g., record covering spirits previously dumped);

(8) Date of each transaction;

(9) Quantity, by ingredient (other than water), of nonalcoholic ingredients used;

(10) Formula number;

(11) Quantity of ingredients used in the batch that have been previously dumped, reported on dump records, and held in tanks or containers;

(12) Total quantity in proof gallons of all alcoholic ingredients used;

(13) Identification of each record to which spirits are transferred;

(14) Quantity in each lot transferred;

(15) Date of each transfer;

(16) Total quantity in proof gallons of product transferred;

(17) Gain or loss; and

(18) For each batch to be tax determined in accordance with § 19.35, the effective tax rate.

(b) *Redistillation.* (1) Dump/batch records shall be prepared to show spirits to be redistilled in the processing account, including the production of gin or vodka by redistillation. A dump record shall also be prepared to record the finished distillate.

(2) When redistillation requires the use of more than one tank or other vessel in a continuous distilling system, the system may be shown on the record in lieu of preparing a separate record to show each movement of spirits between tanks or vessels.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–297, 55 FR 18064, Apr. 30, 1990]

§ 19.749 Bottling and packaging record.

The bottling and packaging record shall be prepared and contain the following information:

(a) Tank number(s);

(b) Serial number (beginning with ''1'' at the start of each calendar or fiscal year);

(c) Formula number (if any) under which the batch was produced;

(d) Serial number of the dump/batch record from which received;

(e) Kind of product (including age, if claimed);

(f) Details of the tank gauge (including proof, wine gallons, proof gallons, and, if applicable, obscuration);

(g) The date the bottles or packages were filled;

(h) Size of the bottles or packages filled, number of bottles per case, and number of cases or packages filled;

(i) Serial numbers by brand name of cases or other containers filled;

(j) Proof of the spirits bottled or packaged (if different from subsection (f));

(k) Total quantity bottled, packaged or otherwise disposed of in bulk;

(l) Losses or gains; and

(m) Whether the spirits were labeled as bottled in bond.

(Sec. 807(a), Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.750 Records of alcohol content and fill tests.

(a) Proprietors shall record the results of all tests of alcohol content and quantity (fill) conducted.

(b) The record shall be maintained in a manner and provide information that will enable ATF officers to determine whether the proprietor has complied with the provisions of § 19.386 by:

(1) Monitoring operations by conducting alcohol content and fill tests; and

(2) Employing procedures to correct variations in alcohol content and fill.

(c) Alcohol content and fill test records shall contain, at a minimum, the following information:

(1) Date and time of test;

(2) Bottling tank number;

(3) Serial number of bottling record;

(4) Bottling line designation;

(5) Size of bottle;

(6) Number of bottles tested;

(7) Labeled alcohol content;

(8) Alcohol content found by the test;

(9) Percentage of variation from 100 percent fill; and

(10) Corrective action taken, if any.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555); Sec. 807(a), Pub. L. 96–39 (26 U.S.C. 5207)

[T.D. ATF–237, 51 FR 36395, Oct. 10, 1986; 51 FR 37271, Oct. 21, 1986]

§ 19.751 Records of finished products.

Each processor shall maintain by proof gallons daily transaction records and a daily summary record of spirits bottled or packaged as follows:

(a) Beginning and ending quantity of bottled or packaged spirits on hand;

(b) Spirits bottled or packaged;

(c) Bottled or packaged spirits disposed of by:

(1) Withdrawal on tax determination;

(2) Transfer in bond;

(3) Withdrawal free of tax or without payment of tax;

(4) Dumping for further processing;

(5) Transfer to the production account for redistillation;

(6) Voluntary destruction;

(7) Accountable losses;

(8) Samples;

(9) Inventory shortages and overages; and

(10) Other dispositions.

In lieu of showing the proof gallons of spirits on daily transaction records of withdrawals from bonded premises, proprietors may show the wine gallons or liters and the proof of spirits in cases. Summary records shall be used to compile the report required by § 19.792.

(Sec. 807, Pub. L. 96–39, 93 Stat. 283, as amended (26 U.S.C. 5207))

§ 19.752 Denaturation records.

(a) *General.* Each processor qualified to denature spirits shall maintain daily records of denaturation showing:

(1) Spirits received for, and used in, denaturation;

(2) Spirits, denatured spirits, recovered denatured spirits, spirits residues, and articles redistilled in the processing account for denaturation;

(3) Kind and quantity of denaturants received, used in denaturation of spirits, or otherwise disposed of;

(4) Conversion of denatured alcohol formulas in accordance with § 19.460;

(5) Denatured spirits produced, received, stored in tanks, filled into containers, removed, or otherwise disposed of;

(6) Recovered denatured spirits or recovered articles received, restored, and/or redenatured;

(7) Packages of denatured spirits filled with a separate record for each formula number and filed in numerical order according to the serial number or lot identification number of the packages;

(8) Losses; and

(9) Disposition of denatured spirits.

(b) *Record of denaturation.* Each time spirits are denatured, a record shall be prepared to show the formula number, the tank in which denaturation takes place, the proof gallons of spirits before denaturation, the quantity of each denaturant used (in gallons, or in pounds or ounces), and wine gallons of denatured spirits produced.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.753 Record of article manufacture.

Each processor qualified to manufacture articles shall maintain daily records arranged by the name and authorized use code of the article to show the following:

(a) Quantity, by formula number of denatured spirits used in the manufacture of the article;

(b) Quantity of each article manufactured; and

(c) Quantity of each article removed, or otherwise disposed of, including the name and address of the person to whom sold or otherwise disposed of.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

TAX RECORDS

SOURCE: Sections 19.761 through 19.765 added by T.D. ATF–297, 55 FR 18064, Apr. 30, 1990, unless otherwise noted.

§ 19.761 Record of tax determination.

A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Although neither the proof gallons nor effective tax rates need be shown on the record of tax determination, there shall be shown on each invoice or shipping document sufficient information to enable ATF officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. For purposes of this part, the total proof gallons calculated

from each invoice or shipping document constitutes a single withdrawal.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.762 Daily summary record of tax determinations.

Each proprietor of a distilled spirits plant who withdraws distilled spirits on determination of tax, but before payment of tax, shall maintain a daily summary record of tax determinations. The summary record will show, for each day on which tax determinations occur:

(a) The serial numbers of the records of tax determination, the total proof gallons, rounded to the nearest tenth proof gallon on which tax was determined at each effective tax rate, and the total tax; or

(b) The serial numbers of the records of tax determination, the total tax for each record of tax determination and the total tax.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.763 Record of average effective tax rates.

(a) For each distilled spirits product to be tax determined in accordance with § 19.37, the proprietor shall prepare a daily summary record showing the—

(1) Serial number of the batch record of each batch of the product which will be bottled or packaged, in whole or in part, for domestic consumption;

(2) Proof gallons in each such batch derived from distilled spirits, eligible wine, and eligible flavors; and

(3) Tax liabilities of each such batch determined as follows:

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

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b)(1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors to the extent that such distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) At the end of each month during which the product is manufactured, the proprietor shall determine the—

(1) Total proof gallons and total tax liabilities for each summary record prescribed by paragraph (a) of this section;

(2) Add the sums from paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.764 Inventory reserve records.

(a) *General.* The proprietor shall establish an inventory reserve account, as provided in this section, for each eligible distilled spirits product to be tax determined in accordance with § 19.38.

(b) *Deposit records.* For each batch of the product bottled or packaged, the proprietor shall enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.749 showing the:

(1) Name of the product;

(2) Bottling and packaging record serial number;

(3) Date the bottling or packaging was completed;

(4) Total proof gallons bottled and packaged; and

(5) Effective tax rate of the product computed in accordance with § 19.34.

(c) *Depletions.* The inventory reserve account for each product will be depleted in the same order in which the deposit records were entered into such account. A depletion will be recorded for each disposition (e.g., a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record the:

(1) Transaction date,

(2) Transaction record serial number,

(3) Proof gallons disposed of, and

(4) Proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the remaining quantity will be depleted, the deposit record closed, and

the remainder of the transaction depleted from the next deposit record.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.765 Standard effective tax rates.

For each product to be tax determined using a standard effective tax rate in accordance with § 19.36, the proprietor shall prepare a record of the standard effective tax rate computation showing, for one proof gallon of the finished product, the following information:

(a) The name of the product;

(b) The least quantity of each eligible flavor which will be used in the product, in proof gallons, or 0.025 proof gallon, whichever is less;

(c) The least quantity of each eligible wine which will be used in the product, in proof gallons;

(d) The greatest effective tax rate applicable to the product, calculated in accordance with § 19.34 with the values indicated in paragraphs (a) and (b) of this section; and

(e) The date on which the use of the standard effective tax rate commenced.

OTHER RECORDS

§ 19.766 Record of samples.

(a) *Requirement*. The proprietor shall maintain records of all samples taken pursuant to subpart V of this part.

(b) *Schedule*. (1) When the proprietor takes samples pursuant to an established schedule, such schedule may be maintained as the required record if it contains that information required by paragraphs (c)(2) through (c)(8).

(2) When unanticipated samples are taken, the schedule shall be appropriately supplemented.

(c) *Detail*. Sample records shall show:

(1) Date samples were taken;

(2) Type and identification of container from which taken;

(3) Account from which taken;

(4) Purpose for which taken;

(5) Size and number of samples taken;

(6) Kind of spirits;

(7) Disposition of the sample (e.g., destroyed, returned to containers or the distilling system, retained for library purposes); and

(8) Name and address of the person to whom samples were sent when the samples are to be analyzed or tested elsewhere than at the plant where secured.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.767 Record of destruction.

The proprietor shall record details of the voluntary destruction of spirits, denatured spirits, articles, or wines as follows:

(a) Identification of the spirits, denatured spirits, articles, or wines to include, as applicable, kind, quantity, elements of gauge, name and permit number of the producer, warehouseman or processor, and identification and type of container.

(b) The date, time, place and manner of the destruction;

(c) A statement of whether or not the spirits had previously been withdrawn and returned to bond; and

(d) The name and title of the proprietor's representative who accomplished or supervised the destruction.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.768 Gauge record.

When gauges are required to be made by this part or by the regional director (compliance), the proprietor shall prepare a gauge record to show:

(a) Serial number, commencing with ''1'' at the start of each calendar or fiscal year;

(b) Reason for making the gauge:

(1) Production gauge and entry for deposit in the storage or processing account at the plant where produced;

(2) Packaging of spirits or wine filled from a tank in the storage account at the same plant;

(3) Transfer from the processing or storage account to the production account for redistillation;

(4) Repackaging of spirits of 190 degrees or more of proof; or

(5) Gauge on return to bond in the production or processing account of spirits, denatured spirits, recovered spirits, recovered denatured spirits, articles, recovered articles, or spirits residues.

(c) Date of gauge;

(d) Related form or record (identification, serial number and date);

(e) Kind of spirits or formula number of denatured spirits;

(f) Proof of distillation (not required for denatured spirits, spirits for redistillation, or spirits of 190 degrees or more of proof);

(g) When containers are to be filled, the type and number of containers;

(h) Age of spirits;

(i) Name and plant number of the producer or warehouseman; and

(j) Gauge data:

(1) Package identification, tank number, volumetric or weight gauge details, proof, and wine gallons;

(2) Cooperage identification (''C'' for charred, ''REC'' for recharred, ''P'' for plain, ''PAR''for paraffined, ''G'' for glued, or ''R'' for reused);

(3) Entry proof for whiskey;

(4) Proof gallons per filled package; and

(5) Total proof gallons of spirits or wine gallons of denatured spirits, recovered denatured spirits, articles, spirits residues, or wine.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.769 Package gauge record.

When required by this part and Part 252, a record shall be prepared to document the gauge of packages of spirits and to convey information on package gauges. The following information shall be recorded:

(a) Date prepared;

(b) Identification of the related transaction form or record, and its serial number;

(c) The name and plant number of the producer or processor (For blended rums or brandies enter name(s) and plant number of blending warehouseman. For spirits of 190 degrees or more of proof, name and plant number of the producer or warehouseman, as appropriate; where the packages have already been marked, the name and plant number marked thereon. For imported spirits, the name of the warehouseman who received the spirits from customs custody and name of importer. For Virgin Islands or Puerto Rican spirits, the name of the producer in the Virgin Islands or Puerto Rico);

(d) proof of distillation for spirits not over 190 degrees proof; and

(e) For each package—

(1) Serial or identification number;

(2) Designate wooden barrels as ''C'' for charred, ''REC'' for recharred, ''P'' for plain, ''PAR'' for paraffined, ''G'' for glued, ''R'' for reused, and ''PS'' if a barrel has been steamed or water soaked before filling;

(3) Kind of spirits;

(4) Gross weight determined at the time of original gauge, regauge, or at time of shipment;

(5) Present tare on regauge;

(6) Net weight for filling gauge or regauge;

(7) Proof;

(8) Proof gallons for regauge;

(9) Original proof gallons; and

(10) Receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

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

(Sec. 807, Pub. L. 93–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 19.770 Transfer record.

(a) *Consignor*. When required by this part, proprietors shall prepare a transfer record. The transfer record shall show: (1) Serial number, commencing with ''1'' on January 1 of each year;

(2) Serial number and date of ATF Form 5100.16 (not required for wine spirits withdrawn without payment of tax for use in wine production);

(3) Name and distilled spirits plant number of consignor;

(4) Name and distilled spirits plant number or bonded wine cellar number of the consignee;

(5) Account from which the spirits or wines were removed for transfer (i.e., production, storage, or processing account);

(6) Description of the spirits, denatured spirits, or wine—

(i) Name and plant number of the producer, warehouseman or processor (Not required for denatured spirits or wine. For imported spirits, record the name and plant number of the warehouseman or processor who received the spirits from customs custody. For transfer of imported spirits from customs custody to ATF bond, record the

name of the foreign producer. For Virgin Islands or Puerto Rican spirits, show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen which have been mixed in the processing account, record the name of the processor.);

(ii) Kind of spirits or wines (For denatured spirits, show kind and formula number. For alcohol, show material from which produced. For bulk spirits and for alcohol in packages, show kind and proof. For other spirits and wines, use kind designation as defined in 27 CFR Part 4 or 5 as appropriate);

(iii) Age (in years, months, and days) and year of production;

(iv) Number of packages or cases with their lot identification numbers or serial numbers and date of fill;

(v) Type of container (If spirits, denatured spirits or wines are to be transferred by pipeline, show ''P/L''.);

(vi) Proof gallons for distilled spirits, or wine gallons for denatured spirits or wine;

(vii) Conveyance identification; and

(viii) For distilled spirits products which contain eligible wine or eligible flavors, the elements necessary to compute the effective tax rate as follows:

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

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

(C) Proof gallons of distilled spirits derived from eligible flavors.

(7) Notation to indicate when spirits are being transferred in bond from production facility to another plant;

(8) Identification of seals, locks or other devices affixed to the conveyance or package (Permanent seals affixed to a conveyance and which remain intact need not be recorded on the transfer record when a permanent record is maintained);

(9) Date; and

(10) Signature and title of the consignor with the penalties of perjury statement required by § 19.100.

(b) *Consignee.* (1) When a proprietor receives wine from a bonded wine cellar, the consignee shall complete Form 703 covering such transfer in accordance with the instructions thereon.

(2) When a proprietor receives spirits from an alcohol fuel plant or from customs custody, or spirits, denatured spirits and wines from the bonded premises of another distilled spirits plant, he shall record the results of such receipt on the related transfer record as follows:

(i) Date of receipt;

(ii) Notation whether the securing devices on the conveyance were or were not intact on arrival (not applicable to spirits transferred in unsecured conveyances or denatured spirits);

(iii) Gauge of spirits, denatured spirits, or wine showing the tank number, proof (percent of alcohol by volume for wine) and elements of the weight or volumetric determination of quantity, wine gallons or proof gallons received, and any losses or gains;

(iv) Notation of excessive in-transit loss, missing packages, tampering, or apparent theft;

(v) Account into which the spirits, denatured spirits or wines were deposited (i.e., production, storage or processing); and

(vi) Signature and title of the consignee with the penalties of perjury statement required by § 19.100.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–297, 55 FR 18065, Apr. 30, 1990; 55 FR 23635, June 11, 1990]

§§ 19.771–19.772 [Reserved]

§ 19.773 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of all distilled spirits and wines at such premises, and of all reclosing and relabeling operations. The provisions of this section shall also apply to products returned to a wholesale liquor dealer or taxpaid storeroom from the market. A separate

record shall be kept for each such premises. The records in respect of the receipt and disposition of distilled spirits and wines shall contain all data necessary (consisting of or supported by records including bills of lading and invoices) to enable ATF officers to identify and trace such receipt and dispositions and to ascertain whether there has been compliance with all laws and regulations relating thereto. In addition to any other information shown therein, such records shall include:

(a) *For receipts and dispositions*—

(1) The date of the transaction (or date of discovery in the case of casualty or theft);

(2) The name and address of each consignor or consignee, as the case may be;

(3) The brand name;

(4) The kind of spirits;

(5) The actual quantity of distilled spirits involved (proof and proof gallons if in packages, wine gallons or liters and proof if in bottles);

(6) The package identification or serial numbers of packages involved;

(7) The name of the producer; and

(8) The country of origin, if imported spirits.

(b) *For case dispositions*—In addition to the requirements listed in paragraph (a) of this section the regional director (compliance) may, upon notice to the dealer, require the recording of case serial numbers for dispositions.

(c) *For reclosing or relabeling operations*—

(1) The date of the transaction;

(2) The serial numbers of cases involved;

(3) The total number of bottles;

(4) The name of the bottler; and

(5) The number and kind of strip stamps used and/or the number of alternative devices used.

(Approved by the Office of Management and Budget under control number 1512–0198)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 19.774 Record of inventories.

(a) *General*. Each proprietor shall make a record of inventories of spirits, denatured spirits, and wines required by §§ 19.329, 19.353, 19.401, 19.402, and 19.464. The following information shall be shown:

(1) Date taken;

(2) Identification of container(s);

(3) Kind and quantity of spirits, denatured spirits, and wines;

(4) Losses (whether by theft, voluntary destruction or otherwise), gains or shortages; and

(5) Signature, under penalties of perjury, of the proprietor or person taking the inventory.

(b) *Production*. Each proprietor shall record the quarterly inventory of spirits as provided in paragraph (a) of this section.

(c) *Storage*. (1) Each proprietor shall record the quarterly inventory of spirits and wines (except those in packages) as provided in paragraph (a) of this section.

(2) Gains or losses disclosed for each container shall be recorded on the current tank record (or summary record for spirits of 190 degrees or more of proof).

(d) *Processing*. Each proprietor shall record inventories as provided in paragraph (a) of this section, and for:

(1) Bulk spirits and wines in process, any gains or losses shall be recorded on the individual dump, batch, or bottling record;

(2) Finished products in bottles and packages, any overages, losses, and shortages for the total quantity inventoried shall be recorded in records required by § 19.751; and

(3) Denatured spirits, any gains or losses shall be recorded in the record prescribed by § 19.752.

(e) *Retention*. Inventory records shall be retained by the proprietor and made available for inspection by ATF officers.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.775 Record of securing devices.

Each proprietor shall maintain a record of securing devices by serial number showing the number received, affixed to conveyances (in serial order), and otherwise disposed of.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.776 Record of scale tests.

Proprietors shall maintain records of results of tests conducted in accordance with § 19.273 and § 19.276.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.777 [Reserved]

§ 19.778 Removal on or after January 1, 1987 of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas.

(a) *General.* The proprietor shall maintain separate accounts, in proof gallons, of Puerto Rican spirits having an alcoholic content of at least 92 percent rum, of Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of rum imported from all other areas removed from the processing account on determination of tax. Quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients may be determined by using the methods provided in paragraphs (b), (c), or (d) of this section. The proprietor shall report these quantities monthly on Form 5110.28, Monthly Report of Processing Operations, as provided in § 19.792.

(b) *Standard method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined based on the least amount of such spirits which may be used in each product as stated in the approved formula, ATF F 5110.38.

(c) *Averaging method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined by computing the average quantity of such spirits contained in all batches of the same product formulation manufactured during the preceding 6-month period. The average shall be adjusted at the end of each month so as to include only the preceding 6-month period.

(d) *Alternative method.* Distilled spirits plant proprietors who wish to use an alternative method for determining the amount of spirits in these categories contained as ingredients of other distilled spirits products shall file an application with the Director. The written application shall specifically describe the proposed alternative method, and shall set forth the reasons for using the alternative method.

(e) *Transitional rule.* On January 1, 1987 the proprietor shall take physical inventories of all Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas which were received into the processing account prior to that date. These inventories may be taken as provided in § 19.402(a)(2). The results of the inventories shall be submitted in a letter to the regional director (compliance) within 30 days of the required date of the inventories.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5555))

[T.D. ATF–239, 51 FR 40026, Nov. 4, 1986]

§ 19.779 Record of shipment of spirits and specially denatured spirits withdrawn free of tax.

(a) *General.* The proprietor shall prepare a record of shipment, and forward the original to the consignee and file a copy, when:

(1) Samples of specially denatured spirits in excess of five gallons are withdrawn in accordance with § 19.540(c)(2);

(2) Spirits are withdrawn free of tax in accordance with § 19.536(a)—(c); and

(3) Specially denatured spirits are withdrawn free of tax in accordance with §§ 19.536(d) and 19.540.

(b) *Form of record.* (1) The record of shipment prescribed in this section may consist of a proprietor's commercial invoice, bill of lading, or another document intended for the same purpose. Any commercial document used as a record of shipment shall:

(i) Be preprinted with the name and address of the proprietor,

(ii) Be sequentially numbered, and

(iii) Be consistently used for the intended purpose.

(2) In addition to any other information on the document, the record of shipment shall contain, as applicable, the following information:

(i) Date of shipment;

(ii) Name, address, and permit number of consignee;

(iii) Kind of spirits;

(iv) Proof of spirits;

(v) Formula number(s), for specially denatured spirits;

(vi) Number and size of containers;

(vii) Package identification numbers or serial numbers of containers; and

(viii) Total wine gallons (specially denatured spirits) or total proof gallons (tax-free alcohol).

(Records relating to tax-free alcohol 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)

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985]

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

(a) *General*. Where distilled spirits are shipped to a manufacturer of nonbeverage products, the proprietor shall prepare a record of shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record*. The record of tax determination prescribed by § 19.761, or any other document issued by the proprietor and containing the necessary information, may be used as the record of shipment.

(c) *Required information*. In addition to any other information on the document, the document used as the record of shipment must contain the following information:

(1) Name, address and registry number of the proprietor;

(2) Date of shipment;

(3) Name and address of the consignee;

(4) Kind, proof, and quantity of distilled spirits in each container;

(5) Number of containers of each size;

(6) Package identification numbers or serial numbers of containers;

(7) Serial number of the applicable record of tax determination; and

(8) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201 Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

[T.D. ATF–297, 55 FR 18065, Apr. 30, 1990, as amended by T.D. ATF–379, 61 FR 31426, June 20, 1996]

SUBMISSION OF FORMS AND REPORTS

§ 19.791 Submission of transaction forms.

Completed copies of transaction forms which must be submitted to the regional director (compliance) under the provisions of this part shall be submitted by the proprietor no later than the close of business the third business day succeeding the day of the transaction as provided by this part and by instructions on the individual forms.

(Sec. 807, Pub. L. 97–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.792 Reports.

(a) Reports required by this section shall be prepared as of the end of the applicable reporting period. The original shall be submitted to the regional director (compliance) and a copy retained by the proprietor.

(b) Proprietors shall submit the following summary reports of their operations:

Title	Form No.	Reporting period
(1) Production report	5110.40	Monthly.
(2) Storage report	5110.11	Do.
(3) Processing reports—		
(i) Manufacture/bottling	5110.28	Do.
(ii) Denaturation (including articles).	5110.43	Do.

(c) All reports required by this part shall be prepared and submitted to the regional director (compliance) not later than the 15th day of the month following the close of the reporting period.

(Approved by the Office of Management and Budget under control number 1512–0198)

(Sec. 807, Pub. L. 96–39, 98 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23953, June 7, 1985]

Subpart X—Production of Vinegar by the Vaporizing Process

SCOPE OF SUBPART

§ 19.821 Production of vinegar by the vaporizing process.

The regulations in this subpart relate to the production of vinegar by the vaporizing process. The regulations cover

requirements governing the location, qualification, changes after qualification, construction, equipment, plant operations and records of operations at vinegar plants. Except where incorporated by reference, the provisions of subpart A through W and subpart Y of this part do not apply to vinegar plants using the vaporizing process. The following provisions of this part shall apply to this subpart: the meaning of terms, § 19.11; other businesses, § 19.68; right of entry and examination, § 19.81; furnishing facilities and assistance, § 19.86; restrictions as to location, § 19.131; registry of stills, § 19.169; and maintenance and preservation of records, § 19.723.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1391, as amended (26 U.S.C. 5501–5505))

QUALIFICATION DOCUMENTS

§ 19.822 Application.

Each person, before commencing the business of manufacturing vinegar by the vaporizing process shall make written application to the regional director (compliance). The application will include:

(a) The applicant's name and principal business address (including the plant address if different from the principal business address);

(b) Description of the extent of the premises;

(c) Description of the type of operations to be conducted; and

(d) Description of the stills including the name and residence of the owner, the kind of still, its capacity and the purpose for which it was set up.

The applicant shall receive and approved application from the regional director (compliance) prior to commencing business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

§ 19.823 Changes after original qualification.

When there is a change in the information recorded in the original approved application, the proprietor shall make a written notice of the change to the regional director (compliance). The notice will identify the change and the effective date of the change.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

§ 19.824 Notice of permanent discontinuance of business.

A proprietor who intends to permanently discontinue operations shall make written notice to the regional director (compliance). The proprietor shall include in the notice a statement of the status of the stills.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

CONSTRUCTION AND EQUIPMENT

§ 19.825 Construction and equipment.

A proprietor of a vinegar plant shall construct and equip the vinegar plant so that—

(a) The distilled spirits vapors that are separated by the vaporizing process from the mash produced by the manufacturer are condensed only by introducing them into the water or other liquid used in making the vinegar; and

(b) The distilled spirits produced can be accurately accounted for and are secure from unlawful removal from the premises or from unauthorized use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

PLANT OPERATIONS

§ 19.826 Authorized operations.

Vinegar manufacturers qualified under this subpart are authorized to—

(a) Produce vinegar only by the vaporizing process; and

(b) Produce distilled spirits of 30 degrees of proof or less only for use in the manufacture of vinegar on the vinegar plant premises.

§ 19.827 Conduct of operations.

Vinegar manufacturers qualified under this subpart may—

(a) Separate by a vaporizing process the distilled spirits from the mash produced by him; and

(b) Condense the distilled spirits vapors by introducing them into the water or other liquid used in making the vinegar.

§ 19.828 Removals from the premises.

No person shall remove from the vinegar plant premises vinegar or other fluid or material containing more than 2% alcohol by volume.

RECORDS

§ 19.829 Daily records.

Each manufacturer of vinegar by the vaporizing process shall keep accurate and complete daily records of production operations that include—

(a) The kind and quantity of fermenting or distilling materials received on the premises;

(b) The kind and quantity of materials fermented or mashed;

(c) The proof gallons of distilled spirits produced;

(d) The proof gallons of distilled spirits used in the manufacture of vinegar;

(e) The wine gallons of vinegar produced; and

(f) The wine gallons of vinegar removed from the premises.

Separate government records need not be kept as long as commercial records contain all the required information.

ADMINISTRATIVE AND MISCELLANEOUS

§ 19.830 Application of distilled spirits tax.

The internal revenue tax must be paid on any distilled spirits produced in or removed from the premises of a vinegar plant in violation of law or this subpart.

Subpart Y—Distilled Spirits For Fuel Use

§ 19.901 Scope of subpart.

This subpart implements 26 U.S.C. 5181, which authorizes the establishment of distilled spirits plants solely for producing, processing and storing, and using or distributing distilled spirits to be used exclusively for fuel use. This subpart relates to the qualification and operation of such distilled spirits plants. Distilled spirits plants established under this subpart are designated as alcohol fuel plants.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.902 Waiver for alcohol fuel plants.

All provisions of subparts A through X of this part and all provisions of 26 U.S.C. Chapter 51 are hereby waived except:

(a) Any provision specifically incorporated by reference in this subpart and the cited authority for that provision;

(b) Any provision requiring the payment of tax;

(c) Any provisions dealing with penalty, seizure, or forfeiture which is applicable to distilled spirits; and

(d) 26 U.S.C. 5181.

(Sec. 232, Pub. L. 93–224, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.903 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart or subparts A through X of this part where the provisions of those subparts have been incorporated by reference in this subpart. 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 applicable 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, to the assessment, payment or collection of tax, will be authorized under this section. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to do so to the regional director (compliance), for transmittal to the Director. The application will specifically describe the

proposed alternate method or procedure, and will set forth the reasons therefor. The proprietor shall not employ any alternate method or procedure until the application has been approved. The 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 by the continuation of such authorization. As used in this section, alternate methods or procedures include alternate construction or equipment. The proprietor shall retain, as part of the records available for examination by AFT officers, any application approved by the Director under the provisions of this section.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.904 Emergency variations from requirements.

The regional director (compliance) may approve construction, equipment, and 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 applicable provisions of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations with respect thereto set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations will automatically terminate the authority for such variations and the proprietor 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 regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor desires to employ such variation, he shall submit a written application to do so to the regional director (compliance). The application will describe the proposed variations and set forth the reasons therefor. Variations will not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the regional director (compliance), via telephone. The proprietor shall retain, as part of the records available for examination by ATF officers, any application approved by the regional director (compliance) under the provisions of this section.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§19.905 Taxes.

Distilled spirits may be withdrawn free of tax from the premises of an alcohol fuel plant exclusively for fuel use in accordance with this subpart. Payment of tax will be required in the case of diversion of spirits to beverage use or other unauthorized dispositions. The provisions of subpart C of this part are applicable to distilled spirits for fuel use as follows:

(a) Imposition of tax liability (§§ 19.21 through 19.25);

(b) Assessment of tax (§§ 19.31 and 19.32); and

(c) Claims for tax (§§ 19.41 and 19.44).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

[T.D. ATF–207, 50 FR 23682, June 5, 1985]

§ 19.906 Special (occupational) tax.

(a) *General rule.* A proprietor of an alcohol fuel plant established under this subpart shall be subject to a special (occupational) tax as prescribed in subpart Ca of this part, and shall hold a separate special tax stamp to cover the alcohol fuel operations.

(b) *Exemption for small plants (effective July 1, 1989).* On and after July 1, 1989,

paragraph (a) of this section shall not apply to small alcohol fuel plants as defined in § 19.907. If the annual production (including receipts) of a small plant exceeds 10,000 proof gallons in any calendar year, special tax is due as provided in § 19.49(a)(1) for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application for change of plant type under § 19.921(a) has been filed or approved. If a medium or large plant produces 10,000 or fewer proof gallons (including receipts) in any calendar year, the plant shall be exempt from special tax under this paragraph, as for a small plant, for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application under § 19.921(c) has been filed or approved.

(26 U.S.C. 5081)

[T.D. ATF–271, 53 FR 17543, May 17, 1988, as amended by T.D. ATF–285, 53 FR 12609, Mar. 28, 1989; T.D. ATF–312, 56 FR 31077, July 9, 1991]

DEFINITIONS

§ 19.907 Meaning of terms.

When used in this subpart, and in forms prescribed under this subpart, terms shall have the meaning given in this section. Words in the plural form include the singular and vice versa, and words indicating the masculine gender include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

Alcohol fuel plant or plant. An establishment qualified under this subpart solely for producing, processing and storing, and using or distributing distilled spirits to be used exclusively for fuel use.

Alcohol fuel producer's permit. The document issued pursuant to 26 U.S.C. 5181 authorizing the person named therein to engage in business as an alcohol fuel plant.

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.

Bonded premises. The premises of an alcohol fuel plant where distilled spirits are produced, processed and stored, and used or distributed. Premises of small alcohol fuel plants, which are exempt from bonding under § 19.912(b), shall be treated as bonded premises for purposes of this subpart.

CFR. The Code of Federal Regulations.

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

Fuel alcohol. Distilled spirits which have been rendered unfit for beverage use at an alcohol fuel plant as provided in this subpart.

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

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

Proprietor. The person qualified under this subpart to operate the alcohol fuel plant.

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

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

Render unfit for beverage use. The addition to distilled spirits of materials which will not impair the quality of the spirits for fuel use as prescribed and authorized by the provisions of this subpart.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled 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 fuel alcohol unless specifically stated. For purposes of this subpart, the term

does not include spirits produced from petroleum, natural gas, or coal.

This chapter. Title 27, Code of Federal Regulations, Chapter I [27 CFR Chapter I].

Transfer in bond. The transfer of spirits between alcohol fuel plants or the transfer of spirits to or from a distilled spirits plant qualified under 26 U.S.C. 5171 and an alcohol fuel plant.

Type of plant. The following three types of alcohol fuel plants are recognized in this subpart:

(a) *Small plant*. An alcohol fuel plant which produces (including receipts) not more than 10,000 proof gallons of spirits per calendar year.

(b) *Medium plant*. An alcohol fuel plant which produces (including receipts) more than 10,000 and not more than 500,000 proof gallons of spirits per calendar year.

(c) *Large plant*. An alcohol fuel plant which produces (including receipts) more than 500,000 proof gallons of spirits per calendar year.

U.S.C. The United States Code.

PERMITS

§ 19.910 Application for permit required.

Any person wishing to establish an alcohol fuel plant shall first make application for and obtain an alcohol fuel producer's permit. The application for a permit will be on Form 5110.74. The application, in duplicate, will be submitted to the regional director (compliance). The description of stills on the approved application constitutes registration of stills as required by 27 CFR 196.45. Alcohol fuel producers' permits are continuing unless automatically terminated under § 19.920, suspended or revoked as provided in § 19.950, or voluntarily surrendered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.911 Criteria for issuance of permit.

In general, an alcohol fuel producer's permit will be issued to any person who completes the required application for permit and who furnishes the required bond (if any). However, the regional director (compliance) may institute proceedings for the denial of the application, if the regional director (compliance) determines that:

(a) 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 business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued thereunder; or

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

(c) The premises on which the applicant proposes to conduct the operations are not adequate to protect the revenue. The procedures applicable to denial of applications are set forth in 27 CFR Part 71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.912 Small plants.

Persons wishing to establish a small plant shall apply for a permit as provided in this section. Except as provided in paragraph (c) of § 19.913, operations may not be commenced until the permit has been issued.

(a) *Application for permit*. The application (Form 5110.74) shall be submitted to the regional director (compliance) and shall set forth the following information:

(1) Name and mailing address of the applicant, and the location of the alcohol fuel plant if not apparent from the mailing address;

(2) A diagram of the plant premises and a statement as to the ownership of the premises (if the premises are not owned by the proprietor, the owner's consent to access by ATF officers must be furnished);

(3) A description of all stills and a statement of their maximum capacity;

(4) The materials from which spirits will be produced; and

(5) A description of the security measures to be used to protect premises, buildings and equipment where spirits are produced, processed, and stored.

(b) *Bond.* No bond is required for small plants.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.913 Action on applications to establish small plants.

(a) *Receipt by the regional director (compliance)*—(1) *Notice of receipt.* Within 15 days of receipt of the application, the regional director (compliance) shall send a written notice of receipt to the applicant. The notice will include a statement as to whether the application meets the requirements of § 19.912. If the application does not meet those requirements, the application will be returned and a new 15-day period will commence upon receipt by the regional director (compliance) of the amended or corrected application.

(2) *Failure to give notice.* If the required notice of receipt is not sent, and the applicant has a receipt indicating that the regional director (compliance) has received the application, the 45-day period provided for in paragraphs (b) and (c) of this section will commence on the fifteenth day after the date the regional director (compliance) received the application.

(3) *Limitation.* The provisions of subparagraphs (1) and (2) of this section apply only to:

(i) The first application submitted with respect to any one small plant in any calendar quarter; and

(ii) An amended or corrected first application.

(b) *Determination by the regional director (compliance).* Within 45 days from the date the regional director (compliance) sent the applicant a notice of receipt of a completed application, the regional director (compliance) shall either (1) issue the permit, or (2) give notice in writting to the applicant, stating in detail the reason that a permit will not be issued. Denial of an application will not prejudice any further application for a permit made by the same applicant.

(c) *Presumption of approval.* If, within 45 days from the date of the notice to the applicant of receipt of a completed application, the regional director (compliance) has not notified the applicant of issuance of the permit or denial of the application, the application shall be deemed to have been approved and the applicant may proceed if a permit had been issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.914 Medium plants.

Any person wishing to establish a medium plant shall make application for and obtain in alcohol fuel producer's permit. Operations may not be commenced until the application has been approved and the permit issued.

(a) *Application for permit.* The application (Form 5110.74) shall be submitted to the regional director (compliance) and shall set forth the following information:

(1) The information required by § 19.912 (a);

(2) Statement of maximum total proof gallons of spirits that will be produced and received during a calendar year:

(3) Information identifying the principal persons involved in the business and a statement as to whether the applicant or any such person has ever been convicted of a felony or misdemeanor under Federal or State law; and,

(4) Statement of the amount of funds invested in the business and the source of those funds.

(b) *Bond.* A bond of sufficient penal sum, as prescribed in § 19.957, is required. The bond must be submitted on Form 5110.56 and approved before a permit may be issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.915 Large plants.

Any person wishing to establish a large plant shall make application for and obtain an alcohol fuel producer's permit. Operations may not be commenced until the application has been approved and the permit issued.

(a) *Application for permit.* The application (Form 5110.74) shall be submitted to the regional director (compliance) and shall set forth the following information:

(1) The information required by § 19.912(a);

(2) Statement of the maximum proof gallons of spirits that will be produced and received during a calendar year;

(3) Information identifying the principal persons involved in the business and a statement as to whether the applicant or any such person has ever been convicted of a felony or misdemeanor under Federal or State law;

(4) Statement of the amount of funds invested in the business and the source of those funds;

(5) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.916; and,

(6) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(b) *Bond*. A bond of sufficient penal sum, as prescribed in § 19.957, is required. The bond must be submitted on Form 5110.56 and approved before a permit may be issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.916 Organizational documents.

The supporting information required by paragraph (a)(5) of § 19.915, includes, as applicable, copies of—

(a) *Corporate documents*. (1) Corporate charter or certificate of corporate existence or incorporation.

(2) List of officers and directors, showing their names and addresses. However, do not list officers and directors who have no responsibilities in connection with the operation of the alcohol fuel plant.

(3) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Statement of interest*. (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the plant, whether the interest appears in the name of the interested party or in the name of another for that person.

(c) *Availability of additional documents*. The originals of documents required to be submitted under this section and additional items required under § 19.918 such as the articles of incorporation, bylaws, State certificate authorizing operations, or articles of partnership or association (in the case of a partnership where required by State law) shall be made available to any ATF officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.917 Powers of attorney.

The proprietor of a large plant shall execute and file with the regional director (compliance) a Form 1534 (5000.8), in accordance with instructions on the form, for each person authorized to sign or act on behalf of the proprietor (Not required for persons whose authority is furnished in the application).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.918 Information already on file and supplemental information.

If any of the information required by §§ 19.912 through 19.916 is on file with the regional director (compliance), that information, if accurate and complete, may be incorporated by reference and made a part of the application. When required by the regional director (compliance), the applicant shall furnish as a part of the application for permit, additional information as may

be necessary to determine whether the application should be approved.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278, (26 U.S.C. 5181))

CHANGES AFFECTING APPLICATIONS AND PERMITS

§ 19.919 Changes affecting applications and permits.

When there is a change relating to any of the information contained in, or considered a part of, the application on Form 5110.74, the proprietor shall within 30 days file with the regional director (compliance), a written notice, in duplicate, of such change. Where the change affects the terms and conditions of the permit the proprietor shall within 30 days (except as otherwise provided in this subpart), file with the regional director (compliance), in duplicate, an amended application on Form 5110.74.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.920 Automatic termination of permits.

(a) *Permits not transferable.* Permits issued under this subpart shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the authorized operations, the permit automatically terminates.

(b) *Corporations.* In the case of a corporation holding a permit under this subpart, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permit may remain in effect until the expiration of 30 days after the change, whereupon the permit will automatically terminate. However, if operations are to be continued after the change in control, and an application for a new permit is filed within 30 days of the change, then the outstanding permit may remain in effect until final action is taken on the new application. When final action is taken on the application, the outstanding permit automatically terminates.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.921 Change in type of alcohol fuel plant.

(a) *Small plants.* If the proprietor of a small plant wishes to increase production (including receipts) to a level in excess of 10,000 proof gallons of spirits per calendar year, the proprietor shall first furnish a bond and obtain an amended permit by filing application under § 19.914 or § 19.915, as applicable. Information filed with the original application for permit need not be resubmitted, but may be incorporated by reference in the new application.

(b) *Medium plants.* Where the proprietor of a medium plant intends to increase production (including receipts) above 500,000 proof gallons of spirits per calendar year, the proprietor shall first obtain an amended permit by filing an application under § 19.915. A new or strengthening bond may be required (see § 19.956). Information already on file may be incorporated by reference in the new application.

(c) *Curtailment of activities.* Proprietors of large or medium plants who have curtailed operations to a level where they are eligible to be requalified as medium or small plants may, on approval of a letter of application by the regional director (compliance), be relieved from the additional requirements incident to their original qualification. In the case of a change to small plant status, termination of the bond and relief of the surety from further liability shall be as provided in subpart H of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.922 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall, within 30 days of the change, file an application to

amend the permit; a new bond or consent of surety is not required.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.923 Changes in officers, directors, or principal persons.

Where there is any change in the list of officers, directors, or principal persons, furnished under the provisions of § 19.914, § 19.915 or § 19.916, the proprietor shall submit, within 30 days of any such change, a notice in letter form stating the changes in officers, directors, or principal persons. A new list reflecting the changes will be submitted with the letter notice.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.924 Change in proprietorship.

(a) *General*. If there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 19.945 and the successor shall, before commencing operations, apply for and obtain a permit and file the required bond (if any) in the same manner as a person qualifying as the proprietor of a new plant.

(b) *Fiduciary*. A successor to the proprietorship of a plant who is an administrator, executor, receiver, trustee, assignee or other fiduciary, shall comply with the applicable provisions of § 19.186(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.925 Continuing partnerships.

If under the laws of the particular State, the partnership is not immediately terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the plant under the prior qualification of the partnership. However, in the case of a large or a medium plant, a consent of surety must be filed, wherein the surety and the surviving partner agree to remain liable on the bond. If the surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 19.924(a). The rule set forth in this section will also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.926 Change in location.

Where there is a change in the location of the plant or of the area included within the plant premises, the proprietor shall file an application to amend the permit and, if a bond is required, either a new bond or a consent of surety on Form 1533 (5000.18). Operation of the plant may not be commenced at the new location prior to issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

ALTERNATE OPERATIONS

§ 19.930 Alternating proprietorship.

(a) *General*. (1) An alcohol fuel plant, or a part thereof, may be operated alternately by proprietors if—

(i) The alcohol fuel plant and the proprietors are otherwise qualified under the provisions of this subpart, and

(ii) The necessary operations bonds (if any) and applications covering such operations have been filed with and approved by the regional director (compliance).

(2) Where alternating proprietorship is to be limited to a part of a plant, that part must be suitable for qualification as a separate plant.

(b) *Qualifying Documents*. Each person desiring to operate an alcohol fuel plant as an alternating proprietor shall file with the regional director (compliance):

(1) An application on Form 5110.74 to cover the proposed alternation of premises.

(2) Diagram of premises, in duplicate, showing the arrangement under which

the premises will be operated. Diagrams will be prepared in accordance with paragraph (c) of this section.

(3) Evidence of existing operations bond (if any), consent of surety, or a new operations bond to cover the proposed alternation of premises.

(4) When required by the regional director (compliance), additional information as may be necessary to determine whether the application should be approved.

(c) *Diagram of premises.* Each person filing an application for operation of a plant as an alternating proprietor shall submit a diagram of the premises. Where operations by alternating proprietors are limited to parts of a plant, a diagram which designates the parts of the plant that are to be alternated will be submitted. A diagram will be submitted for each arrangement under which the premises will be operated. The diagram will be in sufficient detail to establish the boundaries of the plant or any part thereof which is to be alternated.

(d) *Alternation Journal.* Once the applications have been approved and initial operations conducted thereunder, the plant, or parts thereof, may be alternated. The outgoing and incoming proprietor shall enter into an alternation journal the following information:

(1) Name or trade name;

(2) Alcohol fuel plant permit number;

(3) Date and time of alternation; and

(4) Quantity of spirits transferred in proof gallons.

The alternation journal will remain in the possession of the incoming proprietor until the premises are again alternated whereupon it will be transferred to the new incoming proprietor.

(e) *Commencement of operations.* Except for spirits transferred to the incoming proprietor, the outgoing proprietor shall remove all spirits from areas, rooms, or buildings to be alternated, prior to the effective date and time shown in the alternation journal. Fuel alcohol may be either transferred to the incoming proprietor or may be retained by the outgoing proprietor in areas, rooms, or buildings to be alternated when the areas, rooms, or buildings are secured with locks, the keys to which are in the custody of the outgoing proprietor. Whenever operation of the areas, rooms, or buildings is to be resumed by a proprietor following suspension of operations by an alternating proprietor, the outgoing proprietor (except proprietors of small plants) must furnish a consent of surety on Form 1533 (5000.18) to continue in effect the operations bond covering his operations. This is to be done prior to alternating the premises.

(f) *Records.* Each proprietor shall maintain separate records and submit separate reports. All transfers of spirits will be reflected in the records of each proprietor. The quantity of spirits and fuel alcohol transferred will be shown in the production and disposition records of the outgoing proprietor. The quantity of spirits transferred will be shown in the receipt record of the incoming proprietor. Each outgoing and incoming proprietor shall include spirits transferred in determinations of plant size and bond amounts. The provisions of § 19.921 regarding change in type of plant are applicable to each proprietor. Entries into these records will be in the manner prescribed in §§ 19.982, 19.984, and 19.986.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271; sec. 805(a), Pub. 96–39, 93 Stat. 275 (26 U.S.C. 5171); sec. 232 Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

PERMANENT DISCONTINUANCE OF BUSINESS

§ 19.945 Notice of permanent discontinuance.

A proprietor who permanently discontinues operations as an alcohol fuel plant shall, after completion of the operations, file a letterhead notice with the regional director (compliance). The notice shall be accompanied—

(a) By the alcohol fuel producer's permit, and by the proprietor's request that such permit be canceled;

(b) By a written statement disclosing, as applicable, whether (1) all spirits (including fuel alcohol) have been lawfully disposed of, and (2) any spirits are in transit to the premises; and

(c) By a report covering the discontinued operations (the report shall be marked ''Final Report'').

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

SUSPENSION OR REVOCATION OF PERMITS

§ 19.950 Suspension or revocation.

Whenever the regional director (compliance) has reason to believe that any person holding an alcohol fuel producer's permit—

(a) Has not in good faith complied with the applicable provisions of 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) Has violated conditions of the permit; or

(c) Has made any false statements as to any material fact in the 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 Title 26, U.S.C. punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years; the regional director (compliance) may institute proceedings for the revocation or suspension of the permit in accordance with the procedures set forth in 27 CFR part 71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

BONDS

§ 19.955 Bonds.

An operations bond is required for medium and large plants. The bond will be executed, in duplicate, on Form 5110.56. Surety bonds 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 570. However, in lieu of corporate surety the proprietor 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. The regional director (compliance) will not release such securities until liability under the bond for which they were pledged has been terminated.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); CH. 390, Pub. L. 80–280, 61 Stat. 648, 650 (31 U.S.C. 9301, 9303, 9304, 9306); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.956 Amount of bond.

The penal sum of the bond is based on the total quantity of distilled spirits to be produced (including receipts) during a calendar year. If the level of production and/or receipts at the plant is to be increased, and the bond is not in the maximum penal sum, a new or strengthening bond shall be obtained.

(a) *Medium plants.* A medium plant which will produce (including receipts) between 10,000 and 20,000 proof gallons of spirits per year requires a bond in the amount of $2,000. For each additional 10,000 proof gallons (or fraction thereof), the bond amount is increased $1,000. The maximum bond for a medium plant is $50,000.

(b) *Large plants.* The minimum bond for a large plant is $52,000 (more than 500,000, but not more than 510,000 proof gallons annual production (including receipts)). For each additional 10,000 (or fraction) proof gallons, the amount of the bond is increased $2,000. The maximum bond for a large plant is $200,000 (more than 1,240,000 proof gallons).

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.957 Instructions to compute bond penal sum.

(a) *Medium plants.* To find the required amount of your bond, estimate the total proof gallons of spirits to be produced and received in a calendar year. The amount of the bond is $1,000 for each 10,000 proof gallons (or fraction), subject to a minimum of $2,000 and a maximum of $50,000. The following table provides some examples:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
10,000	20,000	$2,000
20,000	30,000	3,000
90,000	100,000	10,000
190,000	200,000	20,000
490,000	500,000	50,000

(b) *Large plants*. To find the required amount of your bond, estimate the total proof gallons of spirits to be produced and received in a calendar year. The amount of the bond is $50,000 plus $2,000 for each 10,000 proof gallons (or fraction) over 500,000. The following table provides some examples:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
500,000	510,000	$52,000
510,000	520,000	54,000
740,000	750,000	100,000
990,000	1,000,000	150,000
1,240,000	.....	200,000

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173; sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.958 Conditions of bond.

The bond shall be conditioned on payment of all taxes (including any penalties and interest) imposed by 26 U.S.C. Chapter 51, on compliance with all requirements of law and regulations, and on payment of all penalties incurred or fines imposed for violations of any such provisions.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.959 Additional provisions with respect to bonds.

Subpart H of this part contains further provisions applicable to bonds which, where not inconsistent with this subpart, are applicable to bonds of alcohol fuel plants.

CONSTRUCTION, EQUIPMENT AND SECURITY

§ 19.965 Construction and equipment.

Buildings and enclosures where distilled spirits will be produced, processed, or stored shall be constructed and arranged to enable the proprietor to maintain security adequate to deter diversion of the spirits. Distilling equipment shall be constructed to prevent unauthorized removal of spirits, from the point where distilled spirits come into existence until production is complete and the quantity of spirits has been determined. Tanks and other vessels for containing spirits shall be equipped for locking and be constructed to allow for determining the quantities of spirits therein.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.966 Security.

Proprietors shall provide security adequate to deter the unauthorized removal of spirits. The proprietor shall store spirits either in a building, a storage tank, or within an enclosure, which the proprietor will keep locked when operations are not being conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

§ 19.967 Additional security.

If the regional director (compliance) finds that security is inadequate to deter diversion of the spirits, as may be evidenced by the occurrence of break-ins or by diversion of spirits to unauthorized purposes, additional security measures may be required. Such additional measures may include, but are not limited to, the following:

(a) The erection of a fence around the plant or the alcohol storage facility;

(b) Flood lights;

(c) Alarm systems;

(d) Watchman services; or,

(e) Locked or barred windows.

The exact additional security requirements would depend on the extent of the security problems, the volume of alcohol produced, the risk to tax revenue, and safety requirements.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

SUPERVISION

§ 19.970 Supervision of operations.

The regional director (compliance) may assign ATF officers to premises of plants qualified under this subpart. The authorities of ATF officers, provided in §§ 19.81 through 19.84, and the requirement that proprietors furnish facilities and assistance to ATF officers, provided in § 19.86, apply to plants qualified under this subpart. The provisions of § 19.75 of this part pertaining to the assignment of ATF officers and hours of operation, to the extent deemed necessary by the regional director (compliance), are applicable to plants qualified under this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1356, as amended, 1357, as amended, 1358, as amended, 1375, as amended, 1396, as amended (26 U.S.C. 5006, 5201, 5203, 5204, 5213, 5555); sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202); sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

ACCOUNTING FOR SPIRITS

§ 19.980 Gauging.

(a) *Equipment and method.* Proprietors shall gauge spirits by accurately determining the proof and quantity of spirits. The proof of the spirits shall be determined using a glass cylinder, hydrometer, and thermometer. Proprietors may account for fuel alcohol in wine gallons. Unless proprietors desire to do so, it is not necessary to determine the proof of fuel alcohol manufactured, on-hand, or removed. The Proprietor may determine quantity either by volume or weight. A tank or receptacle with a calibrated sight glass installed, a calibrated dipstick, conversion charts, meters (subject to approval by the regional director (compliance)), or other devices or methods approved by the Director, may be used to determine quantity by volume. The proprietor shall ensure that hydrometers, thermometers, and other equipment used to determine proof, volume, or weight are accurate. From time to time ATF officers shall verify the accuracy of such equipment. Detailed procedures for gauging spirits are provided in 27 CFR part 30.

(b) *When Required.* Proprietors shall guage spirits and record the results in their records at the following times:

(1) On completion of production of distilled spirits;

(2) On receipt of spirits at the plant;

(3) Prior to the addition of materials to render the spirits unfit for beverage use;

(4) Before withdrawal from plant premises or other disposition of spirits (including fuel alcohol); and

(5) When spirits are to be inventoried.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5204))

§ 19.981 Inventories.

Proprietors shall take actual physical inventory of all spirits (including fuel alcohol) on bonded premises at least once during each period for which a report is required by § 19.988. The results of the inventory shall be posted in the applicable records required by § 19.982.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.982 Records.

(a) *All plants.* All proprietors shall maintain records with respect to: (1) The quantity and proof of spirits produced; (2) The proof gallons of spirits on-hand and received; (3) The quantities and types of materials added to render the spirits unfit for beverage use; (4) The quantity of fuel alcohol manufactured; and, (5) All dispositions of spirits (including fuel alcohol). Fuel alcohol may be recorded in wine gallons.

(b) *Medium and large plants.* Proprietors of medium and large plants shall also record the kind and quantity of materials used to produce spirits.

(c) *General requirements.* (1) The records must contain sufficient information to allow ATF officers to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been lawfully disposed of or used.

(2) Records which the proprietor prepares for other purposes (i.e. invoices or other commercial records) may be used to meet the record requirements of this subpart, so long as they show the required information.

(3) Where the format or arrangement of the record is such that the information is not clearly or accurately reflected, the regional director (compliance) may require a format or arrangement which will clearly and accurately reflect the information.

(4) Entries required by this subpart to be made into records will be made on the day on which the operation or transaction occurs. However, these entries may be deferred until the third business day succeeding the day on which the operation or transaction occurs when the proprietor prepares commercial records concurrent with the individual operation or transaction.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.983 Spirits rendered unfit for beverage use in the production process.

Where spirits are rendered unfit for beverage use before removal from the production system, the proprietor shall enter into the production records, in addition to the quantity and proof of spirits produced, the kind and quantity of materials added to each lot of spirits. In such a case, a separate record under § 19.985 is not required. The quantity of spirits produced will be determined by substracting the quantity of materials added to render the spirits unfit for beverage use from the quantity of fuel alcohol produced and multiplying the resulting figure by the proof of each lot of spirits. The proprietor shall determine the proof of each lot of spirits. The proprietor shall procure a representative sample of each lot, prior to the addition of any material for rendering the spirits unfit for beverage use, and proof the sample in accordance with the provisions of § 19.980(a). This paragraph applies to in-line addition of materials and to systems in which, before any spirits come off the production equipment, the proprietor adds materials for rendering the spirits unfit for beverage use to the first receptacle where spirits are to be deposited.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 232, Pub. L. 96–222, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.984 Record of spirits received.

The proprietor's copy of the consignor's invoice or other document received with the shipment, on which the proprietor has noted the date of receipt and quantity received, constitutes the required record.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.985 Record of spirits rendered unfit for beverage use.

The proprietor shall record the kind and quantity of materials added to render each lot of spirits unfit for beverage use and the quantity of fuel alcohol manufactured (which may be given in wine gallons).

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.986 Record of dispositions.

(a) *Fuel alcohol removed.* For fuel alcohol removed from the plant premises, the commercial record or other document required by § 19.997 constitutes the required record.

(b) *Spirits transferred.* For spirits transferred in bond (including transfers from small plants) to a distilled spirits plant qualified under subpart G of this part or to another alcohol fuel plant, the commercial invoice or other document required by §§ 19.508 and 19.999 constitutes the required record.

(c) *Other dispositions.* For spirits or fuel alcohol used or otherwise disposed of (e.g., lost, destroyed, redistilled) on the premises of the alcohol fuel plant, the proprietor shall maintain a record as follows:

(1) The quantity of spirits (in proof gallons) or fuel alcohol (in gallons) and the date of disposition; and,

(2) The purpose for which used or the nature of the other disposition.

(d) *Separate records.* Records for dispositions of fuel alcohol and spirits will be maintained separately.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.987 Maintenance and retention of records.

The proprietor shall retain at the plant where an operation or transaction occurs the records required by

this subpart for a period of not less than three years from the date thereof or from the date of the last entry made thereon, whichever is later. Whenever any record because of its condition becomes unsuitable for its intended or continued use the proprietor shall reproduce the record by a process approved by the regional director (compliance) under the provisions of § 19.725. The records shall be available for inspectin by any ATF officer during business hours. For records maintained on data processing equipment, the provisions of § 19.723 apply.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.988 Reports.

Each proprietor shall submit an annual report of their operations, Form 5110.75, for the calendar year ending December 31. The proprietor shall submit this report to the regional director (compliance) by January 30 following the end of the calendar year.

(Sec. 807, Pub. L. No. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–327, 57 FR 32178, July 21, 1992]

REDISTILLATION

§ 19.990 Redistillation of spirits or fuel alcohol received on the plant premises.

(a) *Receipts for redistillation*. Proprietors of alcohol fuel plants may receive and redistill spirits. Fuel alcohol may be received on the premises of an alcohol fuel plant for the recovery by redistillation of the spirits contained therein. Spirits and fuel alcohol received for redistillation will be identified as such and will be kept separate from other spirits and fuel alcohol on the premises until redistilled. Spirits originally produced by the plant and subsequently recovered by redistillation will not be included in determinations of plant size and bond amounts. Spirits riginally produced at other plants and subsequently recovered by redistillation will be included in determinations of plant size and bond amounts.

(b) *Recordkeeping*. (1) The proprietor shall record in a separate record the following information for spirits and fuel alcohol received for redistillation.

(i) Date received;

(ii) Whether fuel alcohol or spirits;

(iii) Quantity received;

(iv) From whom received;

(v) Reason for redistillation;

(vi) Date redistilled; and

(vii) Quantity of spirits recovered by redistillation.

(2) The proprietor's commercial record required for spirits by § 19.999 or for fuel alcohol by § 19.997 and any other commercial record received covering spirits or fuel alcohol to be redistilled will be filed separately from other records. These records may be used in lieu of the record required by paragraph (b)(1) of this section when any missing information required to be shown has been entered upon the commercial record by the proprietor.

(c) *Status*. Spirits recovered by redistillation will be treated the same as spirits which have not been redistilled. All provisions of this subpart and 26 U.S.C. Chapter 51 (including liability for tax) applicable to spirits when originally produced are applicable to spirits recovered by redistillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1370, as amended (26 U.S.C. 5223, 5243); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

USES, WITHDRAWALS AND TRANSFERS

§ 19.995 Use on premises.

Spirits may be used as a fuel on the premises of the alcohol fuel plant at which produced and need not be rendered unfit for beverage use. Proprietors using spirits on the plant premises shall keep the applicable records concerning such dispositions as provided in § 19.986(c).

(Sec. 232, Pub. L. 96–223, 94 Stat. 278, (26 U.S.C. 5181))

§ 19.996 Withdrawal of spirits.

Before spirits may be withdrawn from the premises of an alcohol fuel plant, they must be rendered unfit for beverage use as provided in this subpart. Spirits rendered unfit for beverage use (fuel alcohol) may be withdrawn free of tax from plant premises exclusively for fuel use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.997 Withdrawal of fuel alcohol.

For each shipment or other removal of fuel alcohol from the plant premises the consignor shall prepare a commercial invoice, sales slip, or similar document. The consignor shall enter on the document the date, the quantity of fuel alcohol removed, a description of the shipment (for example, number and size of containers, tank truck, etc.), and the name and address of the consignee. The consignor shall retain a copy of the document as a record.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.998 Transfer in bond of spirits.

(a) *Transfer between alcohol fuel plants.* A proprietor may remove spirits from the bonded premises of an alcohol fuel plant (including the premises of a small plant) for transfer in bond to another alcohol fuel plant. Bulk conveyances in which spirits are transferred shall be secured with locks, seals or other devices as prescribed by § 19.96. The spirits need not be rendered unfit for beverage use prior to transfer. Spirits so transferred may not be withdrawn, used, sold, or otherwise disposed of for other than fuel use.

(b) *Transfer to or from other distilled spirits plants.* Spirits (not including spirits produced from petroleum, natural gas, or coal) may be transferred in bond from distilled spirits plants qualified under subpart G of this part to alcohol fuel plants. Alcohol fuel plants may transfer spirits in bond to distilled spirits plants qualified under subpart G of this part. Bulk conveyances in which spirits are transferred shall be secured with locks, seals, or other devices as prescribed by § 19.96. The spirits need not be rendered unfit for beverage use prior to transfer. Spirits so transferred may not be withdrawn, used, sold, or otherwise disposed of for other than fuel use.

(c) *Transfer procedures.* The procedures in §§ 19.999 through 19.1001 pertain only to the transfer of spirits between alcohol fuel plants. The procedures in §§ 19.506 through 19.509 and 19.770 pertain to the transfer of spirits from an alcohol fuel plant to a distilled spirits plant qualified under 26 U.S.C. 5171. The alcohol fuel plant transferring in bond spirits filled into portable containers to the bonded premises of a distilled spirits plant qualified under 26 U.S.C. 5171 shall mark each container as required by § 19.1008(b). The procedures in §§ 19.508, 19.510 and 19.770 pertain to the transfer of spirits from a distilled spirits plant to an alcohol fuel plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5212); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.999 Consignor premises.

The consignor shall prepare, in duplicate, a commerical invoice or shipping document to cover each shipment of spirits. The consignor shall enter on the document the quantity of spirits transferred, the proof of the spirits transferred, a description of the shipment (for example, number and size of drums or barrels, tank truck, etc.), the name, address, and permit number of the consignor and of the consignee, and the serial numbers of seals, locks, or other devices used to secure the conveyance. The consignor shall forward the original of the document to the consignee with the shipment and retain the copy as a record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5212))

§ 19.1000 Reconsignment in transit.

When, prior to or on arrival at the premises of a consignee, spirits transferred in bond are found to be unsuitable for the intended purpose, were shipped in error, or, for any other bona fide reason, are not accepted by such consignee, or are not accepted by a carrier, they may be reconsigned, by the consignor, to himself, or to another qualified consignee. In such case, the bond, if any, of the proprietor to whom the spirits are reconsigned shall cover such spirits while in transit after reconsignment. In addition, if the spirits are reconsigned to a distilled spirits plant qualified under subpart G of this part, an application to receive spirits by transfer in bond (on Form 5100.16) must have been previously approved for the consignee. Notice of cancellation of the shipment shall be made by the consignor to the consignee and the consignor shall note the reconsignemnt on

his copy of the document covering the original shipment. Where the reconsignment is to another proprietor, a new document shall be prepared and prominently marked with the word ''Reconsignment''.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, (26 U.S.C. 5212); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1001 Consignee premises.

(a) *General.* When spirits are received by transfer in bond, the proprietor shall examine each conveyance to determine whether the locks, seals, or other devices are intact upon arrival at his premises. If the locks, seals or other devices are not intact, he shall immediately notify the area supervisor, before removal of any spirits from the conveyance. The consignee shall determine the quantity of spirits received and record the quantity and the date received on the document received with the shipment. The consignee shall retain the document as the record of receipt required by § 19.984.

(b) *Portable containers.* When spirits are received in barrels, drums, or similar portable containers, the proprietor shall examine each container and, unless the transfer was made in a secured conveyance and the seals or other devices are intact on arrival, verify the contents of each container. The proprietor shall record the quantity received for each container on a list, and shall attach a copy of the list to the invoice or other document received with the shipment.

(c) *Bulk conveyances and pipelines.* When spirits are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits received and shall record the quantity so determined on the invoice or other document received with shipment. However, the regional director (compliance) may waive the requirement for gauging spirits on receipt by pipeline if, because of the location of the premises, there will be no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5212); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1002 Prohibited uses, transfers, and withdrawals.

No person shall withdraw, use, sell, or otherwise dispose of distilled spirits (including fuel alcohol) produced under this subpart for other than fuel use. The law imposes criminal penalties on any person who withdraws, uses, sells or otherwise disposes of distilled spirits (including fuel alcohol) produced under this subpart for other than fuel use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1398, as amended (26 U.S.C. 5601); sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

MATERIALS FOR RENDERING SPIRITS UNFIT FOR BEVERAGE USE

§ 19.1005 Authorized materials.

(a) *General.* The Director shall determine and authorize for use materials for rendering spirits unfit for beverage use which will not impair the quality of the spirits for fuel use. Spirits treated under this section will be considered rendered unfit for beverage use and eligible for withdrawal as fuel alcohol.

(b) *List.* The Director will compile and issue periodically a list of materials authorized for rendering spirits unfit for beverage use. The list will specify for each material (1) name and (2) quantity required to render spirits unfit for beverage use. The list may be obtained at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(c) *Authorized material.* Until issuance of the initial list of materials authorized for rendering spirits unfit for beverage use, proprietors are authorized to add to each 100 gallons of spirits any of the following materials in the quantities specified.

(1) 2 gallons or more of—

(i) Gasoline or automotive gasoline (for use in engines which require unleaded gasoline Environmental Protection Agency and manufacturers specifications may require that unleaded gasoline be used to render the spirits unfit for beverage use).

(ii) Kerosene,

(iii) Deodorized kerosene,

(iv) Rubber hydrocarbon solvent,

(v) Methyl isobutyl ketone,

(vi) Mixed isomers of nitropropane,

(vii) Heptane, or,

(viii) Any combination of (i) through (vii); or

(2) ⅛ ounce of denatonium benzoate N.F. and 2 gallons of isopropyl alcohol.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 19.1006 Other materials.

If a proprietor desires to use a material not authorized under § 19.1005 to render spirits unfit for beverage use, the proprietor shall submit an application to the Director. The application must state the name of the material and the quantity of material that the proprietor proposes to add to each 100 gallons of spirits. The proprietor may be required to submit an 8 ounce sample of the material with the application. Material that impairs the quality of the spirits for fuel use will not be approved. The proprietor shall not use any proposed material prior to its approval. Materials approved for use under this section will appear in the next subsequent issuance of the list of materials authorized for rendering spirits unfit for beverage use provided for under § 19.1005. The proprietor shall retain as part of the records available for inspection by ATF officers, any application approved by the Director under the provisions of this section.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1007 Samples.

A proprietor may take samples of spirits and fuel alcohol for testing and analysis. Samples of spirits may not be removed from the premises of the alcohol fuel plant. Samples of fuel alcohol may be removed from the premises of the alcohol fuel plant to a bona fide laboratory for testing and analysis. The proprietor shall indicate on sample containers that the spirits or fuel alcohol contained therein is a sample. The proprietor shall account for samples in the record provided for in § 19.986.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

MARKS

§ 19.1008 Marks.

(a) *Fuel alcohol.* The proprietor shall conspicuously and permanently mark or securely label each container of fuel alcohol containing 55 gallons or less that will be withdrawn from the plant premises, as follows:

WARNING

FUEL ALCOHOL

MAY BE HARMFUL OR FATAL IF SWALLOWED

The mark or label shall be placed on the head or side of the container, and shall be in plain legible letters. Proprietors may place other marks or labels on containers so long as they do not obscure the required mark.

(b) *Spirits.* When barrels, drums or similiar portable containers of spirits are to be transferred by a proprietor to a distilled spirits plant qualified under subpart G of this part, each container will be marked or labeled in plain legible letters on the side or head to show the following information:

(1) Quantity in wine gallons;

(2) Proof;

(3) Serial number of container;

(4) Name, address (city or town and State) and permit number of the alcohol fuel plant; and

(5) The words ''Spirits-For Alcohol Fuel Use Only''.

Proprietors may place other marks or labels on such containers so long as they do not obscure the required mark. Serial numbers will be assigned consecutively commencing with ''1''. When the numbering of any series reaches ''1,000,000'', the proprietor may recommence the series. The recommenced series will be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name or trade name, the series in use at the time of the change may be continued.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278, (26 U.S.C. 5181); sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Subpart Z—Paperwork Reduction Act

§ 19.1010 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose*. This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Department intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(b) *Display*.

Section where identified	Current OMB control No.
19.21	1512–0203
19.34	1512–0203
19.35	1512–0198
	1512–0203
19.36	1512–0203
19.37	1512–0203
19.38	1512–0203
19.41	1512–0141
	1512–0203
19.42	1512–0141
	1512–0203
19.43	1512–0141
	1512–0203
19.44	1512–0141
	1512–0203
19.45	1512–0203
19.46	1512–0203
19.62	1512–0206
19.66	1512–0206
19.67	1512–0206
19.68	1512–0462
19.71	1512–0206
19.72	1512–0206
19.73	1512–0206
19.75	1512–0206
19.91	1512–0206
	1512–0250
19.92	1512–0250
19.93	1512–0250
19.96	1512–0206
19.98	1512–0206
19.99	1512–0206
19.133	1512–0206
19.134	1512–0206
19.151	1512–0206
19.152	1512–0206
19.153	1512–0206
19.154	1512–0206
19.155	1512–0206
19.157	1512–0195
19.158	1512–0195
19.159	1512–0195
19.162	1512–0195
19.165	1512–0195
19.166	1512–0206
19.167	1512–0206
19.168	1512–0206
19.170	1512–0206
19.180	1512–0206
19.182	1512–0206
19.183	1512–0195
19.184	1512–0206
19.185	1512–0206
19.186	1512–0206
19.187	1512–0206
19.189	1512–0206
19.190	1512–0206
19.191	1512–0206
19.192	1512–0206
19.193	1512–0206
19.201	1512–0202
	1512–0206
19.202	1512–0202
	1512–0206
19.203	1512–0202
	1512–0206
19.204	1512–0202
	1512–0206
19.205	1512–0202
	1512–0206
19.206	1512–0206
19.211	1512–0206
19.249	1512–0206
19.250	1512–0206
19.251	1512–0206
19.273	1512–0250
19.274	1512–0460
19.276	1512–0250
19.277	1512–0206
19.278	1512–0460
19.280	1512–0460
19.281	1512–0206
19.311	1512–0202
19.312	1512–0205
19.314	1512–0205
19.315	1512–0205
19.316	1512–0205
19.318	1512–0250
19.319	1512–0250
19.320	1512–0192
	1512–0250
19.321	1512–0250
19.322	1512–0250
19.324	1512–0204
	1512–0206
19.326	1512–0205
19.327	1512–0205
	1512–0461
19.329	1512–0250
19.342	1512–0192
	1512–0250
19.343	1512–0250
19.344	1512–0192
	1512–0250
19.345	1512–0461
19.347	1512–0192
19.349	1512–0192
19.353	1512–0250
19.372	1512–0198
19.373	1512–0198
19.382	1512–0206
19.383	1512–0198
19.384	1512–0198
19.385	1512–0461
19.386	1512–0198
	1512–0461
19.387	1512–0198
19.388	1512–0461

Section where identified	Current OMB control No.
19.389	1512–0198
19.390	1512–0198
	1512–0250
	1512–0461
19.391	1512–0198
19.392	1512–0198
19.393	1512–0198
19.394	1512–0189
	1512–0461
19.395	1512–0461
19.396	1512–0461
19.397	1512–0189
	1512–0190
	1512–0199
	1512–0461
19.398	1512–0189
	1512–0461
19.400	1512–0198
19.401	1512–0250
19.402	1512–0206
	1512–0250
19.451	1512–0207
19.453	1512–0207
19.454	1512–0250
19.456	1512–0206
19.457	1512–0207
19.458	1512–0207
19.460	1512–0206
19.461	1512–0206
19.462	1512–0250
19.463	1512–0461
19.464	1512–0250
19.467	1512–0141
19.471	1512–0207
	1512–0461
19.483	1512–0192
19.484	1512–0250
	1512–0461
19.485	1512–0461
19.487	1512–0203
19.501	1512–0250
19.502	1512–0250
19.503	1512–0250
19.505	1512–0191
	1512–0250
19.508	1512–0250
	1512–0461
19.509	1512–0191
	1512–0250
19.510	1512–0061
	1512–0250
19.515	1512–0203
19.516	1512–0203
19.517	1512–0203
	1512–0250
19.518	1512–0203
19.519	1512–0203
19.520	1512–0203
19.521	1512–0203
19.522	1512–0203
19.523	1512–0203
19.524	1512–0203
19.525	1512–0203
19.526	1512–0203
19.532	1512–0250
19.533	1512–0206
19.537	1512–0067
	1512–0250
19.540	1512–0067
	1512–0077
	1512–0250
	1512–0461
19.541	1512–0067

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19.561	1512–0141
19.562	1512–0141
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	1512–0206
	1512–0250
19.564	1512–0141
19.565	1512–0198
	1512–0203
	1512–0250
19.583	1512–0461
19.587	1512–0460
19.588	1512–0460
19.592	1512–0461
19.593	1512–0461
19.594	1512–0461
19.595	1512–0461
19.596	1512–0461
19.597	1512–0206
	1512–0461
19.599	1512–0461
19.601	1512–0461
19.602	1512–0461
19.604	1512–0461
19.605	1512–0189
	1512–0461
19.606	1512–0461
19.607	1512–0461
19.608	1512–0461
19.610	1512–0189
19.611	1512–0198
19.633	1512–0092
19.634	1512–0206
19.635	1512–0198
19.636	1512–0198
19.638	1512–0206
19.639	1512–0198
19.640	1512–0091
19.641	1512–0204
	1512–0461
19.642	1512–0461
19.643	1512–0461
19.644	1512–0461
19.645	1512–0461
19.646	1512–0461
19.647	1512–0461
19.648	1512–0461
19.649	1512–0461
19.650	1512–0461
19.661	1512–0461
19.662	1512–0461
19.663	1512–0206
19.664	1512–0056
19.666	1512–0189
19.668	1512–0189
19.669	1512–0056
	1512–0189
19.670	1512–0189
19.671	1512–0189
19.672	1512–0189
19.681	1512–0141
	1512–0203
19.682	1512–0203
	1512–0250
19.683	1512–0250
19.684	1512–0250
19.685	1512–0067
19.686	1512–0191
	1512–0250
19.687	1512–0199
19.688	1512–0250
19.691	1512–0250
19.701	1512–0206
	1512–0250

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19.702	1512–0250
19.703	1512–0203
19.704	1512–0461
19.721	1512–0189
	1512–0192
	1512–0198
	1512–0203
	1512–0205
	1512–0207
	1512–0250
19.723	1512–0189
	1512–0192
	1512–0198
	1512–0203
	1512–0205
	1512–0207
	1512–0250
	1512–0462
19.724	1512–0206
19.725	1512–0206
19.731	1512–0189
	1512–0192
	1512–0198
	1512–0203
	1512–0205
	1512–0207
	1512–0250
	1512–0189
19.732	1512–0192
	1512–0198
	1512–0203
	1512–0205
	1512–0207
	1512–0250
19.736	1512–0205
19.740	1512–0192
19.741	1512–0192
19.742	1512–0192
19.743	1512–0192
19.747	1512–0198
19.748	1512–0198
19.749	1512–0198
19.750	1512–0198
19.751	1512–0198
19.752	1512–0207
19.753	1512–0207
19.761	1512–0203
19.762	1512–0203
19.763	1512–0203
19.764	1512–0203
19.765	1512–0203
19.766	1512–0250
19.767	1512–0250
19.768	1512–0250
19.769	1512–0250
19.770	1512–0215
	1512–0250
19.772	1512–0189
19.773	1512–0198
19.774	1512–0250
19.775	1512–0250
19.776	1512–0250
19.778	1512–0198
19.779	1512–0067
19.780	1512–0250
19.791	1512–0067
	1512–0190
19.792	1512–0189
	1512–0192
	1512–0198
	1512–0205
	1512–0207
19.821	1512–0462
19.822	1512–0462
19.823	1512–0462
19.824	1512–0462
19.829	1512–0462
19.903	1512–0215
19.904	1512–0215
19.905	1512–0141
19.910	1512–0214
19.912	1512–0214
19.914	1512–0214
19.915	1512–0214
19.916	1512–0214
19.919	1512–0215
19.921	1512–0214
	1512–0215
19.922	1512–0214
19.923	1512–0215
19.924	1512–0214
19.926	1512–0214
19.930	1512–0215
19.945	1512–0215
19.980	1512–0215
19.981	1512–0215
19.982	1512–0215
19.983	1512–0215
19.984	1512–0215
19.985	1512–0215
19.986	1512–0215
19.987	1512–0215
19.988	1512–0215
19.990	1512–0215
19.995	1512–0215
19.997	1512–0215
19.998	1512–0191
	1512–0215
19.999	1512–0215
19.1000	1512–0215
19.1001	1512–0215
19.1005	1512–0215
19.1006	1512–0215
19.1007	1512–0215
19.1008	1512–0215

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–297, 55 FR 18065, Apr. 30, 1990]

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AUTHORITY: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

SOURCE: T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 20 appear by T.D. ATF–235, 66 FR 5473–5475, Jan. 19, 2001 and by T.D. ATF–463 and T.D. ATF–462, 66 FR 42733, 42736, Aug. 15, 2001.

Subpart A—Scope

§ 20.1 General.

The regulations in this part relate to denatured distilled spirits and cover the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits.

§ 20.2 Territorial extent.

(a) This part applies to the several States of the United States, the District of Columbia and to denatured spirits and articles coming into the United States from Puerto Rico or the Virgin Islands.

(b) For the purposes of this part, operations in a foreign-trade zone located in any State of the United States or the District of Columbia are regulated in the same manner as operations in any other part of such State or the District of Columbia, with the exception that under this part only domestic denatured spirits may be used in the manufacture of articles in a foreign-trade zone.

(48 Stat. 999, as amended (19 U.S.C. 81c))

[T.D. ATF–274, 53 FR 25156, July 5, 1988]

§ 20.3 Related regulations.

Regulations related to this part are listed below:

16 CFR Chapter I—Federal Trade Commission.
16 CFR Chapter II—Consumer Product Safety Commission.
21 CFR Chapter I—Food and Drug Administration, Department of Health and Human Services.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 29—Stills and Miscellaneous Regulations.
27 CFR Part 71—Rules of Practice in Permit Proceedings.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lien of Surety or Sureties on Penal Bonds.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–207, 50 FR 23682, June 5, 1985; T.D. ATF–459, 66 FR 38549, July 25, 2001]

Subpart B—Definitions

§ 20.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

Alcohol. Those spirits known as ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced; the term does not include such spirits as whisky, brandy, rum, gin, or vodka.

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 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22.

Article. Any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

Bulk conveyance. Any tank car, tank truck, tank ship, or tank barge, or a compartment of any such conveyance, or any other container approved by the appropriate ATF officer for the conveyance of comparable quantities of denatured spirits or articles.

CFR. The Code of Federal Regulations.

Completely denatured alcohol. Those spirits known as alcohol, as defined in this section, denatured under the completely denatured alcohol formulas prescribed in subpart C of part 21 of this chapter.

Dealer. A person required to hold a permit to deal in specially denatured spirits for resale to persons authorized to purchase or receive specially denatured spirits in accordance with this part. The term does not include a person who only buys and sells specially denatured spirits which that person never physically receives or intends to receive.

Denaturant. Any one of the materials authorized under part 21 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Alcohol or rum to which denaturants have been added as provided in part 21 of this chapter.

Denaturer. The proprietor of a distilled spirits plant who denatures alcohol or rum under part 19 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Distributor. Any person who sells completely denatured alcohol, other than a proprietor of a distilled spirits plant who sells such alcohol at the plant premises, and any person who sells articles containing completely or specially denatured alcohol or specially denatured rum, other than the manufacturer, except where otherwise specifically restricted in this part.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the 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.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

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

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. The symbol for milliliter or milliliters is ''ml''.

Manufacturer or user. A person who holds a permit to use specially denatured alcohol or specially denatured rum or to recover completely or specially denatured alcohol, specially denatured rum, or articles.

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw and deal in or use specially denatured alcohol or specially denatured rum or to recover denatured alcohol, specially denatured rum, or articles under specified conditions.

Permittee. Any person holding a permit, Form 5150.9, issued under this part to withdraw and deal in or use (including recover) denatured spirits.

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

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

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

Proprietary solvents. Solvents which are manufactured with specially denatured alcohol under the proprietary solvent general-use formula in this part.

Recover. To salvage, after use, specially denatured spirits, completely denatured alcohol without all of its original denaturants, or any article containing denatured spirits, if (1) the original article was made with specially denatured spirits and the salvaged article does not contain all of the original ingredients of the article, or (2) the original article was made with completely denatured alcohol and the salvaged article does not contain

all of the original denaturants of the completely denatured alcohol.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the original denaturants of the completely denatured alcohol.

Recovered denatured alcohol. Denatured alcohol (except completely denatured alcohol containing all of its original denaturants) which has been recovered.

Recovered denatured rum. Denatured rum which has been recovered.

Restoration. Restoring to the original state (except that the restored material may or may not contain denaturants to the same extent as the original material) of recovered denatured alcohol, recovered specially denatured rum, or recovered articles containing denatured alcohol or specially denatured rum. Restoration includes bringing the alcohol content of the recovered product to 190° of proof or more or to not less than the original proof if less than 190°. Restoration also includes the removal of foreign materials by any suitable means.

Rum. Any spirits produced from sugar cane products and distilled at less than 190° proof in such manner that the spirits possess the taste, aroma, and characteristics generally attributed to rum.

Secretary. The Secretary of the Treasury or his delegate.

Special industrial solvents. Solvents which are manufactured with specially denatured alcohol under special industrial solvent general-use formula in this part.

Specially denatured alcohol or S.D.A. Those spirits known as alcohol, as defined in this section, denatured under the specially denatured alcohol formulas prescribed in part 21 of this chapter.

Specially denatured rum or S.D.R. Those spirits known as rum, as defined in this section, denatured under the specially denatured rum formula prescribed in part 21 of this chapter.

Specially denatured spirits. Specially denatured alcohol or specially denatured rum.

Spirits or distilled spirits. Alcohol or rum as defined in this part.

Tank truck. A tank-equipped semi-trailer, trailer, or truck, conforming to the requirements of this part.

This chapter. Chapter I, Title 27, Code of Federal Regulations.

U.S.C. The United States Code.

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

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985, as amended by ATF–332, 57 FR 40849, Sept. 8, 1992; T.D. ATF–435, 66 FR 5473, Jan. 19, 2001]

Subpart C—Administrative Provisions

AUTHORITIES

§ 20.20 Delegations of the Director.

All of the regulatory authorities of the Director contained in this Part 20 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22. ATF delegation orders, such as ATF Order 1130.9, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–435, 66 FR 5473, Jan. 19, 2001]

§ 20.21 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

§ 20.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application*. A permittee, after receiving approval from the appropriate ATF officer, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the appropriate ATF officer. The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by appropriate ATF officer*. The appropriate ATF officer 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 appropriate ATF officer will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval*. A permittee may not employ an alternate method or procedure until the appropriate ATF officer has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with terms of the approved application.

(b) *Emergency variations from requirements*—(1) *Application*. When an emergency exists, a permittee may apply to the appropriate ATF officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by appropriate ATF officer*. The appropriate ATF officer 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*. A permittee may not employ an emergency variation from the requirements until the appropriate ATF officer 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 permittee 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 permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval*. The appropriate ATF officer may withdraw approval for an alternate method or procedure, may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the appropriate ATF officer finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

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

(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 9162, Mar. 6, 1985, as amended by T.D. ATF–235, 66 FR 5474, Jan. 19, 2001]

§ 20.23 Approval of formulas and statements of process.

The appropriate ATF officer is authorized to approve all formulas for articles and statements of process relating to recovery operations or other activities required to be submitted on Form 5150.19.

§ 20.24 Allowance of claims.

The appropriate ATF officer is authorized to allow claims for losses of

specially denatured alcohol or specially denatured rum.

§ 20.25 Permits.

The appropriate ATF officer must issue permits for the United States or a Governmental agency as provided in § 20.241 and industrial alcohol user permits, Form 5150.9, required under this part.

[T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

§ 20.26 Bonds and consents of surety.

The appropriate ATF officer is authorized to approve all bonds and consents of surety required by this part.

§ 20.27 Right of entry and examination.

An appropriate ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records and reports required by this part to be kept on those premises. An appropriate ATF officer may also inspect and take samples of distilled spirits, denatured alcohol, specially denatured rum or articles (including any substance for use in the manufacture of denatured alcohol, specially denatured rum or articles) to which those records or reports relate.

§ 20.28 Detention of containers.

(a) *Summary detention*. An appropriate ATF officer may detain any container containing, or supposed to contain, spirits (including denatured spirits and articles), when the appropriate ATF officer believes those spirits, denatured spirits, or articles were produced, withdrawn, sold, transported, or used in violation of law or this part. The appropriate ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations*. Summary detention may not exceed 72 hours without process of law or intervention of the appropriate ATF officer. The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on his or her premises during detention.

(Sec. 201, Pub. L. 85–859, Stat. 1375, as amended (26 U.S.C. 5311))

LIABILITY FOR TAX

§ 20.31 Applicable laws and regulations; persons liable for tax.

(a) All laws and regulations regarding alcohol or rum that is not denatured, including those requiring payment of the distilled spirits tax, apply to completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles produced, withdrawn, sold, transported, or used in violation of laws or regulations pertaining to those substances.

(b) Any person who produces, withdraws, sells, transports, or uses completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles in violation of laws or regulations shall be required to pay the distilled spirits tax on those substances.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

MARKS AND BRANDS

§ 20.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing denatured alcohol, specially denatured rum, or articles made from denatured alcohol or specially denatured rum shall immediately destroy or obliterate the marks, brands, and labels required by this chapter to be placed on packages containing those materials.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

DOCUMENT REQUIREMENTS

§ 20.36 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the dealer or user or other authorized person shall:

(1) Insert the declaration ''I declare under the penalties of perjury that I have examined this _____ (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete''; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the dealer or user or other authorized person shall sign the document.

(26 U.S.C. 6065)

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–332, 57 FR 40849, Sept. 8, 1992]

§ 20.37 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an appropriate ATF officer during business hours.

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF–271, 53 FR 17544, May 17, 1988, unless otherwise noted.

§ 20.38 Liability for special tax.

(a) *Industrial alcohol permittee.* Except as otherwise provided in this section, every person required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover denatured distilled spirits for industrial purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each industrial alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, 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 permittee engaged in denatured distilled spirits operations 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.* Special (occupational) tax liability is incurred at each place of business for which a permit under subpart D of this part to procure, use, sell, and/or recover denatured distilled spirits has been issued. 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.

(d) *Exception for United States.* Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

(e) *Exemption for certain educational institutions (effective July 1, 1989).* (1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research, which holds a permit to procure and use specially denatured spirits under this part, is exempt from payment of special tax under this subpart if—

(i) The university, college, or institution procures less than 25 gallons of specially denatured spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1)(i) and (ii) of this section during any calendar year, shall pay special tax as provided in § 20.38(a) for the special tax year (July

1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

[T.D. ATF–271, 53 FR 17544, May 17, 1988, as amended by T.D. ATF–285, 54 FR 12610, Mar. 28, 1989]

§ 20.38a 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 § 20.39).

(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 percent of 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 is 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 § 20.267.

(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)

§ 20.39 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 § 70.105 of this chapter.

(b) *Application for employer indentification 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)

SPECIAL TAX STAMPS

§ 20.40 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 § 20.38a(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 shall 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. 5143, 5146, 6806)

§ 20.40a 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 permittee 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 permittee 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 industrial alcohol operation, 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 proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The 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 proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Subpart D—Qualification of Dealers and Users

APPLICATION FOR PERMIT, FORM 5150.22

§ 20.41 Application for industrial alcohol user permit.

(a) *Dealers.* A person who desires to withdraw and deal in specially denatured spirits shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9.

(b) *Users.* A person who desires to withdraw and use or recover specially denatured spirits shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9. The provisions of this paragraph also apply to persons desiring to recover denatured spirits from articles.

(c) *Filing.* All applications and necessary supporting documents, as required by this subpart, shall be filed with the appropriate ATF officer. All data, written statements, certifications, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of specially denatured spirits in a number of institutions under it control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the specially denatured spirits to be withdrawn.

(d) *Exceptions.* (1) The proprietor of a distilled spirits plant qualified under part 19 of this chapter, who sells specially denatured spirits stored at the plant premises is not required to qualify as a dealer under this part.

(2) A permittee who was previously qualified on the effective date of this regulation shall not be required to requalify under this part.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.42 Data for application, Form 5150.22.

(a) Unless waived under § 20.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of all formulations of specially denatured spirits, in gallons, which will be procured during a 12-month period.

(4) Location, or locations where specially denatured spirits will be sold or used if different from the business address.

(5) Statement that specially denatured spirits will be stored in accordance with the requirements of this part.

(6) For user applications, statement as to the intended use (*e.g.* cosmetics, external medicines, solvents, fuels, mouthwashes, laboratory uses, inks, etc.) to be made of the specially denatured spirits, and whether recovery, restoration, and redenaturation processes will be used.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 20.45.

(8) Listing of the principal equipment to be used in recovery processes, including processing tanks, storage tanks, and equipment for recovery, restoration, and redenaturation of denatured spirits (including the serial number, kind, capacity, names and addresses of manufacturer and owner of distilling apparatus along with intended use).

(9) List of trade names under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the specially denatured spirits activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the appropriate ATF officer may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity, the appropriate ATF officer may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 20.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) and any information which may be required under paragraph (a)(11) of this section is on file with any appropriate ATF officer, the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 20.43 Exceptions to application requirements.

(a) The appropriate ATF officer may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) and (a)(9) of § 20.42, and paragraph (a)(8) of that section as it relates to recovery, restoration and redistillation, in the case of—

(1) All applications, Form 5150.22, filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants whose annual withdrawal and sale or use of specially denatured spirits does not exceed 5,000 gallons.

(b) The waiver, provided for in this section will terminate when the permittee, other than a State or a political subdivision thereof, or the District of Columbia, files an application to amend its permit, Form 5150.9, to increase the annual withdrawal and sale or use of specially denatured spirits to an amount in excess of 5,000 gallons. In this case, the permittee shall also furnish information required by § 20.56(a)(2).

§ 20.44 Disapproval of application.

The appropriate ATF officer may, in accordance with part 71 of this chapter, disapprove an application for a permit to withdraw and deal or use denatured spirits, if on examination of the application (or inquiry), the appropriate ATF officer has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and deal in or use specially denatured spirits;

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

Chapter 51, or regulations issued under this part;

(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 the application; or

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

§ 20.45 Organizational documents.

The supporting information required by § 20.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated);

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate offices, if applicable, are directly responsible for the specially denatured spirits portion of the business; and

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* 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.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons must be submitted to the appropriate ATF officer if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

INDUSTRIAL ALCOHOL USER PERMIT, ATF F 5150.9

§ 20.48 Conditions of permits.

(a) Permits to withdraw and deal in or use specially denatured spirits will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use, recovery, restoration or redistillation of denatured spirits or articles are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

(b) An applicant need not have formulas and statements of processes, approved by the appropriate ATF officer, prior to the issuance of a permit by the appropriate ATF officer.

(c) A permittee shall not use specially denatured spirits in the manufacture or production of any article unless the appropriate ATF officer has approved the formula on Form 5150.19 or the article is covered by an approved general-use formula.

§ 20.49 Duration of permits.

Permits to withdraw and deal in or use specially denatured spirits are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 20.51, or voluntarily surrendered. The provisions of § 20.57 are considered part of the terms and conditions of all permits.

§ 20.50 Correction of permits.

If an error on a permit is discovered, the permittee shall immediately return the permit to the appropriate ATF officer for correction.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.51 Suspension or revocation of permits.

The appropriate ATF officer may institute proceedings under part 71 of this chapter to suspend or revoke a permit whenever the appropriate ATF officer has reason to believe that the permittee:

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

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

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

(f) Is, by reason of its operations, no longer warranted in procuring and dealing in or using specially denatured spirits authorized by the permit; or

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

§ 20.52 Rules of practice in permit proceedings.

The regulations of part 71 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 20.53 Powers of attorney.

An applicant or permittee shall execute and file a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act on behalf of the applicant or permittee. Form 1534 is not required for a person whose authority is furnished in accordance with § 20.42(a)(10).

§ 20.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw specially denatured spirits from a distilled spirits plant and other persons authorized under this part to deal in specially denatured spirits.

§ 20.55 Posting of permits.

Permits issued under this part shall be kept posted and available for inspection on the permit premises.

CHANGES AFTER ORIGINAL QUALIFICATION

§ 20.56 Changes affecting applications and permits.

(a) *General*—(1) *Changes affecting application*. When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the appropriate ATF officer to amend the application. However, a change in the information required by § 20.42(a)(6) caused by approval of a new formula or statement of process shall not require filing a new application unless the approval is the permittee's first statement of process covering recovery operations.

(2) *Changes affecting waivers*. When any waiver under § 20.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit*. When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice*. A written notice to amend an application on Form 5150.22 shall—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The appropriate ATF officer may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked ''No change since Form 5150.22, Serial No. _____.''

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the appropriate ATF officer) to those offices, the incumbents of which are responsible for the operations covered by this part.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 20.45(c)(1), a permittee may, upon filing written notice to the appropriate ATF officer and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 20.57.

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

§ 20.57 Automatic termination of permits.

(a) *Permit not transferable.* Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit. or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall, within 10 days of the change, give written notice to the appropriate ATF officer. Within 30 days of the change, the permittee shall file an application for a new permit, Form 5150.22 with supporting documents. If an application for a new permit is not filed on Form 5150.22 within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application for a new permit is filed on Form 5150.22 within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit may remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and shall be forwarded to the appropriate ATF officer.

(c) *Proprietorships.* In the event of a change in proprietorship of a business of a permittee (as for instance, by reasons of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit, under the same conditions provided for in paragraph (b) of this section. The successor may adopt the formulas and statements of process of the predecessor.

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

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.58 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any, and may

adopt the formulas and statements of process of the predecessor. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

§ 20.59 Continuing partnerships.

(a) *General*. If, under the laws of a particular State, a partnership is not teminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use specially denatured spirits under the prior qualifications of the partnership.

(b) *Bonds*. If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

(c) *Requalification*. If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 20.57(c).

(d) *More than one partner*. The rule set forth in this section also applies if there is more than one surviving partner.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.60 Change in name of permittee.

When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit issued by the appropriate ATF officer.

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

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.61 Change in trade name.

If there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the appropriate ATF officer. A new bond or consent of surety is not required for changes in trade names.

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

§ 20.62 Change in location.

(a) *Permit*. When there is to be a change in location, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information to amend the application and permit has been filed and an amended permit issued by the appropriate ATF officer.

(b) *Bond*. If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

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

T.D. ATF–199, 50 FR 9162, Mar. 8, 1985, as amended by T.D. ATF– 435, 66 FR 5474, jan. 19, 2001]

§ 20.63 Adoption of formulas and statements of process.

(a) The adoption by a successor (proprietorship or fiduciary) of a predecessor's formulas and statements of process as provided in § 20.57(c), and § 20.58, will be in the form of a certificate submitted to the appropriate ATF officer.

(b) The certificate will contain, as applicable, (1) a list of all approved formulas or statements of process in which specially denatured spirits are used or recovered, (2) the formulas of specially denatured spirits used, (3) the ATF laboratory number of the sample

(if any), (4) the date of approval of Form 1479–A or serial number of Form 5150.19, and (5) the applicable code number for the article or process. In addition, the certificate will contain the name of the successor followed by the phrase ''Formula of ———— (Name of predecessor) is hereby adopted.''

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

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985, as amended by ATF–332, 57 FR 40849, Sept. 8, 1992]

§ 20.64 Return of permits.

Following the issuance of a new or amended permit, the permittee shall (a) obtain and destroy all photocopies of the previous permit from its suppliers, and (b) return the original of the previous permit to the appropriate ATF officer.

REGISTRY OF STILLS

§ 20.66 Registry of stills.

The provisions of subpart C of part 29 of this chapter are applicable to stills or distilling apparatus located on the premises of a permittee used for distilling. As provided under § 29.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

[T.D. ATF–207, 50 FR 23682, June 5, 1985]

PERMANENT DISCONTINUANCE OF BUSINESS

§ 20.68 Notice of permanent discontinuance.

(a) *Notice*. When a permittee permanently discontinues business, a written notice shall be filed with the appropriate ATF officer to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(1) A request to cancel the permit,

(2) A statement of the disposition made of all specially denatured spirits, as required in § 20.234, and

(3) The date of discontinuance.

(b) *Bonds*. The bond of a permittee may not be canceled until all specially denatured spirits have been properly disposed of as required by this part.

(c) *Final Reports*. The written notice required by this paragraph will also be accompanied by a report on Form 5150.18 covering the discontinuance and marked ''Final Report.''

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

Subpart E—Bonds and Consents of Surety

§ 20.71 Bond.

(a) Except as provided in paragraph (d) of this section, each permittee who intends to withdraw more than 5000 gallons of specially denatured spirits per annum shall file a bond, Form 5150.25, before issuance of the permit. The penal sum of the bond shall be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 5,000 gallons	No bond required.
Over 5,000 but not over 500,000 gallons.	$2,000 plus $1,000 for each 5,000 gallons of withdrawals over 10,000 gallons.
Over 500,000 gallons	$100,000.

(b) The following method may be used to compute your penal sum:

(1) If the total of your estimated annual withdrawals is divisible by 5,000, divide it by 5. The result is your penal sum in dollars.

(2) If the total of your estimated annual withdrawals is not divisible by 5,000, increase it to the next highest number which is divisible by 5,000 and divide that number by 5. The result is your penal sum in dollars.

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
25,000 gallons	$5,000
84,500 gallons	17,000
335,000 gallons	67,000

(d) Any bond previously approved on Form 1475 or 1480 which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on ATF F 5150.25. No bond is required if the permittee is a State, any

political subdivision of a State, or the District of Columbia.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by 50 FR 20099, May 14, 1985]

§ 20.72 Evaluation of bond penal sum.

(a) *Permittee's evaluation.* Each permittee shall, for the period from July 1 through the following June 30, make an annual evaluation of the permittee's previous and future needs for specially denatured spirits. Based on the results of this evaluation:

(1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of § 20.71, or

(2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of § 20.71.

(b) *Authority of appropriate ATF officer.* The appropriate ATF officer may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

§ 20.73 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 in the current revision of Treasury Department Circular No. 570.

(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 may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 20.74 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, must be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The appropriate ATF officer who is authorized to approve the bond may require additional evidence of the authority of the agent or officer to execute the bond or consent.

§ 20.75 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 not a manually signed original, it shall be accompanied by certification of its validity.

§ 20.76 Deposit of securities instead of corporate surety.

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR part 225.

§ 20.77 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.

§ 20.78 Strengthening bonds.

(a) When 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. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered:

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full penal sum.

(b) Strengthening bonds shall show the date of execution and the effective date, and shall be marked ''Strengthening Bond.''

§ 20.79 Superseding bonds.

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the appropriate ATF officer when any other contingency affects the validity or impairs

the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under § 20.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds shall show the date of execution and the effective date, and shall be marked ''Superseding Bond.'' If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

§ 20.80 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and appropriate ATF officer with whom the bond is filed, that the surety desires (after a specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the appropriate ATF officer. The surety shall also file with the appropriate ATF officer an acknowledgment or other proof of service of the notice of termination on the principal.

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

§ 20.81 Termination of rights and liability under a bond.

(a) If the notice of termination given by the surety is not withdrawn, in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to:

(1) The date named in a notice of termination (§ 20.80); or

(2) The effective date of a superseding bond (§ 20.79); or

(3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all specially denatured spirits or articles on hand or in transit to the principal on that date until the spirits or articles have been lawfully disposed of or a new bond has been filed by the principal.

§ 20.82 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 20.76, will be released only under the provisions of 31 CFR part 225. When the appropriate ATF officer is satisfied that they may be released, the appropriate ATF officer shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the appropriate ATF officer may extend the date of release for any additional length of time considered necessary.

Subpart F—Formulas and Statements of Process

§ 20.91 Formula.

(a) Each article made with specially denatured spirits shall be made in accordance with (1) an approved formula, Form 5150.19, or (2) an approved general-use formula prescribed in this subpart, approved by the appropriate ATF officer as an alternate method, or published as an ATF Ruling in the ATF Bulletin. The manufacturer shall file Form 5150.19, along with the sample(s) required by § 20.92, and obtain an approved formula before manufacturing the article.

(b) An article made in accordance with a formula on Form 1479–A approved under previous regulations in part 211 of this chapter will be considered to comply with the requirements of this subpart.

(c) Any person who has approved formulas or statements of process, Form 1479–A or Form 5150.19, which have been discontinued or have become obsolete, may submit these formulas or statements of process to the appropriate ATF officer for cancellation.

§ 20.92 Samples.

(a) For each formula submitted in accordance with § 20.91 covering a toilet preparation made with S.D.A. Formula No. 39–C and containing an essential

oil, the manufacturer shall submit a 0.5-ounce sample of the essential oil used in the article. The appropriate ATF officer may also require the manufacturer to submit a sample of any ingredient which is not adequately described in the formula.

(b) For each formula submitted in accordance with § 20.91, the appropriate ATF officer may require the manufacturer to submit a 4-ounce sample of the finished article.

(c) The appropriate ATF officer may, at any time, require submission of samples of:

(1) Any ingredient used in the manufacture of an article, or;

(2) Any article.

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

§ 20.93 Changes to formulas.

(a) *General*. Except as provided in paragraph (b) of this section, any change of ingredients or quantities of ingredients listed in an appoved formula shall constitute a different article for which a different approved formula is required by § 20.91.

(b) *Exceptions*. A different approved formula is not required for the following—

(1) A change from an ingredient identified in the formula by a brand name to the same quantity of a chemically identical ingredient acquired under a different brand name, or

(2) A change of an ingredient which is a coloring material.

§ 20.94 Statement of process.

(a) Manufacturers shall submit a statement of process on Form 5150.19, in accordance with paragraph (b) of this section, covering the following activities:

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product;

(2) If specially denatured spirits are used in a manufacturing process in which none of the specially denatured spirits remains in the finished product;

(3) If specially denatured spirits, completely denatured alcohol, or articles are used in a manufacturing process and are to be recovered; or

(4) If recovered denatured spirits are to be redenatured.

(b) The manufacturer shall submit a separate Form 5150.19 for each activity described in paragraph (a) of this section describing the process completely.

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product, the Form 5150.19 shall identify the formula number of specially denatured spirits, a description of the laboratory or mechanical use, and the approximate annual quantity to be used.

(2) If the Form 5150.19 is submitted covering activities described in paragraphs (a)(2), (a)(3), or (a)(4) of this section, the Form 5150.19 shall also contain the following information:

(i) Flow diagrams shall be submitted with the Form 5150.19 clearly depicting the equipment in its relative operating sequence, with essential connecting pipelines and valves. All major equipment shall be identified as to its use. The direction of flow through the pipelines shall be indicated in the flow diagram. The flow diagram, shall be accompanied by a written description of the flow of materials through the system.

(ii) The statement of process shall describe the chemical composition of the recovered spirits. The statement of process shall be accompanied by a statement of the intended use of the recovered spirits.

§ 20.95 Developmental samples of articles.

(a) A user may use limited quantities of specially denatured spirits in the manufacture of samples of articles for submission in accordance with § 20.92.

(b) A user may prepare developmental samples of articles, of limited sizes and quantities, for one-time shipment to prospective customers. The user shall maintain records showing—

(1) The types of product samples prepared,

(2) The size and number of samples sent, on a one-time basis, to each prospective customer, and

(3) The names and addresses of the prospective customers.

(Approved by the Office of Management and Budget under control number 1512–0337)

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

APPROVAL POLICIES

§ 20.100 General.

(a) In addiiton to the limitations in this part, and if necessary to protect the revenue or public safety, the appropriate ATF officer, when approving Form 5150.19 may:

(1) Specify on the Form 5150.19 the size of containers in which any article may be sold;

(2) Specify the maximum quantity that may be sold to any person at one time; or

(3) Restrict the sale of an article to a specific class of vendee and for a specific use.

(b) Approval by the appropriate ATF officer of formulas, samples, or statements of process means only that they meet the standards of the Bureau of Alcohol, Tobacco and Firearms. The approval does not require the issuance of a permit under subpart D of this part to withdraw and use specially denatured spirits in those formulas, articles, or statements of process.

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

§ 20.101 Drafting formulas.

(a) In preparing Form 5150.19, the manufacturer shall, for each ingredient containing ethyl alcohol, identify—

(1) The percent alcohol by volume of the ingredient, if known, and

(2) The supplier's name and serial number or approval date of the supplier's approved formula covering the manufacture of the ingredient.

(b) In preparing Form 5150.19, manufacturers may—

(1) Identify ingredients by generic names rather than brand names, and

(2) Identify quantities of ingredients used in ranges rather than in finite quantities.

(c) If ranges of ingredients are used, as authorized by paragraph (b)(2) of this section—

(1) The lower range shall not be zero for any ingredient, and

(2) The range for usage of specially denatured spirits shall not exceed ±5%.

§ 20.102 Bay rum, alcoholado, or alcoholado-type toilet waters.

All bay rum, alcoholado, or alcoholado-type toilet waters made with specially denatured alcohol shall contain:

(a) 1.10 grains of benzyldiethyl (2:6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)) in each gallon of finished product in addition to any of this material used as a denaturant in the specially denatured alcohol, or

(b) 32 grains of tartar emetic in each gallon of finished product, or

(c) 0.5 avoirdupois ounce of sucrose octaacetate in each gallon of finished product.

§ 20.103 Articles made with S.D.A. Formula No. 39–C.

Each article made with S.D.A. Formula No. 39–C shall contain in each gallon of finished product not less than 2 fluid ounces of perfume material (essential oils, isolates, aromatic chemicals, etc.) satisfactory to the appropriate ATF officer.

§ 20.104 Residual alcohol in spirit vinegar.

Commercial strength (40 grain) vinegar made from specially denatured alcohol may contain trace amounts of residual alcohol, not to exceed 0.5 percent of alcohol by volume, in the finished product.

GENERAL-USE FORMULAS

§ 20.111 General.

(a) An approved formula on Form 5150.19 is not required for an article made in accordance with any approved general-use formula prescribed by §§ 20.112 through 20.119, approved by the appropriate ATF officer as an alternate method, or published as an ATF Ruling in the ATF Bulletin.

(b) Any interested party may petition ATF for approval of a new general-

use formula by submitting a letter describing the proposed general-use formula to the appropriate ATF officer.

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

§ 20.112 Special industrial solvents general-use formula.

(a) A special industrial solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A special industrial solvent shall be made with S.D.A. Formula No. 1, 3A, or 3C containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: methyl isobutyl ketone, methyl *n*-butyl ketone, nitropropane (mixed isomers), or ethylene glycol monoethyl ether, and

(2) No less than 5 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), isopropyl alcohol, or methyl alcohol.

(b) Special industrial solvents are intended for use as ingredients or solvents in manufacturing processes and shall not be distributed through retail channels for sale as consumer commodities for personal or household use. When a special industrial solvent is used in the manufacture of an article for sale, sufficient ingredients shall be added to definitely change the composition and character of the special industrial solvent. A special industrial solvent shall not be reprocessed into another solvent intended for sale if the other solvent would contain more than 50% alcohol by volume.

(c) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: ''danger,'' ''poison,'' ''vapor harmful,'' ''May be fatal or cause blindness if swallowed,'' and ''Cannot be made nonpoisonous.''

§ 20.113 Proprietary solvents general-use formula.

(a) A proprietary solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A proprietary solvent shall be made with S.D.A. Formula No. 1 or 3–A containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: gasoline, unleaded gasoline, heptane, or rubber hydrocarbon solvent, and

(2) No less than 3 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), methyl isobutyl ketone, methyl *n*-butyl ketone, *tert*-butyl alcohol, *sec*-butyl alcohol, nitropropane (mixed isomers), ethylene glycol monoethyl ether, or toluene.

(b) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: ''danger,'' ''poison,'' ''vapor harmful,'' ''May be fatal or cause blindness if swallowed,'' and ''Cannot be made nonpoisonous.''

§ 20.114 Tobacco flavor general-use formula.

Tobacco flavor general-use formula is any finished article made with S.D.A. Formula No. 4 or S.D.R. Formula No. 4 which—

(a) Contains sufficient flavors,

(b) May contain other ingredients, and

(c) Is packaged, labeled, and sold or used as a tobacco flavor only.

§ 20.115 Ink general-use formula.

Ink general-use formula is any finished article made with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, 32, or 33 which—

(a) Contains sufficient pigments, dyes, or dyestuffs,

(b) May contain other ingredients, and

(c) Is packaged, labeled and sold or used as an ink.

§ 20.116 Low alcohol general-use formula.

Low alcohol general-use formula is a finished article containing not more than 5% alcohol by volume.

§ 20.117 Reagent alcohol general-use formula.

(a) Reagent alcohol is an article (1) made in accordance with paragraph (b) of this section, (2) packaged and labeled in accordance with paragraph (c) of this section, and (3) distributed in accordance with paragraph (d) of this section.

(b) Reagent alcohol shall be made with 95 parts (by volume) of S.D.A. Formula No. 3–A, and 5 part (by volume) of isopropyl alcohol. Water may be added at the time of manufacture. Reagent alcohol shall not contain any ingredient other than those named in this paragraph.

(c)(1) Except as provided in paragraph (d) of this section, reagent alcohol shall be packaged by the manufacturer in containers not exceeding four liters. Each container shall have affixed to it a label with the following words, as conspicuously as any other words on the labels: ''Reagent Alcohol, Specially Denatured Alcohol Formula 3–A–95 parts by vol., and Isopropyl Alcohol—5 parts by vol.''

(2) Because this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossbones symbol and the following words: ''danger,'' ''poison,'' ''vapor harmful,'' ''May be fatal or cause blindness if swallowed,'' and ''Cannot be made nonpoisonous

(3) If water is added at the time of manufacture, the label shall reflect the composition of the diluted product. If the addition of water reduces the methyl alcohol concentration to less than 4% by weight, the requirements of paragraph (c)(2) of this section shall not apply.

(4) A back label shall be attached showing the word ''ANTIDOTE'', followed by suitable directions for an antidote.

(d)(1) Reagent alcohol may be distributed in containers not exceeding 4 liters exclusively to laboratories or persons who require reagent alcohol for scientific use.

(2) Reagent alcohol may be distributed in bulk containers to proprietors of bona fide laboratory supply houses for packaging and resale, and to any other person who was qualified to receive bulk shipments of reagent alcohol on the effective date of this part. Reagent alcohol may also be distributed in bulk containers to any person who has received approval of a letterhead application containing the following:

(i) The applicant's name, address, and permit number, if any;

(ii) A description of the security measures which will be taken to segregate reagent alcohol from denatured spirits or other alcohol which may be on the same premises;

(iii) A statement that labels required by paragraph (c) of this section will be affixed to containers of reagent alcohol filled by the applicant;

(iv) A statement that the applicant will allow appropriate ATF officers to inspect the applicant's premises; and

(v) A statement that the applicant will comply with the requirements of § 20.133.

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

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5474, Jan. 19, 2001]

§ 20.118 Rubbing alcohol general-use formula.

(a) Rubbing alcohol is an article made with S.D.A. Formula No. 23–H (1) containing 70% ethyl alcohol by volume (2) made in accordance with one of the two formulas prescribed in paragraph (b) of this section, and (3) labeled in accordance with § 20.134(e) of this part.

(b) Either of the following two formulas is approved for manufacturing rubbing alcohol:

Formula A

S.D.A. formula no. 23–H	103.3 fl. oz.
Sucrose octa-acetate	0.5 av.oz.
Water	q.s. 1 gallon.

(If desired, ordorous, medicinal and/or colorative ingredients may be added.)

Formula B

S.D.A. formula no. 23–H	103.3 fl. oz.
Benzyldiethyl (2: 6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)).	0.88 grains.
Water	q.s. 1 gallon.

(If desired, odorous, medicinal and/or colorative ingredients may be added.)

§ 20.119 Toilet preparations containing not less than 10% essential oils general-use formula.

This general-use formula shall consist of an article containing not less than 10% essential oils by volume made with a formula of S.D.A. authorized for that article on the following list:

Article	Product code No.	Formula authorized
Bath preparations	142	1, 3–A, 3–B, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Colognes	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Deodorants (body)	114	23–A, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Hair and scalp preparations	111	3–B, 23–A, 23–F, 23–H, 37, 38–B, 39, 39–A, 39–B, 39–C, 39–D, 40, 40–A, 40–B, 40–C.
Lotions and creams (body, face, and hand).	113	23–A, 23–H, 31–A, 37, 38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfume materials (processing)	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfumes and perfume tinctures	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Shampoos	141	1, 3–A, 3–B, 3–C, 23–A, 27–B, 31–A, 36, 38–B, 39–A, 39–B, 40, 40–A, 40–B, 40–C.
Soaps, toilet	142	1, 3–A, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Toilet waters	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

Subpart G—Requirements Relating to Articles

§ 20.131 Scope of subpart.

This subpart prescribes requirements relating to articles which may affect persons who are not required to obtain a permit under this part. These requirements, described in general terms § 20.132, are imposed by law. Criminal penalties imposed for violating these requirements are described in § 20.137. In this subpart, the term ''article'' means any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

§ 20.132 General requirements.

(a) *Internal medicinal preparations and flavoring extracts*—(1) *Manufacture*. No person shall use denatured spirits in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remain in the finished product.

(2) *Sale*. No person shall sell or offer for sale for internal human use any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remain in the finished product.

(3) *Labeling and advertising*. Labeling and advertising of articles shall not imply that the article is intended for or suitable for internal human use.

(b) *Beverage use*. No person shall sell or offer for sale any article containing denatured spirits for beverage purposes. Labeling and advertising of articles shall not imply that the article is intended for or suitable for use as a beverage.

(c) *Trafficking in articles*. The appropriate ATF officer may impose the requirements of § 20.133 on any person who reprocesses, rebottles, or repackages articles, deals in articles, or receives articles in containers exceeding one gallon.

§ 20.133 Registration of persons trafficking in articles.

(a) Upon written notice from the appropriate ATF officer, any person who reprocesses, rebottles, or repackages articles, deals in articles, or receives articles in containers exceeding one gallon may be required to submit any of the following:

(1) Nature of activities to be conducted;

(2) Name and address of supplier;

(3) Size and type of containers in which articles will be received and, if applicable, rebottled or repackaged;

(4) Maximum quantity of each article to be obtained during any calendar month;

(5) Description of the reprocessing operation;

(6) Samples of the reprocessed article;

(7) Labels and advertising materials; and,

(8) Names and addresses of recipients of articles and quantities received;

(b) The appropriate ATF officer shall prohibit any of the activities described in paragraph (a) of this section if the activities pose a jeopardy to the revenue, or a burden in administering this part.

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§ 20.134 Labeling.

(a) *General.* Except as provided in paragraph (b) or (c) of this section, each article shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying (1) the name, trade name or brand name of the article, and (2) the name and address (city and State) of the manufacturer or distributor of the article.

(b) *Articles for external human use.* Except as provided in paragraph (c) of this section, an article intended for external human use shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying the name, trade name or brand name of the article. If the volume of the article in the container exceeds 8-fluid ounces, the label shall also show the information required by paragraph (b) (1) or (2) of this section.

(1) If the article was packaged or bottled by the person who manufactured it, the label shall identify—

(i) The manufacturer's name and the address (city and State) of the actual place or places where article was manufactured, or

(ii) The name and principal office address (city and State) of the manufacturer, and the permit number or numbers of the place or places of manufacture. However, in lieu of such permit number or numbers, the place or places where the manufacturing operation occurred may be indicated by a coding system. Prior to using a coding system, the manufacturer shall send a notice explaining the coding system to the appropriate ATF officer, or

(iii) The manufacturer's permit number and the name and address (city and State), of the person for whom the article was packaged and bottled.

(2) If the article was packaged or bottled by a person other than the manufacturer of the article, the label shall identify—

(i) The name and address (city and State) of the person by whom or for whom the article was packaged or bottled, and

(ii) The permit number of the manufacturer or distributor.

(3) If a permit number is required to be shown on the label, it may be shown utilizing a State code number, in accordance with § 20.135.

(c) *Shipment of unlabeled articles.* A manufacturer may, subject to the approval of the appropriate ATF officer and compliance with § 20.133, remove an unlabeled article from the manufacturer's premises, if the outer containers of the article are labeled with the name, trade name or brand name of the article and the names and addresses (city and State) of the manufacturer and the consignee.

(d) *Use of the words ''denatured alcohol.''* If the words ''denatured alcohol'' appear on the label of an article, the label shall also have a name, trade name or brand name which appears as conspicuously as the words ''denatured alcohol.''

(e) *Use of the words ''rubbing alcohol.''* If the words ''rubbing alcohol'' appear on the label of an article, (1) the article shall be made in accordance with § 20.118 of this part, and (2) the label (i) shall have the words ''rubbing alcohol'' in letters of the same color and size, (ii) shall identify the name and address (city and State) of the manufacturer or bottler, (iii) shall state the alcohol content as 70% by volume with no reference to the proof strength, and (iv) shall have the warning ''For external use only. If taken internally, will cause

serious gastric disturbances.'' An alcohol rub made from any other material, such as isopropyl alcohol, shall not be labeled ''Rubbing Alcohol'' unless the label informs the consumer that the preparation was not made with specially denatured alcohol.

(f) *Distributor labeling.* Distributors of an article may place minimal identifying information (name, address and a phrase such as ''distributed by'') on the label of that article (or on an additional label) without qualifying in any manner under this part; provided:

(1) The article is produced, packaged and labeled as provided in this part; and

(2) The distributor does not produce, repackage or reprocess the article.

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[T.D ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by ATF–332, 57 FR 40849, Sept. 8, 1992]

§ 20.135 State code numbers.

In showing the permit number on labels as provided in § 20.134(b)(2)(ii), the permittee who distributes the article may substitute the appropriate number shown below for the State abbreviation. For example, permit number SDA–CONN–1234 may be shown on the labels as SDA–07–1234. The code numbers for the respective State are as follows:

01—Alabama
02—Alaska
03—Arizona
04—Arkansas
05—California
06—Colorado
07—Connecticut
08—Delaware
09—DC
10—Florida
11—Georgia
12—Hawaii
13—Idaho
14—Illinois
15—Indiana
16—Iowa
17—Kansas
18—Kentucky
19—Louisiana
20—Maine
21—Maryland
22—Massachusetts
23—Michigan
24—Minnesota
25—Mississippi
26—Missouri
27—Montana
28—Nebraska
29—Nevada
30—New Hampshire
31—New Jersey
32—New Mexico
33—New York
34—North Carolina
35—North Dakota
36—Ohio
37—Oklahoma
38—Oregon
39—Pennsylvania
40—Rhode Island
41—South Carolina
42—South Dakota
43—Tennessee
44—Texas
45—Utah
46—Vermont
47—Virginia
48—Washington
49—West Virginia
50—Wisconsin
51—Wyoming

§ 20.136 Labeling regulations of other agencies.

(a) *General.* Other Federal agencies have promulgated regulations which may affect labeling of articles, as described in this section.

(b) *Consumer Product Safety Commission.* The Consumer Product Safety Commission has promulgated regulations to administer the Federal Hazardous Substances Act. The regulations in 16 CFR Chapter II require warning labels for products containing certain specified substances. For example, S.D.A. Formula Nos. 3–A and 30 require warning labels because they contain methyl alcohol, a hazardous substance at levels of 4% or more by weight. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles containing strong chemicals should refer to 16 CFR Chapter II for warning label requirements.

(c) *Federal Trade Commission.* The Federal Trade Commission (F.T.C.) has promulgated regulations to administer the Fair Packaging and Labeling Act. The regulations in 16 CFR Chapter I affect packaging and labeling of ''consumer commodities.'' The term ''consumer commodities'' generally means products intended for retail sale to an individual for personal or household use. The F.T.C. regulations do not apply to drugs, medical devices, or cosmetics for which the Food and Drug Administration enforces the Fair Packaging and Labeling Act (see paragraph (d) of this section). Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are ''consumer commodities'' should refer to 16 CFR Chapter I for packaging and labeling requirements.

(d) *Food and Drug Administration, Department of Health and Human Services.* The Food and Drug Administration has promulgated regualtions in 21 CFR Chapter I to administer the Fair Packaging and Labeling Act (as it applies to drugs, medical devices, or cosmetics) and the Federal Food, Drug and Cosmetic Act. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are drugs, medical devices, or cosmetics should refer

to 21 CFR Chapter I for packaging and labeling requirements.

§ 20.137 Penalties.

Violation of the requirements prescribed in § 20.132 is punishable by a fine of not more than $10,000 and/or imprisonment for not more than 5 years for each offense. In addition, persons who manufacture (including reprocess), sell, or transport articles in violation of this part are liable for payment of a tax on the articles at the rate imposed by law on distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1402 (26 U.S.C. 5001, 5607))

Subpart H—Sale and Use of Completely Denatured Alcohol

§ 20.141 General.

(a) Each formula of completely denatured alcohol may be sold and used for any purpose, subject to the limitations in the formula prescribed in part 21 of this chapter. For example, C.D.A. Formula No. 18 or 19 may be used:

(1) In the manufacture of definite chemical substances where the alcohol is changed into some other chemical substance and does not appear in the finished product;

(2) In the arts and industries, including but not limited to the manufacture of cleaning fluids, detergents, proprietary antifreeze solutions, thinners, lacquers, and brake fluids; and

(3) For fuel, light, and power.

(b) Completely denatured alcohol may not be used in the manufacture of preparations or products for internal human use or consumption where any of the alcohol or the denaturants used in that alcohol remain in the finished product.

(c) Persons distributing and using (but not recovering for reuse) completely denatured alcohol are not required to obtain a permit or file a bond under this part.

(d) Any person recovering completely denatured alcohol for reuse shall obtain a permit under subpart D of this part if the recovered alcohol does not contain all of the original denaturants of the completely denatured alcohol.

(e) Containers of products manufactured with completely denatured alcohol (such as proprietary antifreeze solutions, solvents, thinners, and lacquers) may not be branded as completely denatured alcohol. These products may not be advertised, shipped, sold, or offered for sale as completely denatured alcohol.

§ 20.142 Records of bulk conveyances.

If completely denatured alcohol is to be shipped in a bulk conveyance, the shipment shall be accompanied by a record which identifies each car, truck, or compartment, the name and location (city or town and State) of both the consignor and consignee, the quantity in gallons, and the formula number of the completely denatured alcohol.

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§ 20.143 Receipt.

Unless completely denatured alcohol received in bulk conveyances or by pipeline is to be used immediately, it shall be deposited in storage tanks, stored in the tank cars or tank trucks in which received, or drawn into packages which shall be marked or labeled as required by this subpart.

§ 20.144 Packages of completely denatured alcohol.

Packages containing more than 5 gallons of completely denatured alcohol shall be of metal or other equally suitable material approved by the appropriate ATF officer. The openings of these packages shall be sealed with appropriate seals furnished by the person filling the packages.

§ 20.145 Encased containers.

Completely denatured alcohol may be packaged by distributors in unlabeled containers which are completely encased in wood, fiberboard, or similar material so that the surface (including the opening) of the actual container is not exposed. When completely denatured spirits are packaged in unlabeled containers, the distributor shall apply the required marks or label to an exposed surface of the case. The case shall be so constructed that the portion containing the marks will be securely attached to the encased container until all of the contents have

been removed. A statement reading ''Do Not Remove Inner Container Until Emptied,'' or words of similar meaning, shall be placed on the portion of the case bearing the marks.

§ 20.146 Labels on bulk containers.

(a) Completely denatured alcohol in bulk containers with a capacity exceeding 1 gallon shall be labeled on the head or side of the container or on the side of the casing, with the following:

(1) The name and address of the person filling the containers;

(2) The contents in gallons:

(3) The words ''Completely Denatured Alcohol''; and

(4) The formula number.

(b) Packages of 5 gallons or less shall bear labels required by § 20.147, in lieu of the labels required by this section.

(c) The letters and figures used for marking packages shall be large enough to be easily read and, when printed, labeled, or stenciled, shall be in permanent ink and shall contrast distinctly with the background to which applied.

(d) Packages may also be marked with the brand name and a statement to the type of merchandise contained in the package if these markings do not obscure or detract from the required markings. The person filling the packages shall maintain the record required by § 20.261.

§ 20.147 Labels on consumer-size containers.

(a) Each consumer-size container with a capacity of 5 gallons or less of completely denatured alcohol sold or offered for sale by a distributor shall bear a label showing, in plain, legible letters, the following:

(1) The words ''Completely Denatured Alcohol'';

(2) The statement ''Caution—contains poisonous ingredients''; and

(3) The name and address of the distributor filling the packages, unless shown elsewhere on the package.

(b) No other information (except that required by State or Federal law) may be shown on the label without the appropriate ATF officer's approval. The word ''pure'', qualifying denatured alcohol may not appear on the label or the container.

(c) The requirements of paragraphs (a) and (b) of this section apply to any person who sells completely denatured alcohol at wholesale or retail.

§ 20.148 Manufacture of articles with completely denatured alcohol.

Articles may be made with completely denatured alcohol for sale under brand names. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the article is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

§ 20.149 Records.

Records of transactions in completely denatured alcohol and articles made with completely denatured alcohol shall be maintained as prescribed in § 20.261.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart I—Operations by Dealers and Users of Specially Denatured Spirits

OBTAINING SPECIALLY DENATURED SPIRITS

§ 20.161 Withdrawals under permit.

(a) *General*. The permit, Form 5150.9, issued under subpart D of this part, authorizes a person to withdraw specially denatured spirits from the bonded premises of a distilled spirits plant or a dealer. If the permittee is located in a foreign-trade zone, the permit will be qualified so that the permittee may obtain domestic specially denatured spirits only. The alcohol in domestic denatured spirits must be produced entirely in the United States, including Puerto Rico.

(b) *Photocopying of permit, Form 5150.9*. (1) As provided in § 20.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw specially denatured spirits.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant or

dealer for the ''initial order'' from that distilled spirits plant or dealer.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy must be signed, dated, and contain the word ''COPY'' across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants and dealers when: (i) An amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of dealing in or using specially denatured spirits.

(c) *Withdrawals.* (1) When a permittee places an initial order for specially denatured spirits the permittee will forward a signed copy of its permit, for retention by the distilled spirits plant or dealer, along with the purchase request.

(2) When the permittee places a subsequent order for specially denatured spirits, the purchase request, in addition to any other information, will contain the permit identification number along with a statement that the permittee possesses a valid permit to withdraw specially denatured spirits, a copy of which is on file with the supplier.

(3) Shipments will not be made by a proprietor of a distilled spirits plant or dealer until it is in possession of a signed copy of a valid permit, Form 5150.9, unless the appropriate ATF officer authorizes the shipment.

(19 U.S.C. 81c; Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1395, as amended (26 U.S.C. 5271, 5555))

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985, as amended by T.D. ATF–274, 53 FR 25156, July 5, 1988]

§ 20.162 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of specially denatured spirits to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorized by the permit, Form 5150.9. Recovered alcohol will be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, specially denatured spirits and recovered alcohol will be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 20.163 Receipt and storage of specially denatured spirits.

(a) *Receipt of bulk conveyances or by pipeline.* A permittee who receives specially denatured spirits in bulk conveyances or by pipeline shall: (1) Deposit the specially denatured spirits into storage tanks as provided by § 20.165; (2) draw the specially denatured spirits into packages marked and labeled as required by paragraph (b) of this section; (3) store the specially denatured spirits in the tank truck or tank car in which received if the conveyance is effectively immobilized within an enclosure secured to prevent unauthorized access; or (4) use the specially denatured spirits immediately in accordance with an approved formula or statement of process.

(b) *Marks on portable containers.* (1) A user who receives specially denatured spirits in bulk conveyances or by pipeline and who transfers the spirits to drums shall plainly label them to show (i) the words ''Specially Denatured Alcohol'' or ''Specially Denatured Rum'', and (ii) the formula number.

(2) A dealer who fills packages of specially denatured spirits shall label them in accordance with § 20.178.

(c) *Receipt of portable containers.* A permittee who receives specially denatured spirits in portable containers such as drums or barrels shall transfer the specially denatured spirits to storage tanks or deposit the specially denatured spirits in a storeroom as provided in § 20.165, or use the spirits in accordance with an approved formula or statement of process. A user may not transfer the spirits to other portable containers for storage except in the following circumstances:

(1) Contents of damaged packages may be transferred to new packages to prevent loss or waste; or

(2) Contents of portable containers may be transferred to ''safety'' containers to comply with city or State fire code regulations, or on filing notice with the appropriate ATF officer to comply with the safety practices of the user. The user shall label the new containers with the information marked on the original containers and shall also identify the new containers as ''repackaged.''

(d) *Record of receipt*. Records of receipt will consist of the consignor's invoice of bill or lading which identifies the quantities, formula number(s), and serial numbers of containers of specially denatured spirits, and which has been annotated by the consignee with the date of receipt of the shipment.

(e) *Losses*. On receipt of specially denatured spirits, the user shall determine and account for any losses in transit in accordance with subpart J of this part.

(Approved by the Office of Management and Budget under control number 1512–0337)

PREMISES AND EQUIPMENT

§ 20.164 Premises.

(a) A permittee shall have premises suitable for the business being conducted and adequate for protecting the revenue.

(b) Storage facilities shall be provided on the premises for specially denatured spirits received or recovered. Except as provided in paragraph (c) of this section, storage facilities shall consist of storerooms, compartments, or stationary storage tanks (not necessarily in a room or building).

(c) A permittee receiving and storing specially denatured spirits in tank cars or tank trucks, as provided in § 20.163, need not provide stationary storage tanks.

(d) If specially denatured spirits are received at or removed from a permittee's premises in bulk conveyances, suitable facilities for those operations shall be provided.

(e) The appropriate ATF officer may require the storage facilities or distilling equipment to be secured with Government locks or seals, or both.

§ 20.165 Storage facilities.

(a) Storerooms shall be constructed and secured to prevent unauthorized access and the entrance doors shall be equipped for locking.

(b) Each stationary tank used for the storage of specially denatured spirits shall be equipped for locking to control access to the denatured spirits. An accurate means of measuring its contents shall be provided for each tank.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 20.166 Stills and other equipment.

If recovered denatured spirits or articles are to be restored on the permittee's premises, all equipment to be used in the restoration process shall be located on the permit premises. Distilling apparatus or other equipment, including pipelines, for restoration or for recovery, shall be constructed and secured in such a manner as to prevent unauthorized access to the denatured spirits and so arranged as to be readily inspected by appropriate ATF officers.

§ 20.167 Recovered and restored denatured spirits tanks.

Suitable storage tanks shall be provided for recovered and restored denatured spirits. Each storage tank for recovered and restored denatured spirits shall be—

(a) Durably marked to show its capacity and use,

(b) Equipped for locking to control access to the contents, and

(c) Provided with an accurate means of measuring its contents.

INVENTORY AND RECORDS

§ 20.170 Physical inventory.

Once in each calendar year and when requested by an appropriate ATF officer, each permittee shall perform and record a physical inventory of each formula of new and recovered specially denatured spirits.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.171 Record of shipment.

(a) *Dealer*. When a dealer transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in the normal course of business or in accordance with § 20.216 or § 20.231 of this part, the dealer shall prepare a record of shipment in accordance with paragraph (c) of this section. Dealers shall consistently use the same record series for the record of shipment. A dealer's record of shipment shall show a serial number or other unique number.

(b) *User*. When a user transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in accordance with § 20.216, 20.231, or 20.235 of this part, the user shall prepare a record of shipment in accordance with paragraph (c) of this section.

(c) *Record*. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Date of shipment;

(2) Consignor's name and address;

(3) Consignee's name, address, and permit number or distilled spirits plant registry number;

(4) For each formula of specially denatured spirits—

(i) The formula number,

(ii) The number and sizes of containers, and

(iii) The total quantity; and,

(5) If the specially denatured spirits are recovered, the word ''recovered'' shall appear on the record.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.172 Records.

In addition to the records required by this subpart, permittees shall maintain records required in subpart P of this part.

(Approved by the Office of Management and Budget under control number 1512–0337)

OPERATIONS BY DEALERS

§ 20.175 Shipment for account of another dealer.

(a) A dealer may order specially denatured spirits shipped directly from a denaturer or another dealer to a customer (dealer or user).

(b) The dealer who ordered the shipment of specially denatured spirits shall forward a copy of his or her permit, Form 5150.9, and the consignee's permit, Form 5150.9, to the person actually shipping the specially denatured spirits.

(c) The bond of the dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the bond of the person actually shipping the specially denatured spirits shall not be liable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.176 Packaging by a dealer.

A dealer may package specially denatured spirits in containers of any size necessary for the conduct of business. After filling packages, the dealer shall accurately determine the contents of each package. After filling drums, the dealer shall seal all the drum openings with the dealer's own seals. Packages of specially denatured spirits shall be marked or labeled in accordance with § 20.178.

§ 20.177 Encased containers.

(a) A dealer may package specially denatured spirits in unlabeled containers which are completely encased in wood, fiberboard, or similar material. The total surface (including the opening) of the actual container of the spirits must be enclosed.

(b) When specially denatured spirits are packaged in unlabeled containers, the bonded dealer shall apply the required marks to an exposed surface of the case. The case shall be constructed so that the portion bearing the marks will remain securely attached to the encased container until all the spirits have been removed. A statement reading ''Do not remove inner container until emptied,'' or of similar meaning, shall be placed on the portion of the case bearing the marks.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.178 Marks and brands on containers of specially denatured spirits.

(a) *Required marks.* Each dealer who fills packages of specially denatured spirits shall mark or label each package with the following imformation:

(1) Quantity, in gallons, or in liters and gallons;

(2) Package identification number or serial number (see § 20.179);

(3) Name and permit number of the dealer;

(4) The words ''Specially Denatured Alcohol'' or ''Specially Denatured Rum,'' or an appropriate abbreviation;

(5) Formula number;

(6) Proof, if the spirits were denatured at other than 190° proof;

(7) Denaturants used, if alcohol was denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturants used, if the approved formula authorizes a choice of quantities of denaturants.

(b) *Location of marks.* The dealer shall place the required marks on the head of the package or on the side of the case.

(c) *Other marks.* Other marks authorized by this paragraph may not interfere with or detract from the marks required by this subpart. The dealer may place marks other than the required marks on the Government head or Government side of the package if the other marks—

(1) Are authorized by the appropriate ATF officer, or

(2) Consist of a brand name, or consist of caution notices, or consist of other material required by Federal or State law or regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.179 Package identification number or serial number.

(a) *Requirement.* A dealer who fills packages with specially denatured spirits shall mark each package with a package identification number, in accordance with paragraph (b) of this section, or a serial number, in accordance with paragraph (c) of this section.

(b) *Package identification number.* A package identification number shall apply to all of the packages filled at the same time on which all of the marks required by § 20.178 (a)(1) and (a)(3) through (a)(8) are identical. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown—

(1) The last two digits of the calendar year;

(2) An alphabetical designation from ''A'' through ''L,'' representing January through December, in that order;

(3) The digits corresponding to the day of the month; and

(4) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with ''A'' representing the second lot of the day, ''B'' representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as ''83K19,'' ''83K19A,'' and ''83K19B'').

(c) *Serial number.* A consecutive serial number shall be marked on each package, beginning with the number ''1'' and continuing in regular sequence. The dealer shall use a separate but similar number series for packages containing specially denatured rum. When any numbering series reaches ''1,000,000'', the dealer may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

(d) *Continuation of numbering series.* If a change in proprietorship, name, or trade name occurs, the numbering system in use at the time of the change may be continued. If serial numbers are used at the time of a change, the numbering series in use at the time of the change may be continued.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.180 Record of packages filled.

(a) *Requirement to keep record.* A dealer shall keep a record when filling packages with specially denatured spirits. The dealer shall keep a separate record of packages for each formula of

specially denatured alcohol and specially denatured rum.

(b) *Information to be shown*. The dealer shall show the following information on the record of packages filled—

(1) Date packages filled;

(2) Package identification number and number of packages in each identical lot filled, or the serial numbers;

(3) Kinds of packages;

(4) Wine gallons or liters;

(5) Kind of specially denatured spirits and formula number; and

(6) Proof, if the spirits were denatured at other than 190° proof.

(c) *Filing*. The dealer shall retain the record at the premises and shall file it according to the serial numbers or package identification numbers of the packages.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.181 Limitations on shipments.

(a) *Shipments made under permit*. A dealer may ship specially denatured spirits to users and other dealers under the consignee's permit, Form 5150.9. The dealer may not ship specially denatured spirits before receiving the consignee's permit, Form 5150.9, unless the shipment has been authorized by the appropriate ATF officer.

(b) *Shipments of samples*. A dealer may ship samples of specially denatured spirits to the persons authorized to receive them, and in the quantities permitted by subpart O of this part.

§ 20.182 Bulk shipments.

(a) *Use*. Dealers may ship specially denatured spirits in bulk conveyances. The dealer shall seal the bulk conveyances at the time of filling with railroad or other appropriate serially numbered seals dissimilar in marking from cap seals used by the Bureau of Alcohol, Tobacco and Firearms. Specially denatured alcohol or specially denatured rum from only one consignor may be placed in any one compartment of a bulk conveyance. Not less than the entire contents of any one compartment may be delivered to any one consignee at any one premises.

(b) *Construction of bulk conveyances*. Bulk conveyances shall be constructed to conform to the following requirements:

(1) All openings (including valves) shall be constructed so that they may be sealed to prevent unauthorized access to the contents of the conveyance. Outlets, valves or other openings to or from tank cars may be constructed in such a manner that they may be closed and securely fastened on the inside.

(2) If the conveyance has two or more compartments, the outlets of each shall be so equipped that delivery of any compartment will not afford access to the contents of any other compartment.

(3) Each compartment shall be arranged so that it can be completely drained.

(4) Each tank car or tank truck shall be permanently and legibly marked with its number, capacity in gallons or liters, and the name or symbol of its owner. If the tank car or truck consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) Permanent facilities must be provided on tank trucks to permit ready examination of manholes or other openings.

(6) Calibrated charts, prepared or certified by recognized authorities or engineers, showing the capacity of each compartment in gallons or liters for each inch of depth, must accompany each tank truck, tank ship, or tank barge.

OPERATIONS BY USERS

§ 20.189 Use of specially denatured spirits.

(a) Specially denatured spirits shall not be used for any purpose not authorized in this section.

(b) Specially denatured spirits shall be used (1) in the manufacture of articles in accordance with the formula requirements of subpart F of this part, (2) for other purposes in accordance with approved statements of process (§ 20.94), or (3) in the case of S.D.A. Formula No. 3–A, 3–C, or 30, for mechanical or laboratory purposes not involving the development of a product.

(c) Each formula of specially denatured spirits may be used only for the purposes authorized under part 21 of this chapter.

(d) By the use of essential oils and chemicals used in the manufacture of each liquid article, the user shall ensure that the finished article cannot be reclaimed or diverted to beverage use or internal human use.

(e) Each finished article shall conform to the sample, if any, and formula for that article approved in accordance with subpart F of this part.

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 20.190 Diversion of articles for internal human use or beverage use.

An appropriate ATF officer who has reason to believe that the spirits in any article are being reclaimed or diverted to beverage or internal human use may direct the permittee to modify an approved formula to prevent the reclamation or diversion. The appropriate ATF officer may require the permittee to discontinue the use of the formula until it has been modified and again approved.

[T.D. ATF– 435, 66 FR 5475, Jan. 19, 2001]

§ 20.191 Bulk articles.

Users who convey articles in containers exceeding one gallon may provide the recipient with a photocopy of subpart G of this part to ensure compliance with requirements relating to articles. Copies of subpart G are printed as ATF Publication 5150.5 and are available from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 21153.

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987]

§ 20.192 Manufacturing record.

For each manufacturing process in which specially denatured spirits are used, the user shall record:

(a) Quantity and formula number of new or recovered specially denatured spirits used;

(b) Names and quantities of ingredients used; and

(c) Name, trade name or brand name and alcoholic content of each article or intermediate product manufactured, as applicable.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart J—Losses

§ 20.201 Liability and responsibility of carrier.

(a) A person or carrier transporting specially denatured spirits to a consignee or returning it to the consignor is responsible for the safe delivery and is accountable for any specially denatured spirits not delivered.

(b) A person or carrier transporting specially denatured spirits in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 20.202 Losses in transit.

(a) *Reporting losses*. Upon discovering any loss of specially denatured spirits while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's appropriate ATF officer of the facts and circumstances relating to the loss.

(b) *Recording losses*. At the time the shipment or report of loss is received, the consignee shall determine the quantity of specially denatured spirits lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 20.163. For the purpose of maintaining the records prescribed in subpart P of this part, receipts of specially denatured spirits will only include the quantity actually received.

(c) *Claims*. A claim for allowances of losses of specially denatured spirits will, as prescribed in § 20.205, be filed:

(1) If the quantity lost in transit exceeds one percent of the total quantity shipped and is more than 10 gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowance of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512–0336; recordkeeping approved by the Office of Management and Budget under control number 1512–0337)

§ 20.203 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by subpart P of this part, the quantity of specially denatured spirits or recovered alcohol lost on premises:

(1) When an inventory is taken,

(2) At the time a container is emptied, or

(3) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowance of specially denatured spirits will be filed as prescribed in § 20.205, in the following circumstances:

(1) If the quantity lost during the annual accounting period (§ 20.263(c)) exceeds one percent of the quantity to be accounted for during that period, and is more than 50 gallons; or,

(2) If the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowance of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.204 Incomplete shipments.

(a) Subject to the provisions of this part (and Part 19 of this chapter for shipments made by a distilled spirits plant), when containers of specially denatured spirits have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipper.

(b) When specially denatured spirits are returned to the shipper in accordance with this section, the carrier shall inform the shipper, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's appropriate ATF officer of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 20.202, the dealer or proprietor shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable data required by § 20.205.

§ 20.205 Claims.

Claims for allowance of losses of specially denatured spirits or recovered alcohol will be filed, on Form 2635 (5620.8), within 30 days from the date the loss is ascertained, and will contain the following information:

(a) Name, address, and permit number of claimant;

(b) Identification and location of the container(s) from which the specially denatured spirits or recovered alcohol was lost, and the quantity lost from each container;

(c) Total quantity of specially denatured spirits or recovered alcohol covered by the claim and the aggregate quantity involved;

(d) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss;

(e) Name of carrier where a loss in transit is involved. The carrier's statement regarding the loss, prescribed by § 20.202 or § 20.204, will accompany the claim; and,

(f) Any additional evidence which the appropriate ATF officer may require to be submitted in support of the claim.

Subpart K—Recovery of Denatured Alcohol, Specially Denatured Rum, or Articles

§ 20.211 General.

(a) Upon filing the appropriate qualifying documents under the applicable provisions of subparts D and F of this part and receiving approval, a manufacturer using denatured alcohol, specially denatured rum, or articles in an approved process may recover the denatured alcohol, specially denatured rum, or articles. However, a person

who recovers (1) completely denatured alcohol with all its original ingredients, (2) an article made with specially denatured spirits with all its original ingredients (or practically so, to the extent that the presence of the original denaturants and other ingredients in the recovered article make it as nonpotable as the original article), or (3) an article made with completely denatured alcohol with all the denaturants of the completely denatured alcohol, shall not be required to obtain a permit under this part.

(b) For a determination as to whether obtaining a permit under this part is necessary, each person who intends to conduct the recovery operations outlined in paragraph (a) of this section shall forward Form 5150.19 with a sample of the recovered article, to the appropriate ATF officer, in accordance with subpart F of this part.

(c) Restoration and redenaturation may be done by a permittee or by the proprietor of a distilled spirits plant.

§ 20.212 Deposit in receiving tanks.

All recovered denatured alcohol, specially denatured rum, or articles shall be accumulated (after recovery or restoration is completed) in a receiving tank equipped for locking. If the recovered product is to be shipped under § 20.214, it may be accumulated in appropriately marked packages. All denatured alcohol or specially denatured rum recovered shall be measured and a record of the measurement shall be made before being redenatured or reused. Recovered denatured alcohol or specially denatured rum and new denatured alcohol or specially denatured rum shall be kept in separate storage containers properly marked for identification.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.213 Reuse of recovered spirits.

(a) If the denatured alcohol or specially denatured rum is recovered in its original denatured state, or practically so, or contains substantial quantities of the original denaturants and other ingredients which make it unfit for beverage or other internal human medicinal use, it may be reused in any approved process without further redenaturation. In these cases, the appropriate ATF officer will require samples of the recovered product to be taken from time to time to determine if the product requires redenaturation.

(b) If the denatured alcohol or specially denatured rum is not recovered in its original denatured state, or practically so, it shall be redenatured at the premises of the manufacturer or a denaturer before being used. The appropriate ATF officer may require supervision of the redenaturation of the recovered spirits by an appropriate ATF officer.

§ 20.214 Shipment for restoration or redenaturation.

Recovered denatured alcohol, recovered specially denatured rum, or recovered articles requiring restoration or redenaturation (or both, unless the restoration or redenaturation is to be done on the manufacturer's premises) shall be shipped to a distilled spirits plant or to a permittee. Packages shall be numbered with a package identification number or serial number in accordance with § 20.179 (b) or (c). Packages shall be labeled with the name, address, and permit number of the manufacturer, the quantity (in gallons) of spirits contained in the package, and the applicable words "Recovered denatured alcohol formula No. ____" or "Recovered specially denatured rum formula No. ____." If the restoration or redenaturation is performed by a user or dealer permittee (not a distilled spirits plant), the permittee shall return the same materials to the same manufacturer and shall not intermingle them with materials received from other sources.

§ 20.215 Shipment of articles and spirits residues for redistillation.

(a) The proprietor of a distilled spirits plant authorized to produce distilled spirits may receive for redistillation (1) articles manufactured under this part which contain denatured spirits, and (2) spirits residues of manufacturing processes related to the manufacture of these articles.

(b) Any person shipping these articles or spirits residues to a distilled spirits plant for redistillation shall—

(1) Identify each package or articles or spirits residues as to contents, and

(2) Mark and serially number each package as provided in § 20.214.

§ 20.216 Record of shipment.

A consignor shipping recovered denatured alcohol, recovered specially denatured rum, or recovered articles to a distilled spirits plant or a permittee shall prepare and forward a record of shipment to the consignee, in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart L—Destruction

§ 20.221 General.

A permittee may terminate liability for payment of tax, prescribed by law, when specially denatured spirits or recovered alcohol are destroyed in accordance with this subpart.

§ 20.222 Destruction.

(a) A permittee who destroys specially denatured spirits or recovered alcohol shall prepare a record which identifies—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction,

(3) The quantity involved and, if applicable, identification of containers, and

(4) The name of the individual who accomplished or supervised the destruction.

(b) This record of destruction shall be maintained with the records required by subpart P of this part.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart M—Return, Reconsignment and Disposition of Specially Denatured Spirits

§ 20.231 Return.

A permittee may, following the receipt of specially denatured spirits and for any legitimate reason, return the specially denatured spirits to any distilled spirits plant or dealer if the consignee consents to the shipment. The consignor shall prepare a record of shipment in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.232 Reconsignment in transit.

(a) *Reconsignment*. Specially denatured spirits may be reconsigned to another permittee or returned to the consignor if, prior to or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage*. In the case of reconsignment, the bond, if required, of the permittee to whom the specially denatured spirits were reconsigned will cover the specially denatured spirits while in transit. In the case of the return of a shipment, the bond, if required, of the consignor will cover the specially denatured spirits while in transit.

(c) *Records of reconsignment*. In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment will be annotated ''Reconsignment.''

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.233 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all specially denatured spirits in transit and all specially denatured spirits on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the specially denatured spirits, for a period of 60 days following the date of revocation. Any specially denatured spirits or recovered alcohol not disposed of within the specific 60-day period, is subject to seizure and forfeiture.

§ 20.234 Disposition on permanent discontinuance of use.

(a) *Specially denatured spirits*. Specially denatured spirits on hand at the time of discontinuance of use, may be disposed of by

(1) Returning the specially denatured spirits to a distilled spirits plant or dealer, as provided in § 20.231,

(2) Destruction, as provided in § 20.222, or

(3) Shipped to another user, as provided in § 20.235.

(b) *Recovered denatured alcohol, recovered specially denatured rum, or recovered articles.* Upon permanent discontinuance of use, a permittee may dispose of recovered denatured alcohol, recovered specially denatured rum, or recovered articles by

(1) Shipment to a distilled spirits plant, as provided in § 20.215 for articles and spirits residues,

(2) Destruction, as provided in § 20.222, or

(3) Upon the filing of an application with the appropriate ATF officer, any other approved method.

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

§ 20.235 Disposition to another user.

(a) A user may dispose of specially denatured spirits to another permittee or Government agency.

(b) The user shall prepare a record of shipment in accordance with § 20.171. The packages to be shipped shall bear the name and permit number of the user and the marks and labels required under § 20.178. The user's copy of the record of shipment shall include an explanation of the reason for the disposition.

(c) The appropriate ATF officer may require a user to apply for and obtain a dealer's permit, if shipments under this section are excessive.

(Approved by the Office of Management and Budget under control number 1512–0337)

[T.D ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by ATF–332, 57 FR 40849, Sept. 8, 1992]

Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency

§ 20.241 General.

The United States or any of its Government agencies may withdraw specially denatured spirits from a distilled spirits plant or dealer under this part, as authorized by 26 U.S.C. 5214(a)(2) and 5271. Before any specially denatured spirits may be withdrawn, a permit to procure the spirits shall be obtained as provided in § 20.25. Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure specially denatured spirits.

(26 U.S.C. 5214, 5271, 5272, 5276)

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF–285, 54 FR 12610, Mar. 28, 1989; T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 20.242 Application and permit, Form 5150.33.

(a) 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) A Government agency shall apply for a permit to obtain specially denatured spirits on Form 5150.33. Upon approval, Form 5150.33 will be returned to the Government agency, and will serve as authority to procure specially denatured spirits.

(c) A Government agency may specify on its application for a permit to procure specially denatured spirits, Form 5150.33, that it desires a single permit authorizing all sub-agencies under its control to procure specially denatured spirits; or each Government location (agency, department, bureau, etc.) desiring to procure specially denatured spirits may individually submit an application for a permit on Form 5150.33.

(d) An 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 for the head of the agency or sub-agency shall be furnished with the application.

(e) Specially denatured spirits obtained by Government agencies may not be used for non-Government purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.243 Procurement of specially denatured spirits.

Government agencies shall retain the original permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for specially denatured spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit will contain an attachment listing all other locations authorized to procure specially denatured spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 20.244 Receipt of shipment.

On receipt of a shipment of specially denatured spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the appropriate ATF officer from which the shipment was consigned.

§ 20.245 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use specially denatured spirits, the permit shall be returned to the appropriate ATF officer for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 20.246 Disposition of specially denatured spirits on discontinuance of use.

At the time of discontinuance of use of specially denatured spirits, a Government agency may dispose of any excess specially denatured spirits (a) to another Government agency holding a permit, (b) by returning the specially denatured spirits to a vendor, or (c) in any manner authorized by the appropriate ATF officer. Specially denatured spirits may not be disposed of to the general public.

Subpart O—Samples of Specially Denatured Spirits

§ 20.251 General.

(a) Applicants and prospective applicants for permits to use specially denatured spirits may obtain samples of specially denatured spirits for experimental purposes or for preparing samples of finished articles as required by § 20.92. Samples of specially denatured spirits may only be obtained from distilled spirits plants or dealers.

(b) Samples not larger than five gallons per calendar year may be obtained without a permit. Dealers shall maintain records to ensure that samples of specially denatured spirits dispensed to nonpermittee do not exceed five gallons per calendar year.

(c) Samples larger than five gallons per calendar year may be obtained without a permit as described in § 20.252.

(d) Samples of specially denatured spirits shall not be used to manufacture articles for commercial sale.

(Approved by the Office of Management and Budget under control number 1512–0337)

[T.D. ATF–199, 50 FR 9162, Mar. 6, 1985; 50 FR 20099, May 14, 1985, as amended by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 20.252 Samples larger than five gallons.

(a) *General.* The appropriate ATF officer may waive the requirement to obtain a permit under subpart D of this part if a nonpermittee can demonstrate that more than five gallons is necessary to determine if an Industrial Use Permit is desired.

(b) *Application.* A nonpermittee who wishes to obtain more than five galllons of specially denatured spirits to determine if an Industrial Use Permit is desired, shall file a letterhead application with the appropriate ATF officer in which the nonpermittee's premises are located. The letter shall describe why the requested quantity is necessary.

(c) *Approval.* If the letterhead application is approved, the nonpermittee shall submit it to the proprietor of a distilled spirits plant or a dealer with

the order for the sample of specially denatured spirits.

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

§ 20.253 Labels for samples.

When a sample of specially denatured spirits is withdrawn from a dealer's premises, that dealer shall attach a label to the sample which shows the following information:

(a) The word ''Sample'';

(b) The dealer's name, address, and permit number;

(c) The words ''Specially Denatured Alcohol'' or ''Specially Denatured Rum'';

(d) The quantity; and

(e) The formula number.

Subpart P—Records and Reports

§ 20.261 Records of completely denatured alcohol.

When requested by the appropriate ATF officer, any person who receives, packages, stores, disposes of, or uses completely denatured alcohol shall keep records of all transactions in completely denatured alcohol which will enable appropriate ATF officers to verify and trace receipt, packaging, storage, usage, and disposal of the spirits, and to determine whether there has been compliance with law and regulations. However, on sales in quantities of less than 5 gallons, only the total quantity disposed of daily need be recorded.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.262 Dealer's records of specially denatured spirits.

(a) Each dealer shall maintain separate records of each formula of new specially denatured spirits—

(1) Received, as required by § 20.163,

(2) Packaged, as required by § 20.180,

(3) Destroyed, as required by § 20.222,

(4) Lost, as required by §§ 20.202–20.204, and

(5) Transferred to another permittee or a distilled spirits plant, as required by §§ 20.171, 20.216, and 20.231.

(b) Each dealer shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(5) of this section.

(c) Once in each calendar year, and when requested by an appropriate ATF officer, each dealer shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the dealer shall submit the accounting required by paragraph (c) of this section to the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.263 User's records of specially denatured spirits.

(a) Each user shall maintain separate records of each formula of new specially denatured spirits—

(1) Received, as required by §20.163,

(2) Recovered, as required by § 20.212,

(3) Used, as required by § 20.192,

(4) Destroyed, as required by § 20.222,

(5) Lost, as required by §§ 20.202–20.203, and

(6) Transferred to another permittee or a distilled spirits plant, as required by §§ 20.216, 20.231, and 20.235.

(b) Each user shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(6) of this section.

(c) Once in each calendar year, and when requested by an appropriate ATF officer, each user shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the user shall submit the accounting required by paragraph (c) of this section to the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.264 User's records and report of products and processes.

(a) *Records.* (1) Each user shall maintain separate accountings of—

(i) The number of gallons of each formula of new specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(ii) The number of gallons of each formula of recovered specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(2) Each user who recovers specially denatured spirits shall maintain separate accountings of the number of gallons of each formula of specially denatured spirits recovered from each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(3) Product or process code numbers are shown on approved formula and statement of process forms. For an article made in accordance with a general-use formula, the user will refer to § 21.141 of this chapter and record the applicable product or process code number.

(b) *Report.* Each user shall submit an annual report, Form 5150.18, for the period from July 1 through June 30, summarized from the records required by this section. The report shall be filed no later than July 15 following the end of the accounting period.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.265 Retention of invoices.

(a) Any person required to keep records under this part shall retain copies of invoices which will enable appropriate ATF officers to readily obtain the details regarding:

(1) Purchases of all essential oils, chemicals, and other materials used in manufacturing articles, including the name and address of the vendor, and the quantity;

(2) Purchases of articles containing specially denatured spirits for reprocessing, or purchases of those articles for bottling, repackaging, and/or resale, including the name and address of the vendor and the quantity; and

(3) Dispositions of all articles manufactured or received, including in each case the name and address of the person to whom sold or otherwise disposed of.

(b) The appropriate ATF officer may, on application filed by the permittee, waive the requirements for retaining invoices if the quantity sold to any person during a calendar month does not exceed 25 gallons, and if a waiver will not hinder the effective administration of this part and will not pose a jeopardy to the revenue.

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

§ 20.266 Time for making entries in records.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same day on which the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 20.267 Filing and retaining records.

Any person who is required to maintain records of operations under this part shall file and retain records and copies of reports in the following manner:

(a) Keep on file for a period of not less than 3 years after the date of the report covering the operation, in such a way as to allow inspection by ATF officers, all those records of operations, all supporting or supplemental records, and copies of all reports as required by this part. However, the appropriate ATF officer may require that the records and copies of reports be kept for an additional period, not to exceed 3 years.

(b) File all records and copies of reports at the premises where the operations are conducted.

(c) Make the files of records and copies of reports available to ATF officers during regular business hours for examination.

[T.D. ATF– 199, 50 FR 1962, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 20.268 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record,

and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records*. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they will be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, ''original record'' means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

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21.120 Nitropropane, mixed isomers of.
21.121 Phenyl mercuric benzoate.
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21.125 Rubber hydrocarbon solvent.
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21.141 List of products and processes using specially denatured alcohol and rum, and formulas authorized therefor.

Subpart G—Denaturants Authorized for Denatured Spirits

21.151 List of denaturants authorized for denatured spirits.

Subpart H—Weights and Specific Gravities of Specially Denatured Alcohol

21.161 Weights and specific gravities of specially denatured alcohol.

AUTHORITY: 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

SOURCE: T.D. ATF–133, 48 FR 24673, June 2, 1983, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 21 appear by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001.

Subpart A—General Provisions

§ 21.1 Scope of regulations.

The regulations in this part relate to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the specifications for denaturants; and to the uses of denatured spirits.

§ 21.2 Forms prescribed.

(a) *General.* The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 21.3 Stocks of discontinued formulas.

Denaturers, or specially denatured spirits dealers or users, having on hand stocks of denaturants or formulas of specially denatured spirits no longer authorized by this part may—

(a) Continue to supply or use those stocks in accordance with existing permits until the stocks are exhausted;

(b) Use up those stocks in any manufacturing process approved by the appropriate ATF officer, pursuant to an application filed with him on ATF Form 5150.19, Formula for Articles made with Specially Denatured Alcohol and Rum;

(c) On approval of an application, filed with the appropriate ATF officer and approved by such officer, destroy those stocks under whatever supervision the appropriate ATF officer requires; or

(d) Otherwise dispose of those stocks in a manner satisfactory to the appropriate ATF officer, pursuant to approval of an application.

[T.D. ATF–133, 487 FR 24673, June 2, 1983, as amended by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

§ 21.4 Related regulations.

The procedural and substantive requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 19 of this chapter, and those relative to the distribution and use of denatured alcohol and specially denatured rum

are prescribed in Part 20 of this chapter.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183 Mar. 6, 1985]

§ 21.5 Denatured spirits for export.

Spirits may be denatured in accordance with formulas prescribed by the government of a foreign country to which the denatured spirits will be exported. However, the denaturer must first apply for and obtain written permission from the appropriate ATF officer. The application shall be submitted to the appropriate ATF officer and shall contain the following information:

(a) A complete list of ingredients for the spirits to be denatured.

(b) The exact amount of each ingredient to be used in denaturing the spirits.

(c) A copy (accompanied by an English translation as necessary) of the law or regulations of the foreign country to which the denatured spirits will be exported, specifying the denatured spirits formulation prescribed by that country.

§ 21.6 Incorporations by reference.

(a) ''The United States Pharmacopoeia (Twentieth Revision, Official from July, 1980) and the National Formulary (Fifteenth Edition, Official from July 1, 1980)'' published together as ''The USP and NF Compendia,'' are incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register. The publication may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and is available from the United States Pharmacopoeia Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland 20852.

(b) Material from Parts 23, 25, and 29 of the 1980 Annual Book of ASTM Standards is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register. These publications may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(c) Material from the ''Official Methods of Analysis of the Association of Official Analytical Chemists (13th Edition 1980)'' (AOAC) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register. This publication may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and is available from the Association of Official Analytical Chemists, 11 North 19th Street, Suite 210, Arlington, Virginia 22209.

(Pub. L. 89–554, 80 Stat. 383 as amended (5 U.S.C. 552(a)))

§ 21.7 Delegations of the Director.

All of the regulatory authorities of the Director contained Part 21 of the regulations are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22. ATF delegation orders, such as ATF Order 1130.9, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site ((http://www.atf.treas.gov/).

[T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

Subpart B—Definitions

§ 21.11 Meaning of terms.

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

Alcohol. The spirits known as ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. The term does not include such spirits as whisky, brandy, rum, gin, or vodka.

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 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22.

CFR. The Code of Federal Regulations.

C.D.A. Completly denatured alcohol.

Completely denatured alcohol. The spirits known as alcohol, as defined in this section, denatured pursuant to completely denatured alcohol formulas prescribed in subpart C of this part.

Denaturant. A material authorized by this part to be added to spirits in order to make those spirits unfit for beverage or internal human medicinal use.

Denatured spirits. Alcohol or rum to which denaturants have been added as provided in this part.

Director. The Director, Bureau of Alcohol, Tobacco and Fireams, the Department of the Treasury, Washington, DC 20226.

Essential oil. Any of the volatile odoriferous natural oils found in plants, which impart to such plants odor, and often other characteristic properties; also, imitations of such natural oils, as well as aromatic substances, and synthetic oils, which possess the denaturing characteristics of such natural oils.

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

Manufacturer or user. A person who holds a permit, issued under part 20 of this chapter, to withdraw and use specially denatured alcohol or specially denatured rum, or to recover completely or specially denatured alcohol, or specially denatured rum, or articles manufactured with denatured spirits, or a distilled spirits plant proprietor qualified under Part 19 of this chapter as a processor.

N.F. The National Formulary. The lastest edition is intended unless otherwise specified. The designations ''U.S.P.'' and ''N.F.'' are considered interchangeable when preparations are transferred from one publication to the other. (For incorporation by reference, see § 21.6(a).)

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Rum. Any spirits produced from sugar cane products and distilled at less than 190 proof in such manner that the spirits possess the taste, aroma, and characteristics generally attributed to rum.

S.D.A. Specially denatured alcohol.

Specially denatured alcohol. Those spirits known as alcohol, as defined in this section, denatured pursuant to the specially denatured alcohol formulas authorized under subpart D of this part.

Specially denatured rum. Those spirits known as rum, as defined in this section, denatured pursuant to the specially denatured rum formula authorized under subpart D of this part.

Spirits or distilled spirits. Alcohol or rum as defined in this part.

U.S.C. The United States Code.

U.S.P. The United States Pharmacopoeia. The latest edition is intended unless otherwise specified. The designations ''U.S.P.'' and ''N.F.'' are considered interchangeable when preparations are transferred from one publication to the other. (For incorporation by reference, see § 21.6(a).)

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

Subpart C—Completely Denatured Alcohol Formulas

§ 21.21 General.

(a) Alcohol shall be completely denatured only in accordance with formulas prescribed in this subpart (or in accordance with § 21.5).

(b) Denaturers may be authorized to add a small quantity of an odorant, rust inhibitor, or dye to completely denatured alcohol. Any such addition shall be made only on approval by the appropriate ATF officer. Request for such approval shall be submitted to the appropriate ATF officer.

(c) Odorants or perfume materials may be added to denaturants authorized for completely denatured alcohol in amounts not greater than 1 part to 250, by weight. However, such addition shall not decrease the denaturing value nor change the chemical or physical constants beyond the limits of the specifications for these denaturants as

prescribed in subpart E, except as to odor. Proprietors of distilled spirits plants using denaturants to which such odorants or perfume materials have been added shall inform the appropriate ATF officer, in writing, of the names and properties of the odorants or perfume materials so used.

§ 21.22 Formula No. 18.

To every 100 gallons of ethyl alcohol of not less than 160 proof add:

2.50 gallons of either methyl isobutyl ketone, mixed isomers of nitropropane, or methyl *n*- butyl ketone;
0.125 gallon of pyronate or a similar compound;
0.50 gallon acetaldol (beta-hydroxybutyraldehyde); and
1.00 gallon of either kerosene, deodorized kerosene, gasoline, unleaded gasoline, rubber hydrocarbon solvent, or heptane.

§ 21.23 Formula No. 19.

To every 100 gallons of ethyl alcohol of not less than 160 proof add:

4.0 gallons of either methyl isobutyl ketone, mixed isomers of nitropropane, or methyl *n*- butyl ketone; and
1.0 gallon of either kerosene, deodorized kerosene, gasoline, unleaded gasoline, rubber hydrocarbon solvent, or heptane.

§ 21.24 Formula No. 20.

(a) *Formula*. To every 100 gallons of ethyl alcohol of not less than 195 proof add:

A total of 2.0 gallons of either unleaded gasoline, rubber hydrocarbon solvent, kerosene, or deodorized kerosene; or any combination of these.

(b) *Authorized use*. Restricted to fuel use, comparable to specially denatured alcohol ''Use Code No.'' 611, 612, 613, 620, and 630.

Subpart D—Specially Denatured Spirits Formulas and Authorized Uses

§ 21.31 General.

(a) *Formulas for specially denatured spirits*. Alcohol and rum shall be specially denatured only in accordance with formulas prescribed in this subpart (or in accordance with § 21.5).

(b) *Proof of spirits for denaturation*. Alcohol of not less than 185 proof shall be used in the manufacture of all formulas of specially denatured alcohol, unless otherwise specifically stated or unless otherwise authorized by the appropriate ATF officer. Rum for denaturation shall be of not less than 150 proof and may be denatured only in accordance with Formula No. 4.

(c) *Use of Denatured Spirits*. Users and manufacturers holding approved Forms 5150.19 (formerly 1479–A) covering use in processes or manufacture of products no longer authorized for a particular formula may continue that use. Pursuant to written application and subject to the provisions of 26 U.S.C. Chapter 51, Part 20 of this chapter, and this part, the appropriate ATF officer, may authorize the use of any formula of specially denatured alcohol or specially denatured rum for uses not specifically authorized in this part. The code number before each item under ''authorized uses'' shall be used in reporting the use of specially denatured alcohol or specially denatured rum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985]

§ 21.32 Formula No. 1.

(a) *Formula*. To every 100 gallons of alcohol add:

Four gallons of methyl alcohol and either ⅛ avoirdupois ounce of denatonium benzoate, N.F.; 1 gallon of methyl isobutyl ketone; 1 gallon of mixed isomers of nitropropane; or 1 gallon of methyl *n*- butyl ketone.

(b) *Authorized uses*. (1) As a solvent:

011. Cellulose coatings.
012. Synthetic resin coatings.
013. Shellac coatings.
014. Other natural resin coatings.
016. Other coatings.
021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
032. Transparent sheeting.
033. Explosives.
034. Cellulose intermediates and industrial collodions.
035. Soldering flux.
036. Adhesives and binders.
041. Proprietary solvents.
042. Solvents and thinners (other than proprietary solvents or special industrial solvents).
043. Solvents, special (restricted sale).
051. Polishes.
052. Inks (not including meat branding inks).

053. Stains (wood, etc.).
141. Shampoos.
142. Soap and bath preparations.
311. Cellulose compounds (dehydration).
312. Sodium hydrosulfite (dehydration).
315. Other dehydration products.
320. Petroleum products.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
351. Processing dyes and intermediates.
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
354. Processing rosin.
355. Processing rubber (latex).
358. Processing other chemicals.
359. Processing miscellaneous products.
410. Disinfectants, insecticides, fungicides, and other biocides.
420. Embalming fluids and related products.
430. Sterilizing and preserving solutions.
440. Industrial detergents and soaps.
450. Cleaning solutions (including household detergents).
481. Photoengraving and rotogravure dyes and solutions.
482. Other dye solutions.
485. Miscellaneous solutions (including duplicating fluids).

(2) As a raw material:

521. Ethyl acetate.
522. Ethyl chloride.
523. Other ethyl esters.
530. Ethylamines.
540. Dyes and intermediates.
551. Acetaldehyde.
552. Other aldehydes.
561. Ethyl ether.
562. Other ethers.
571. Ethylene dibromide.
572. Ethylene gas.
573. Xanthates.
574. Fulminate of mercury and other detonators.
575. Drugs and medicinal chemicals.
579. Other chemicals.

(3) As a fuel:

611. Automobile and supplementary fuels.
612. Airplane and supplementary fuels.
613. Rocket and jet fuels.
620. Proprietary heating fuels.
630. Other fuel uses.

(4) As a fluid:

710. Scientific instruments.
720. Brake fluids.
730. Cutting oil.
740. Refrigerating uses.
750. Other fluid uses.
760. Proprietary anti-freeze.

(5) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).
900. Specialized uses (unclassified).

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.33 Formula No. 2–B.

(a) *Formula.* To every 100 gallons of alcohol add:

One-half gallon of benzene, ½ gallon of rubber hydrocarbon solvent, ½ gallon of toluene, or ½ gallon of heptane.

(b) *Authorized uses.* (1) As a solvent:

021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
032. Transparent sheeting.
033. Explosives.
311. Cellulose compounds (dehydration).
312. Sodium hydrosulfite (dehydration).
315. Other dehydration products.
320. Petroleum products.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
349. Miscellaneous drug processing (including manufacture of pills).
351. Processing dyes and intermediates.
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
358. Processing other chemicals.
359. Processing miscellaneous products.

(2) As a raw material:

521. Ethyl acetate.
522. Ethyl chloride.
523. Other ethyl esters.
524. Sodium ethylate, anhydrous.
530. Ethylamines.
540. Dyes and intermediates.
551. Acetaldehyde.
552. Other aldehydes.
561. Ethyl ether.
562. Other ethers.
571. Ethylene dibromide.
572. Ethylene gas.
573. Xanthates.
575. Drugs and medicinal chemicals.
576. Organo-silicone products.

579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. This formula shall be used in a closed and continuous system unless otherwise authorized by the appropriate ATF officer.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.34 Formula No. 2–C.

(a) *Formula*. To every 100 gallons of alcohol add:

Thirty-three pounds or more of metallic sodium and either ½ gallon of benzene, ½ gallon of toluene, or ½ gallon of rubber hydrocarbon solvent.

(b) *Authorized uses*. (1) As a solvent:

344. Processing medicinal chemicals (including alkaloids).
358. Processing other chemicals.
359. Processing miscellaneous products.

(2) As a raw material:

523. Miscellaneous ethyl esters.
530. Ethylamines.
540. Dyes and intermediates.
575. Drugs and medicinal chemicals.
579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. This formula shall be used in a closed and continuous system unless otherwise authorized by the appropriate ATF officer.

§ 21.35 Formula No. 3–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Five gallons of methyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

011. Cellulose coatings.
012. Synthetic resin coatings.
016. Other coatings.
021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
032. Transparent sheeting.
033. Explosives.
034. Cellulose intermediates and industrial collodions.
035. Soldering flux.
036. Adhesives and binders.
041. Proprietary solvents.
043. Solvents, special (restricted sale).
051. Polishes.
052. Inks (including meat branding inks).
053. Stains (wood, etc.).
141. Shampoos.
142. Soap and bath preparations.
311. Cellulose compounds (dehydration).
312. Sodium hydrosulfite (dehydration).
315. Other dehydration products.
320. Petroleum products.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
351. Processing dyes and intermediates.
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
354. Processing rosin.
355. Processing rubber (latex).
358. Processing other chemicals.
359. Processing miscellaneous products.
410. Disinfectants, insecticides, fungicides, and other biocides.
420. Embalming fluids and related products.
430. Sterilizing and preserving solutions.
440. Industrial detergents and soaps.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.
481. Photoengraving and rotogravure dyes and solutions.
482. Other dye solutions.
485. Miscellaneous solutions (including duplicating fluids).

(2) As a raw material:

530. Ethylamines.
540. Dyes and intermediates.
575. Drugs and medicinal chemicals.
576. Organo-silicone products.
579. Other chemicals.
590. Synthetic resins.

(3) As a fuel:

611. Automobile and supplementary fuels.
612. Airplane and supplementary fuels.
613. Rocket and jet fuels.
620. Proprietary heating fuels.
630. Other fuel uses.

(4) As a fluid:

710. Scientific instruments.
720. Brake fluids.
730. Cutting oils.

740. Refrigerating uses.
750. Other fluid uses.

(5) Miscellaneous uses:

810. General laboratory and experimental use (own use only).
811. Laboratory reagents for sale.
812. Product development and pilot plant uses (own use only).
900. Specialized uses (unclassified).

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985]

§ 21.36 Formula No. 3–B.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of pine tar, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
141. Shampoos.
142. Soap and bath preparations.
410. Disinfectants, insecticides, fungicides, and other biocides.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.37 Formula No. 3–C.

(a) *Formula*. To every 100 gallons of alcohol add:

Five gallons of isopropyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

011. Cellulose coatings.
012. Synthetic resin coatings.
016. Other coatings.
021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
032. Transparent sheeting.
033. Explosives.
034. Cellulose intermediates and industrial collodions.
035. Soldering flux.
036. Adhesives and binders.
043. Solvents, special (restricted sale).
051. Polishes.
052. Inks (including meat branding inks).
053. Stains (wood, etc.).
141. Shampoos.
142. Soaps and bath preparations.
311. Cellulose compounds (dehydration).
312. Sodium hydrosulfite (dehydration).
315. Other dehydration products.
320. Petroleum products.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
351. Processing dyes and intermediates.
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
354. Processing rosin.
355. Processing rubber (latex).
358. Processing other chemicals.
359. Processing miscellaneous products.
410. Disinfectants, insecticides, fungicides, and other biocides.
420. Embalming fluids and related products.
430. Sterilizing and preserving solutions.
440. Industrial detergents and soaps.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.
481. Photoengraving and rotogravure dyes and solutions.
482. Other dye solutions.
485. Miscellaneous solutions (including duplicating fluids).

(2) As a raw material:

530. Ethylamines.
540. Dyes and intermediates.
575. Drugs and medicinal chemicals.
576. Organo-silicone products.
579. Other chemicals.
590. Synthetic resins.

(3) As a fuel:

611. Automobile and supplementary fuels.
612. Airplane and supplementary fuels.
613. Rocket and jet fuels.
620. Proprietary heating fuels.
630. Other fuel uses.

(4) As a fluid:

710. Scientific instruments.
720. Brake fluids.
730. Cutting oils.
740. Refrigerating uses.
750. Other fluid uses.

(5) Miscellaneous uses:

810. General laboratory and experimental use (own use only).
811. Laboratory reagents for sale.
812. Product development and pilot plant uses (own use only).
900. Specialized uses (unclassified).

(c) *Conditions governing use*. This formula shall not be used in manufacturing Reagent alcohol general-use formula under § 20.117 of this chapter.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985]

§ 21.38 Formula No. 4.

(a) *Formula*. To every 100 gallons of alcohol, or to every 100 gallons of rum of not less than 150 proof, add:

One gallon of the following solution: Five gallons of an aqueous solution containing 40 percent nicotine; 3.6 avoirdupois ounces of methylene blue, U.S.P.; and water sufficient to make 100 gallons.

(b) *Authorized uses*. (1) As a solvent:

460. Tobacco sprays and flavors.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.39 Formula No. 6–B.

(a) *Formula*. To every 100 gallons of alcohol add:

One-half gallon of pyridine bases.

(b) *Authorized uses*. (1) As a raw material:

523. Miscellaneous ethyl esters.
574. Fulminate of mercury and other detonators.
575. Drugs and medicinal chemicals.
579. Other chemicals.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.40 Formula No. 12–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Five gallons of benzene, or 5 gallons of toluene.

(b) *Authorized uses*. (1) as a solvent:

021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
036. Adhesives and binders.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
351. Processing dyes and intermediates.
352. Processing perfume materials and fixatives.
354. Processing rosin.
358. Processing other chemicals.
359. Processing miscellaneous products.
430. Sterilizing and preserving solutions.

(2) As a raw material:

523. Miscellaneous ethyl esters.
530. Ethylamines.
540. Dyes and intermediates.
575. Drugs and medicinal chemicals.
579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.41 Formula No. 13–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Ten gallons of ethyl ether.

(b) *Authorized uses*. (1) As a solvent:

015. Candy glazes.
021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
032. Transparent sheeting.
034. Cellulose intermediates and industrial collodions.
052. Inks (not including meat branding inks).
241. Collodion, U.S.P.
331. Processing pectin.
332. Processing other food products.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
358. Processing other chemicals.
359. Processing miscellaneous products.
430. Sterilizing and preserving solutions.
481. Photoengraving and rotogravure solutions and dyes.

(2) As a raw material:

523. Miscellaneous ethyl esters.
561. Ethyl ether.
562. Other ethers.
575. Drugs and medicinal chemicals.
579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.42 Formula No. 17.

(a) *Formula*. To every 100 gallons of alcohol add:

Five-hundredths (0.05) gallon (6.4 fluid ounces) of bone oil (Dipple's oil).

(b) *Authorized uses*. (1) As a solvent:

344. Processing medicinal chemicals (including alkaloids).
358. Processing other chemicals.
359. Processing miscellaneous products.

(2) As a raw material:

575. Drugs and medicinal chemicals.
579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.43 Formula No. 18.

(a) *Formula*. To every 100 gallons of alcohol of not less than 160 proof add:

One hundred gallons of vinegar of not less than 90-grain strength or 150 gallons of vinegar of not less than 60-grain strength.

(b) *Authorized uses*. (1) As a raw material:

511. Vinegar.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.44 Formula No. 19.

(a) *Formula*. To every 100 gallons of alcohol add:

One hundred gallons of ethyl ether.

(b) *Authorized uses*. (1) As a solvent:

031. Photographic film and emulsions.
034. Cellulose intermediates and industrial collodions.
241. Collodion, U.S.P.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.45 Formula No. 20.

(a) *Formula*. To every 100 gallons of alcohol add:

Five gallons of chloroform.

(b) *Authorized uses*. (1) As a raw material:

579. Miscellaneous chemicals (chloroform).

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.46 Formula No. 22.

(a) *Formula*. To every 100 gallons of alcohol add:

Ten gallons of formaldehyde solution, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

420. Embalming fluids and related products.
430. Sterilizing and preserving solutions.
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.47 Formula No. 23–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Eight gallons of acetone, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

011. Cellulose coatings.
012. Synthetic resin coatings.
013. Shellac coatings.
014. Other natural resin coatings.
015. Candy glazes.
016. Other coatings.
032. Transparent sheeting.
034. Cellulose intermediates and industrial collodions.
035. Soldering flux.
036. Adhesives and binders.
042. Solvents and thinners (other than proprietary solvents or special industrial solvents).
052. Inks (including meat branding inks).
053. Stains (wood, etc.).
111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Body deodorants and deodorant creams.
141. Shampoos.
142. Soaps and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
244. Antiseptic solutions, U.S.P. or N.F.
249. Miscellaneous external pharmaceuticals, U.S.P. or N.F.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
358. Processing other chemicals.
359. Processing miscellaneous products.
410. Disinfectants, insecticides, fungicides, and other biocides.
420. Embalming fluids and related products.
430. Sterilizing and preserving solutions.
440. Industrial detergents and soaps.

450. Cleaning solutions (including household detergents).
482. Miscellaneous dye solutions.
485. Miscellaneous solutions.

(2) As a fluid:

740. Refrigerating uses.
750. Miscellaneous fluid uses.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.48 Formula No. 23–F.

(a) *Formula*. To every 100 gallons of alcohol add:

Three pounds of salicylic acid, U.S.P., 1 pound of resorcinol (resorcin), U.S.P., and 1 gallon of bergamot oil, N.F. XI, or bay oil (myrcia oil), N.F. XI.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
210. External pharmaceuticals, not U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.49 Formula No. 23–H.

(a) *Formula*. To every 100 gallons of alcohol add:

Eight gallons of acetone, U.S.P., and 1.5 gallons of methyl isobutyl ketone.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
113. Lotions and creams (hand, face, and body).
210. External pharmaceuticals, not U.S.P. or N.F.
220. Rubbing alcohols.
410. Disinfectants, insectides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.50 Formula No. 25.

(a) *Formula*. To every 100 gallons of alcohol add:

Twenty pounds of iodine, U.S.P., and 15 pounds of either potassium iodide, U.S.P., or sodium iodide, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

230. Tinctures of iodine.
249. Miscellaneous external pharmaceuticals, U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.51 Formula No. 25–A.

(a) *Formula*. To every 100 gallons of alcohol add:

A solution composed of 20 pounds of iodine, U.S.P.; 15 pounds of either potassium iodide, U.S.P., or sodium iodide, U.S.P.; and 15 pounds of water.

(b) *Authorized uses*. (1) As a solvent:

230. Tinctures of iodine.
249. Miscellaneous external pharmaceuticals, U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.52 Formula No. 27.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of rosemary oil, N.F. XII, and 30 pounds of camphor, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

210. External pharmaceuticals, not U.S.P. or N.F.
243. Liniments, U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.53 Formula No. 27–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Thirty-five pounds of camphor, U.S.P., and 1 gallon of clove oil, N.F.

(b) *Authorized uses*. (1) As a solvent:

210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.54 Formula No. 27–B.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of lavender oil, N.F., and 100 pounds of green soap, U.S.P.

NOTE. The requirements of this formula may be met by adding 1 gallon of lavender oil, N.F., and 66.5 pounds of U.S.P. quality soap concentrate containing 25 percent water to 100 gallons of alcohol and, after mixing, by adding thereto 33.5 pounds of water and again mixing.

(b) *Authorized uses*. (1) As a solvent:

141. Shampoos.
210. External pharmaceuticals, not U.S.P. or N.F.
243. Liniments, U.S.P. or N.F.
410. Disinfectants insecticides, fungicides, and other biocides.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.55 Formula No. 28–A.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon or any combination totaling 1 gallon of either gasoline, unleaded gasoline, heptane, or rubber hydrocarbon solvent.

(b) *Authorized uses*. (1) As a fuel:

611. Automobile and supplementary fuels.
612. Airplane and supplementary fuels.
613. Rocket and jet fuels.
620. Proprietary heating fuels.
630. Other fuel uses.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.56 Formula No. 29.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of 100 percent acetaldehyde or 5 gallons of an alcohol solution of acetaldehyde containing not less than 20 percent acetaldehyde, or 1 gallon of ethyl acetate having an ester content of 100 percent, or, where approved by the appropriate ATF officer, as to material and quantity, not less than 6.8 pounds if solid, or 1 gallon if liquid, of any chemical. When material other than acetaldehyde or ethyl acetate is proposed to be used, the user shall submit an application for such use to the appropriate ATF officer. The application shall include specifications, assay methods, and an 8-ounce sample of the substitute material for analysis.

(b) *Authorized uses*. (1) As a raw material:

511. Vinegar.
512. Acetic acid.
521. Ethyl acetate.
522. Ethyl chloride.
523. Other ethyl esters.
530. Ethylamines.
540. Dyes and intermediates.
551. Acetaldehyde.
552. Other aldehydes.
561. Ethyl ether.
562. Other ethers.
571. Ethylene dibromide.
572. Ethylene gas.
573. Xanthates.
575. Drugs and medicinal chemicals.
579. Other chemicals.
580. Synthetic rubber.
590. Synthetic resins.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. This formula is restricted to processes in which the alcohol loses its identity by being converted into other chemicals.

§ 21.57 Formula No. 30.

(a) *Formula*. To every 100 gallons of alcohol add:

Ten gallons of methyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

011. Cellulose coatings.
012. Synthetic resin coatings.
021. Cellulose plastics.
022. Non-cellulose plastics, including resins.
031. Photographic film and emulsions.
035. Soldering flux.
036. Adhesives and binders.
042. Solvents and thinners (other than proprietary solvents or special industrial solvents).
051. Polishes.
052. Inks (not including meat branding inks).
053. Stains.
142. Soap and bath preparations.
331. Processing pectin.
332. Processing other food products.
341. Processing crude drugs.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
345. Processing blood and blood products.
349. Miscellaneous drug processing (including manufacture of pills).
352. Processing perfume materials and fixatives.
353. Processing photographic chemicals.
358. Processing other chemicals.
359. Processing miscellaneous products.
410. Disinfectants, insecticides, fungicides, and other biocides.
430. Sterilizing and preserving solutions.
440. Industrial detergents and soaps.

450. Cleaning solutions (including household detergents).
481. Photoengraving and rotogravure solutions and dyes.
482. Other dye solutions.
485. Miscellaneous solutions (including duplicating fluids).

(2) As a raw material:

575. Drugs and medicinal chemicals.
576. Organo-silicone products.
579. Other chemicals.
590. Synthetic resins.

(3) As a fluid in:

740. Refrigerating uses.
750. Other fluid uses:

(4) Miscellaneous uses:

810. General laboratory and experimental use (own use only).
811. Laboratory reagents for sale.
812. Product development and pilot plant uses (own use only).

§21.58 Formula No. 31–A.

(a) *Formula*. To every 100 gallons of alcohol add:

One hundred pounds of glycerin (glycerol), U.S.P., and 20 pounds of hard soap, N.F. XI.

(b) *Authorized uses*. (1) As a solvent:

113. Lotions and creams (hands, face, and body).
131. Tooth paste and tooth powder.
141. Shampoos.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§21.59 Formula No. 32.

(a) *Formula*. To every 100 gallons of alcohol add:

Five gallons of ethyl ether.

(b) *Authorized uses*. (1) As a solvent:

031. Photographic film and emulsions.
034. Cellulose intermediates and industrial collodions.
052. Inks (not including meat branding inks).
241. Collodion, U.S.P.
311. Ethyl cellulose compounds (dehydration).
332. Processing miscellaneous food products.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
430. Sterilizing and preserving solutions.
481. Photoengraving and rotogravure solutions and dyes.

(2) As a raw material:

522. Ethyl chloride.
523. Other ethyl esters.
561. Ethyl ether.
562. Other ethers.
571. Ethylene dibromide.
572. Ethylene gas.
575. Drugs and medicinal chemicals.
579. Other chemicals.
580. Synthetic rubber.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§21.60 Formula No. 33.

(a) *Formula*. To every 100 gallons of alcohol add:

Thirty pounds of gentian violet or gentian violet, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

052. Inks (not including meat branding inks).
210. External pharmaceuticals, not U.S.P. or N.F.
249. Miscellaneous external pharmaceuticals, U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. Meat branding inks made with Formula No. 33 do not meet U.S. Department of Agriculture meat inspection specifications for use in Federally inspected establishments. Specially denatured alcohol Formulas No. 3–A, 3–C, and 23–A are authorized for this purpose.

§21.61 Formula No. 35.

(a) *Formula*. To every 100 gallons of alcohol add:

29.75 gallons of ethyl acetate having an ester content of 100 percent by weight or the equivalent thereof not to exceed 35 gallons of ethyl acetate with an ester content of not less than 85 percent by weight.

(b) *Authorized uses*. (1) As a solvent:

015. Candy glazes.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.62 Formula No. 35–A.

(a) *Formula.* To every 100 gallons of alcohol add:

4.25 gallons of ethyl acetate having an ester content of 100 percent by weight or the equivalent thereof not to exceed 5 gallons of ethyl acetate with an ester content of not less than 85 percent by weight.

(b) *Authorized uses.* (1) As a solvent:

015. Candy glazes.
331. Processing pectin.
332. Processing other food products.
342. Processing glandular products, vitamins, hormones, and yeasts.
343. Processing antibiotics and vaccines.
344. Processing medicinal chemicals (including alkaloids).
349. Miscellaneous drug processing (including manufacture of pills).
358. Processing miscellaneous chemicals.
359. Processing miscellaneous products.

(2) As a raw material:

511. Vinegar.
512. Acetic acid.
521. Ethyl acetate.
523. Other ethyl esters.
590. Synthetic resins.
910. Animal feed supplements.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.63 Formula No. 36.

(a) *Formula.* To every 100 gallons of alcohol add:

Three gallons of ammonia, aqueous, 27 to 30 percent by weight; 3 gallons of strong ammonia solution, N.F.: 17.5 pounds of caustic soda, liquid grade, containing 50 percent sodium hydroxide by weight; or 12.0 pounds of caustic soda, liquid grade, containing 73 percent sodium hydroxide by weight.

(b) *Authorized uses.* (1) As a solvent:

141. Shampoos.
142. Soap and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
450. Cleaning solutions (including household detergents).

(2) As a raw material:

530. Ethylamines.
540. Dyes and intermediates.
579. Other chemicals.

(3) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.64 Formula No. 37.

(a) *Formula.* To every 100 gallons of alcohol add:

Forty-five fluid onces of eucalyptol, N.F. XII, 30 avoirdupois ounces of thymol, N.F., and 20 avoirdupois ounces of menthol, U.S.P.

(b) *Authorized uses.* (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
131. Dentifrices.
132. Mouth washes.
210. External pharmaceuticals, not U.S.P. or N.F.
244. Antispetic solutions, U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
430. Sterilizing and preserving solutions.
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.65 Formula No. 38–B.

(a) *Formula.* To every 100 gallons of alcohol add:

Ten pounds of any one, or a total of 10 pounds of two or more, of the oils and substances listed below:

Alpha terpineol
Anethole, N.F.
Anise oil, N.F.
Bay oil (myrcia oil), N.F. XI.
Benzaldehyde, N.F.
Bergamot oil, N.F. XI.
Bitter almond oil, N.F. X.
Camphor, U.S.P.
Cedar leaf oil, U.S.P. XIII.
Chlorothymol, N.F. XII.
Cinnamic aldehyde, N.F. IX.
Cinnamon oil, N.F.
Citronella oil, natural.
Clove oil, N.F.
Coal tar, U.S.P.
Eucalyptol, N.F. XII.
Eucalyptus oil, N.F.
Eugenol, U.S.P.
Guaiacol, N.F. X.
Lavender oil, N.F.
Menthol, U.S.P.
Methyl salicylate, N.F.
Mustard oil, volatile (allyl isothiocyanate), U.S.P. XII.
Peppermint oil, N.F.
Phenol, U.S.P.
Phenyl salicylate (salol), N.F. XI.
Pine oil, N.F. XII.
Pine needle oil, dwarf, N.F.
Rosemary oil, N.F. XII.

Safrole.
Sassafras oil, N.F. XI.
Spearmint oil, N.F.
Spearmint oil, terpeneless.
Spike lavender oil, natural.
Storax, U.S.P.
Thyme oil, N.F. XII.
Thymol, N.F.
Tolu balsam, U.S.P.
Turpentine oil, N.F. XI.

If it is shown that none of the above single denaturants or combinations can be used in the manufacture of a particular product, the user may submit an application to the appropriate ATF officer, requesting permission to use another essential oil or substance having denaturing properties satisfactory to the appropriate ATF officer. In such a case the user shall furnish the appropriate ATF officer, with specifications, assay methods, the name and address of the manufacturer, and an 8-ounce sample of the denaturant for analysis.

(b) *Authorized uses.* (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
131. Dentifrices.
132. Mouth washes.
141. Shampoos.
142. Soap and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
243. Liniments, U.S.P. or N.F.
244. Antiseptic solutions, U.S.P. or N.F.
249. Miscellaneous external pharmaceuticals, U.S.P. or N.F.
349. Miscellaneous drug processing (including manufacture of pills).
410. Disinfectants, insecticides, fungicides, and other biocides.
430. Sterlizing and preserving solutions.
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§21.66 Formula No. 38–C.

(a) *Formula.* To every 100 gallons of alcohol add:

Ten pounds of menthol, U.S.P., and 1.25 gallons of formaldehyde solution, U.S.P.

(b) *Authorized uses.* (1) As a solvent:

131. Dentifrices.
132. Mouth washes.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§21.67 Formula No. 38–D.

(a) *Formula.* To every 100 gallons of alcohol add:

Two and one-half pounds of menthol, U.S.P., and 2.5 gallons of formaldehyde solution, U.S.P.

(b) *Authorized uses.* (1) As a solvent:

131. Dentifrices.
132. Mouth washes.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§21.68 Formula No. 38–F.

(a) *Formula.* To every 100 gallons of alcohol add:

(1) Six pounds of either boric acid, N.F., or Polysorbate 80, N.F.; 1⅓ pounds of thymol, N.F.; 1⅓ pounds of chlorothymol, N.F. XII; and 1⅓ pounds of menthol, U.S.P.; or

(2) A total of at least 3 pounds of any two or more denaturing materials listed under Formula No. 38–B, plus sufficient boric acid, N.F., or Polysorbate 80, N.F., to total 10 pounds of denaturant; or

(3) Seven pounds of zinc chloride, U.S.P., 2.6 fluid ounces of hydrochloric acid, N.F., and a total of 3 pounds of any two or more of the denaturing materials listed under Formula No. 38–B.

(b) *Authorized uses.* (1) As a solvent:

132. Mouth washes.
210. External pharmaceuticals, not U.S.P. or N.F.
244. Antiseptic solutions, U.S.P. or N.F.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§21.69 Formula No. 39.

(a) *Formula.* To every 100 gallons of alcohol add:

Nine pounds of sodium salicylate, U.S.P., or salicylic acid, U.S.P.; 1.25 gallons of fluid extract of quassia, N.F. VII; and ⅛ gallon of *tert*-butyl alcohol.

(b) *Authorized uses.* (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.

113. Lotions and creams (hand, face, and body).
121. Perfume and perfume tinctures.
122. Toilet waters and colognes.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.70 Formula No. 39–A.

(a) *Formula*. To every 100 gallons of alcohol add:

Sixty avoirdupois ounces of any one of the following alkaloids or salts together with ⅛ gallon of *tert*- butyl alcohol:

Quinine, N.F. X.
Quinine bisulfate, N.F. XI.
Quinine dihydrochloride, N.F. XI.
Cinchonidine.
Cinchonidine sulfate, N.F. IX.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
122. Toilet waters and colognes.
141. Shampoos.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.71 Formula No. 39–B.

(a) *Formula*. To every 100 gallons of alcohol add:

Two and one-half gallons of diethyl phthalate and ⅛ gallon of *tert*- butyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
141. Shampoos.
142. Soap and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.72 Formula No. 39–C.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of diethyl phthalate.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
142. Soaps and bath preparations.
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.73 Formula No. 39–D.

(a) *Formula*. To every 100 gallons of alcohol add:

One gallon of bay oil (myrcia oil), N.F. XI, and either 50 avoirdupois ounces of quinine sulfate, U.S.P., 50 avoirdupois ounces of sodium salicylate, U.S.P.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.74 Formula No. 40.

(a) *Formula*. To every 100 gallons of alcohol add ⅛ gallon of *tert*-butyl alcohol, and:

One and one-half avoirdupois ounces of either (1) brucine alkaloid, (2) brucine sulfate, N.F. IX, (3) quassin, or (4) any combination of two or of three of those denaturants.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
141. Shampoos.
142. Soaps and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.75 Formula No. 40–A.

(a) *Formula*. To every 100 gallons of alcohol add:

One pound of sucrose octaacetate and ⅛ gallon of *tert*-butyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
141. Shampoos.
142. Soaps and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.76 Formula No. 40–B.

(a) *Formula*. To every 100 gallons of alcohol add:

One-sixteenth avoirdupois ounce of denatonium benzoate, N.F., and ⅛ gallon of *tert*-butyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
141. Shampoos.
142. Soaps and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

21.77 Formula No. 40–C.

(a) *Formula*. To every 100 gallons of alcohol add:

Three gallons of *tert*-butyl alcohol.

(b) *Authorized uses*. (1) As a solvent:

111. Hair and scalp preparations.
112. Bay rum.
113. Lotions and creams (hand, face, and body).
114. Deodorants (body).
121. Perfumes and perfume tinctures.
122. Toilet waters and colognes.
141. Shampoos.
142. Soaps and bath preparations.
210. External pharmaceuticals, not U.S.P. or N.F.
410. Disinfectants, insecticides, fungicides, and other biocides.
450. Cleaning solutions (including household detergents).
470. Theater sprays, incense, and room deodorants.
485. Miscellaneous solutions.

(2) Miscellaneous uses.

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. This formula shall be used only in the manufacture of products which will be packaged in pressurized containers in which the liquid contents are in intimate contact with the propellant and from which the contents are not easily removable in liquid form.

§ 21.78 Formula No. 42.

(a) *Formula*. To every 100 gallons of alcohol add:

(1) Eighty grams of potassium iodide, U.S.P., and 109 grams of red mercuric iodide, N.F. XI; or

(2) Ninety-five grams of thimerosal, U.S.P.; or

(3) Seventy-six grams of any of the following: phenyl mercuric nitrate, N.F.; phenyl mercuric chloride, N.F. IX; or phenyl mercuric benzoate.

(b) *Authorized uses*. (1) As a solvent:

430. Sterilizing and preserving solutions.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.79 Formula No. 44.

(a) *Formula*. To every 100 gallons of alcohol add:

Ten gallons of *n*-butyl alcohol

(b) *Authorized uses*. (1) As a solvent:

430. Sterilizing and preserving solutions.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

§ 21.80 Formula No. 45.

(a) *Formula*. To every 100 gallons of alcohol add:

Three hundred pounds of refined white or orange shellac.

(b) *Authorized uses*. (1) As a solvent:

015. Candy glazes.

(2) Miscellaneous uses:

812 Product development and pilot plant uses (own use only).

§ 21.81 Formula No. 46.

(a) *Formula*. To every 100 gallons of alcohol add:

Twenty-five fluid ounces of phenol, U.S.P., and 4 fluid ounces of methyl salicylate, N.F.

(b) *Authorized uses*. (1) As a solvent:

220. An antiseptic, sterilizing, and bathing solution having restricted use.

(2) Miscellaneous uses:

812. Product development and pilot plant uses (own use only).

(c) *Conditions governing use*. This formula may be used only by institutions and organizations which are of a semipublic character and engaged in charitable work.

Subpart E—Specifications for Denaturants

§ 21.91 General.

Denaturants prescribed in this part shall comply with the specifications set forth in this subpart. However, in order to meet requirements of national defense or for other valid reasons, the appropriate ATF officer may, pursuant to written application filed by the denaturer, authorize variations from such specifications or authorize the use of substitute denaturants if such variation or substitution will not jeopardize the revenue. Each such application shall identify the applicant by name, address, and permit number; state the number of each formula of specially denatured alcohol involved; explain why the use of the substitute denaturant, or the variation from specifications, as the case may be, is necessary; and include, as applicable, either the identity of the approved denaturant for which substitution is desired and the identity of the substitute denaturant (including the name of the manufacturer) or the identity of the prescribed specifications and the proposed variation from those specifications. The application shall be accompanied by an 8-ounce sample of the proposed denaturing material for analysis.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.92 Denaturants listed as U.S.P. or N.F.

Denaturing materials and products listed in this part as ''U.S.P.'' or ''N.F.'' shall meet the specifications set forth in the current United States Pharmacopoeia or National Formulary, or the latest volume of these publications in which the denaturants appeared as official preparations.

§ 21.93 Acetaldehyde.

(a) *Aldehyde content (as acetaldehyde)*. Not less than 95.0 percent by weight.

(b) *Color*. Colorless.

(c) *Odor*. Characteristic pungent, fruity odor.

(d) *Specific gravity at 15.56 °/15.56 °C*. Not less than 0.7800.

§ 21.94 Acetaldol.

(a) *Purity*. Not less than 90 percent by weight acetaldol as determined by the following method:

Dissolve 15 grams of the acetaldol in distilled water and dilute to 1 liter in a volumetric flask. Transfer 5 ml of this solution to a 250 ml glass-stoppered flask containing 25 ml distilled water. Add 25 ml of a freshly prepared 1 percent sodium bisulfite solution. Prepare a blank omitting the acetaldol solution. Place the flasks in a dark place away

from excessive heat or cold and allow to stand six hours. Remove flasks and titrate free bisulfite with 0.1 N iodine solution using starch indicator.

Percent acetaldol by weight=(ml blank − ml test)×200×0.44/weight of sample

Titrations in excess of 100 percent may be obtained if the sample contains appreciable amounts of acetaldehyde.

(b) *Specific gravity at 20 °C.* 1.098 to 1.105.

§ 21.95 Alpha terpineol.

(a) Boiling point at 752mm 218.8–219.4 °C.

(b) Density at 15° 0.9386.

(c) Refractive index at 20° 1.4831.

[T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.96 Ammonia, aqueous.

(a) *Alkalinity.* Strongly alkaline to litmus.

(b) *Ammonia content.* 27 to 30 percent by weight. Accurately weigh a glass-stoppered flask containing 25 ml of water, add about 2 ml of the sample, stopper, and weigh again. Add methyl red indicator, and titrate with 1 N sulfuric acid. Each ml of 1 N sulfuric acid is equivalent to 17.03 mg of NH_3

(c) *Color.* Colorless liquid.

(d) *Non-volatile residue.* 2 mg maximum. Dilute a portion of the sample with 1½ times its volume of distilled water. Evaporate 10 ml of this product to dryness in a tared platinum or porcelain dish. Dry residue at 105 °C. for 1 hour, cool and weigh.

(e) *Odor.* Characteristic (exceedingly pungent).

(f) *Specific gravity at 20 °/4 °C.* 0.8920 to 0.9010.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.97 Benzene.

(a) *Distillation range.* (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 29, page 573, Standard No. D 836–77; for incorporation by reference, see § 21.6(b).) When 100 ml of benzene are distilled by this method, not more than 1 ml should distill below 77 °C., and not less than 95 ml below 85 °C.

(b) *Odor.* Characteristic odor.

(c) *Specific gravity at 15.6 °/15.6 °C.* 0.875 to 0.886.

(d) *Water solubility.* When 10 ml of benzene are shaken with an equal volume of water in a glass-stoppered bottle, graduated to 0.1 ml, and allowed to stand 5 minutes to separate, the upper layer of liquid shall measure not less than 9.5 ml.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.98 Bone oil (Dipple's oil).

(a) *Color.* The color shall be a deep brown.

(b) *Distillation range.* When 100 ml are distilled in the manner described for pyridine bases, not more than 5.0 ml should distill below 90 °C.

(c) *Pyrrol reaction.* Prepare a 1.0 percent solution of bone oil in 95 percent alcohol. Prepare a second solution containing 0.025 percent bone oil by diluting 2.50 ml of the first solution to 100 ml with 95 percent alcohol. Dip a splinter of pine, previously moistened with concentrated hydrochloric acid, into 10 ml of the 0.025 percent bone oil solution. After a few minutes the splinter should show a distinct red coloration.

(d) *Reaction with mercuric chloride.* Add 5 ml of the 1.0 percent bone oil solution above to 5 ml of a 2 percent alcoholic solution of mercuric chloride. A turbidity is formed at once which separates into a flocculent precipitate on standing several minutes. Add 5.0 ml of the 0.025 percent bone oil solution to 5.0 ml of a 2.0 percent alcoholic solution of mercuric chloride. A faint turbidity appears after several minutes.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.99 Brucine alkaloid.

(a) *Identification test.* Add a few drops of concentrated nitric acid to about 10 mg of brucine alkaloid. A vivid red color is produced. Dilute the red solution with a few drops of water and add a few drops of freshly made dilute stannous chloride solution. A reddish purple (violet) color is produced.

(b) *Melting point.* 178 °±1 °C. Dry the alkaloid in an oven for one hour at 100 °C., increase the temperature to 110°

and dry to a constant weight before taking melting point.

NOTE. Brucine alkaloid tetrahydrate melts at 105 °C. while the anhydrous form melts at 178 °C.

(c) *Strychnine test*. Brucine alkaloid shall be free of strychnine when tested by the method listed under Brucine Sulfate, N.F. IX.

NOTE. If the brucine contains as much as 0.05 percent strychnine, a clear distinctive violet color, characteristic of strychnine, will be obtained.

(d) *Sulfate test*. No white precipitate is formed that is not dissolved by hydrochloric acid when several drops of a 1 N barium chloride solution are added to 10 ml of a solution of the alkaloid.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.100 n-Butyl alcohol.

(a) *Acidity (as acetic acid)*. 0.03 percent by weight maximum.

(b) *Color*. Colorless.

(c) *Dryness at 20 °C*. Miscible without turbidity with 10 volumes of 60° Bé1. gasoline.

(d) *Odor*. Characteristic odor.

(e) *Specific gravity at 20 °/20 °C*. 0.810 to 0.815.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.101 tert-Butyl alcohol.

(a) *Acidity (as acetic acid)*. 0.003 percent by weight maximum.

(b) *Color*. Colorless.

(c) *Distillation range*. When 100 ml of tertiary butyl alcohol are distilled, none should distill below 78 °C. and none above 85 °C. More than 95 percent should distill between 81 °−83 °C.

(d) *Dryness at 20 °C*. Miscible without turbidity with 19 volumes of 60° Bé1. gasoline.

(e) *Freezing point (first needle)*. Above 20 °C.

(f) *Identification test*. Place five drops of a solution containing approximately 0.1 percent tertiary butyl alcohol in ethyl alcohol in a test tube. Add 2 ml of Denige's reagent (dissolve 5 grams of red mercuric oxide in 20 ml of concentrated sulfuric acid; add this solution to 80 ml of distilled water, and filter when cool). Heat the mixture just to the boiling point and remove from the flame. A yellow precipitate forms within a few seconds.

(g) *Nonvolatile matter*. Less than 0.005 percent by weight.

(h) *Odor*. Characteristic odor.

(i) *Residual odor after evaporation*. None.

(j) *Specific gravity at 25 °/25 °C*. 0.780 to 0.786.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.102 Caustic soda, liquid.

(a) The liquid caustic soda may consist of either 50 percent or 73 percent by weight sodium hydroxide in aqueous solution. The amount of caustic soda used shall be such that each 100 gallons of alcohol will contain not less than 8.76 pounds of sodium hyroxide, anhydrous basis.

(b) *Color*. A 2 percent solution of the sodium hydroxide in water shall be water-white.

(c) *Assay*. The sodium hydroxide content of the caustic soda solution shall be determined by the following procedure:

Accurately weigh 2 grams of liquid caustic soda into a 100 ml volumetric flask, dissolve, and dilute to the mark with distilled water at room temperature. Transfer a 25 ml aliquot of the solution to a titration flask, add 10 ml of 1 percent barium chloride solution, 0.2 ml of 1 percent phenolphthalein indicator, and 50 ml of distilled water. Titrate with 0.25 N hydrochloric acid to the disappearance of the pink color. Not less than 25 ml of the hydrochloric acid shall be required to neutralize the sample of diluted 50 percent caustic soda, and not less than 36.5 ml of the hydrochloric acid shall be required to neutralize the sample of diluted 73 percent caustic soda.

One ml of 0.25 N hydrochloric acid equals 0.01 gram of sodium hydroxide (anhydrous).

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.103 Chloroform.

(a) *Odor*. Characteristic odor.

(b) *Specific gravity at 25 °/25 °C*. Not less than 1.400.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.104 Cinchonidine.

(a) *Melting point*. 208° to 210 °C.

(b) *Color*. White powder.

(c) *Taste*. Bitter.

(d) *Test*. A solution of cinchonidine in dilute sulfuric acid shall not have more than a faint blue fluorescence (to distinguish from quinine and quinoidine).

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.105 Citronella oil, natural.

(a) *Java type:*

(1) *Alcohol content (as Geraniol)*. Not less than 85 percent by weight.

(2) *Aldehyde content (as Citronellal)*. Not less than 30 percent by weight.

(3) *Refractive index at 20 °C*. 1.4660 to 1.4745.

(4) *Specific gravity at 25 °/25 °C*. 0.875 to 0.893.

(5) *Odor*. Characteristic odor.

(b) *Ceylon type:*

(1) *Alcohol content (as Geraniol)*. Not less than 55 percent by weight.

(2) *Aldehyde content (as Citronellal)*. Not less than 7 percent by weight.

(3) *Refractive index at 20 °C*. 1.4790 to 1.4850.

(4) *Specific gravity at 25 °/25 °C*. 0.891 to 0.904.

(5) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.106 Diethyl phthalate.

(a) *Refractive index at 25 °C*. 1.497 to 1.502.

(b) *Color*. Colorless.

(c) *Odor*. Practically odorless.

(d) *Solubility*. Soluble in 20 parts of 60 percent alcohol.

(e) *Specific gravity at 25 °/25 °C*. 1.115 to 1.118.

(f) *Ester content (as diethyl phthalate)*. Not less than 99 percent by weight.

NOTE.— The sample taken for ester determination should be approximately 0.8 gram. The number of ml of 0.5 N potassium hydroxide used in saponification multiplied by 0.05555 indicates the number of grams of ester in the sample taken for assay.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.107 Ethyl acetate.

(a) *85 percent ester:*

(1) *Acidity (as acetic acid)*. Not more than 0.015 percent by weight.

(2) *Color*. Colorless.

(3) *Odor*. Characteristic odor.

(4) *Ester content*. Not less than 85 percent by weight.

(5) *Specific gravity at 20 °/20 °C*. Not less than 0.882.

(6) *Distillation range*. (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 29, page 70, Standard No. D 302–58 (1975); for incorporation by reference, see § 21.6(b).) When 100 ml of ethyl acetate are distilled by this method, none shall distill below 70 °C., not more than 10 ml shall distill below 72 °C., and none above 80 °C.

(b) *100 percent ester:*

(1) *Acidity (as acetic acid)*. Not more than 0.010 percent by weight.

(2) *Color*. Colorless.

(3) *Odor*. Characteristic odor.

(4) *Ester content*. Not less than 99 percent by weight.

(5) *Specific gravity at 20 °/20 °C*. Not less than 0.899.

(6) *Distillation range*. (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 29, page 433, Standard No. D 3127–77; for incorporation by reference, see § 21.6(b).) When 100 ml of ethyl acetate are distilled by this method, not more than 2 ml shall distill below 75 °C., and none above 80 °C. (760 mm).

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.108 Ethyl ether.

(a) *Odor*. Characteristic odor.

(b) *Specific gravity at 15.56 °/15.56 °C*. Not more than 0.728.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.109 Gasoline.

(a) *Distillation range*. When 100 ml of gasoline are distilled, none shall distill below 90 °F. Not more than 5 ml shall be collected below 140 °F., and not less than 50 ml shall distill below 230 °F.

(b) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.110 Gasoline, unleaded.

Conforms to specifications as established by the American Society for Testing and Materials (ASTM) in the 1980 Annual Book of ASTM Standards, Part 23, page 229, Standard No. D 439–79. Any of the ''seasonal and geographical'' volatility classes for unleaded gasoline are considered suitable as a denaturant. (For incorporation by reference, see § 21.6(b).)

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.111 Gentian violet.

(a) Gentian violet (methyl violet, methylrosaniline chloride) occurs as a dark green powder or crystals having metallic luster.

(b) *Arsenic content*. Not more than 15 ppm. (as As_2 O_3) as determined by the applicable U.S.P. method.

(c) *Identification test*. Sprinkle about 1 mg of sample on 1 ml of sulfuric acid; it dissolves in the acid with an orange or brown-red color. When this solution is diluted cautiously with water, the color changes to brown, then to green, and finally to blue.

(d) *Insoluble matter*. Not to exceed 0.25 percent when tested by the following method:

Transfer 1.0 gram of sample to a 150 ml beaker containing 50 ml of alcohol. Stir to complete solution and filter through a weighed Whatman No. 4 filter paper. Wash residue with small amounts of alcohol totaling about 50 ml. Dry paper in oven for 30 minutes at 80 °C. and weigh. Calculate insoluble material.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.112 Heptane.

(a) *Distillation range*. No distillate should come over below 200 °F. and none above 211 °F.

(b) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.113 Isopropyl alcohol.

Specific gravity at 15.56 °/15.56 °C. 0.810 maximum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.114 Kerosene.

(a) *Distillation range*. (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 25, page 395, Standard No. D 3699–78 for burner fuel; see Part 23, page 849, Standard Nos. D 1655–80a for aviation turbine fuels and D 86–78 for distillation of petroleum products; for incorporation by reference, see § 21.6(b).) No distillate should come over below 340 °F. and none above 570 °F.

(b) *Flash point*. 115 °F. minimum.

(c) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.115 Kerosene (deodorized).

(a) *Distillation range*. No distillate should come over below 340 °F. and none above 570 °F.

(b) *Flash point*. 155 °F. minimum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.116 Methyl alcohol.

Specific gravity at 15.56 °/15.56 °C. 0.810 maximum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.117 Methyl isobutyl ketone.

(a) *Acidity (as acetic acid)*. 0.02 percent by weight, maximum.

(b) *Color*. Colorless.

(c) *Distillation range*. (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 29, page 147, Standard No. D 1153–77; for incorporation by reference, see § 21.6(b).) No distillate should come over below 111 °C. and none above 117 °C.

(d) *Odor*. Characteristic odor.

(e) *Specific gravity at 20 °/20 °C*. 0.799 to 0.804.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.118 Methyl n-butyl ketone.

(a) *Acidity (as acetic acid)*. 0.02 percent by weight, maximum.

(b) *Color*. Colorless.

(c) *Odor*. Characteristic odor.

(d) *Refractive index at 20 °C*. 1.396 to 1.404.

(e) *Specific gravity at 20 °/20 °C*. 0.800 to 0.835.

(f) *Distillation range*. No distillate should come over below 123 °C. and none above 129 °C.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.119 Nicotine solution.

(a) *Composition*. Five gallons of an aqueous solution containing 40 percent nicotine; 3.6 avoirdupois ounces of methylene blue, U.S.P.; water sufficient to make 100 gallons.

(b) *Color*. One ml of the nicotine solution (previously agitated in the presence of air) is measured into 100 ml of water and thoroughly mixed. Fifty ml of this colored solution is compared, using Nessler tubes, with 50 ml of a standard color solution containing 5 grams of $CuSO_4 \bullet 5H_2O$, C.P. in 100 ml of water. The color intensity of the solution tested should be equal to or greater than that of the standard solution.

(c) *Nicotine content*. The above solution must contain not less than 1.88 percent of nicotine determined by the following process: 20 ml of the solution are measured into a 500 ml Kjeldahl flask provided with a suitable bulb tube, 50 ml of 0.1 N NaOH added and the mixture distilled in a current of steam until the distillate is no longer alkaline (about 500 ml). The distillate is then titrated with 0.1 N H_2SO_4 using rosolic acid or methyl red as indicator. Not less than 23.2 ml should be required for neutralization.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.120 Nitropropane, mixed isomers of.

(a) *Nitropropane content*. A minimum of 94 percent by weight.

(b) *Total nitroparaffin content*. A minimum of 99 percent by weight.

(c) *Distillation range*. 119° to 113 °C.

(d) *Specific gravity at 20°/20 °C*. 0.992 to 1.003.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.121 Phenyl mercuric benzoate.

(a) *Assay (as phenyl mercuric benzoate)*. Not less than 99.0 percent by weight.

(b) *Melting point*. Not less than 94 °C.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.122 Pyridine bases.

(a) *Alkalinity*. One ml of pyridine bases dissolved in 10 ml of water is titrated with 1 N H_2SO_4 until a drop of the mixture placed upon Congo paper shows a distinct blue border, which soon disappears. A minimum of 9.5 ml of the acid must be required for the end point. (Congo paper: filter paper treated with 0.1 percent aqueous solution of Congo red and dried.)

(b) *Distillation range*. One hundred ml of the denaturant are distilled in the following manner: The sample is placed in a short-necked glass flask of about 200 ml capacity which is rested on an asbestos plate having a circular opening of 30 mm in diameter. The neck of this flask is fitted with a fractionating tube 12 mm in diameter and 170 mm long and having a bulb just 1 cm below the side tube which is connected with a Liebig condenser having a water jacket not less than 400 mm in length. A standardized thermometer is placed in the fractionating tube so that the mercury bulb is suspended in the center of the fractionating bulb. Heat is applied slowly and in such manner that 5 ml of distillate is collected per minute in a graduated cylinder. At least 50 ml must distill at or below 140 °C. and at least 90 ml below 160 °C.

(c) *Reactions*. Dissolve 1 ml of pyridine bases in 100 ml of water.

(1) Ten ml of this solution are treated with 5 ml of 5 percent aqueous solution of anhydrous fused $CaCl_2$ and the mixture vigorously shaken. An abundant crystalline separation should occur within 10 minutes.

(2) Ten ml of the pyridine solution mixed with 50 ml of Nessler's reagent must give a white precipitate.

(d) *Water content*. Twenty ml of pyridine bases are shaken with 20 ml of a caustic soda solution having a specific gravity of 1.40 (15.56 °/15.56 °C.) and the mixture allowed to stand until completely separated into two layers. The amount of pyridine base layer should be 18.5 ml, minimum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.123 Pyronate.

Pyronate is a product of the destructive distillation of hardwood meeting the following requirements:

(a) *Acidity (as acetic acid)*. Not more than 0.1 percent by weight, determined as follows:

Add 5.0 ml sample to 100 ml distilled water in an Erlenmeyer flask and titrate with 0.1 N NaOH to a bromthymol blue endpoint.

(b) *Color*. The color shall be no darker than the color produced by 2.0 grams of potassium dichromate in 1 liter of water. The comparision shall be made in 4-ounce oil sample bottles viewed crosswise.

(c) *Distillation range*. When 100 ml are distilled not more than 5 ml shall distill below 70 °C., not less than 50 ml below 160 °C., and not less than 90 ml below 205 °C.

NOTE. Any material submitted as pyronate must agree in color, odor, taste and denaturing value with a standard sample furnished by the Bureau of Alcohol, Tobacco and Firearms to chemists authorized to examine samples of denaturants.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.124 Quassin.

(a) Quassin is the bitter principle of quassia wood (occurring as a mixture of two isomeric forms). It shall be a good commercial grade of purified amorphous quassin, standardized as to bitterness.

(b) *Bitterness*. An aqueous solution of quassin shall be distinctly bitter at a 1 to 250,000 dilution. To test: Dissolve 0.1 gram of quassin in 100 ml of 95 percent alcohol, then dilute 4 ml of the solution to 1,000 ml with distilled water, mix well and taste.

(c) *Identification test*. Dissolve about 0.5 gram of quassin in 10 ml of 95 percent alcohol and filter. To 5 ml of the filtrate, add 5 ml of concentrated hydrochloric acid and 1 mg of phloroglucinol and mix well. A red color develops.

(d) *Optical assay*. When 1 gram of quassin (in solution in a small amount of 95 percent alcohol) is dissolved in 10,000 ml of water, the absorbance of the solution in a 1 cm cell at a wavelength of 258 millimicrons shall not be less than 0.400.

(e) *Solubility*. When 0.5 gram of quassin is added to 25 ml of 190 proof alcohol, it shall dissolve completely.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.125 Rubber hydrocarbon solvent.

(a) Rubber hydrocarbon solvent is a petroleum derivative.

(b) *Distillation range*. When 10 percent of the sample has been distilled into a graduated receiver, the themometer shall not read more than 170 °F. nor less than 90 °F. When 90 percent has been recovered in the receiver the thermometer shall not read more than 250 °F.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.126 Safrole.

(a) *Congealing point*. 10.0° to 11.2 °C.

(b) *Refractive index at 20 °C*. 1.5363 to 1.5385.

(c) *Specific gravity at 15 °/15 °C*. 1.100 to 1.107.

(d) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.127 Shellac (refined).

(a) *Arsenic content*. Not more than 1.4 parts per million as determined by the Gutzeit Method (AOAC method 25.020; for incorporation by reference, see § 21.6(c)).

(b) *Color*. White or orange.

(c) *Rosin content*. None when tested by the following method: Add 20 ml of absolute alcohol or glacial acetic acid (m. p. 13° to 15 °C.) to 2 grams of the shellac and thoroughly dissolve. Add 100 ml of petroleum ether and mix thoroughly. Add approximately 2 liters of water and separate a portion of the ether layer (at least 50 ml) and filter if cloudy. Evaporate the petroleum ether and test as follows: Solution A—5 ml of phenol dissolved in 10 ml of carbon tetrachloride. Solution B—1 ml of bromine dissolved in 4 ml of carbon tetrachloride. To the residue obtained above add 2 ml of Solution A and transfer the mixture to a porcelain spot plate, filling one cavity. Immediately fill an adjacent cavity with solution B. Cover the plate with a watch glass and observe any color formation in Solution A. A decided purple or deep indigo blue color is an indication of the presence of rosin.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.128 Sodium (metallic).

(a) *Color*. Silvery-white (metallic luster) when freshly cut.

(b) *Identification test*. Clean a platinum wire by dipping it in concentrated hydrochloric acid and holding it over a Bunsen burner until the flame is no longer colored. Moisten the wire loop with hydrochloric acid and dip it into the sample. Hold the wire in the Bunsen flame and note the color. Sodium produces a golden yellow flame; not observed when viewed through a cobalt glass.

(c) *Purity*. Technical grade or better.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.129 Spearmint oil, terpeneless.

(a) *Carvone content*. Not less than 85 percent by weight.

(b) *Refractive index at 20 °C*. 1.4930 to 1.4980.

(c) *Specific gravity at 25 °/25 °C*. 0.949 to 0.956.

(d) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.130 Spike lavender oil, natural.

(a) *Alcohol content (as borneol)*. Not less than 30 percent by weight.

(b) *Esters (as bornyl acetate)*. Not less than 1.5 percent by weight.

(c) *Refractive index at 20 °C*. 1.4630 to 1.4680.

(d) *Specific gravity at 25 °/25 °C*. 0.893 to 0.909.

(e) *Odor*. Characteristic odor.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.131 Sucrose octaacetate.

(a) Sucrose octaacetate is an organic acetylation product occurring as a white or cream-colored powder having an intensely bitter taste.

(b) *Free acid (as acetic acid)*. Maximum percentage 0.15 by weight when determined by the following procedure: Dissolve 1.0 gram of sample in 50 ml of neutralized ethyl alcohol (or S.D.A. No. 3–A, No. 3–C, or No. 30) and titrate with 0.1 N sodium hydroxide using phenolphthalein indicator.

Percent acid as acetic acid=ml NaOH used×0.6/ weight of sample

(c) *Insoluble matter*. 0.30 percent by weight maximum.

(d) *Melting point*. Not less than 78.0 °C.

(e) *Purity*. Sucrose octaacetate 98 percent minimum by weight when determined by the following procedure: Transfer a weighed 1.50 grams sample to a 500 ml Erlenmeyer flask containing 100 ml of neutral ethyl alcohol (or S.D.A. No. 3–A, No. 3–C, or No. 30) and exactly 50.0 ml of 0.5 N sodium hydroxide. Reflux for 1 hour on a steam bath, cool and titrate the excess sodium hydroxide with 0.5 N sulfuric acid using phenolphthalein indicator.

Percent sucrose octaacetate=(ml NaOH − ml H_2SO_4)×4.2412/weight of sample

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.132 Toluene.

(a) *Distillation range*. (For applicable ASTM method, see 1980 Annual Book of ASTM Standards, Part 29, page 569, Standard No. D 362–75 for industrial grade toluene; for incorporation by reference, see § 21.6(b).) When 100 ml of toluene are distilled by this method, not more than 1 ml should distill below 109 °C., and not less than 99 ml below 112 °C.

(b) *Boiling point*. 110.6 °±1 °C.

(c) *Odor*. Characteristic odor.

(d) *Specific gravity at 15.56 °/15.56 °C*. 0.869 to 0.873.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

§ 21.133 Vinegar.

(a) *Vinegar, 90-grain:*

Acidity (as acetic acid). 9.0 percent by weight, minimum.

(b) *Vinegar, 60-grain:*

Acidity (as acetic acid). 6.0 percent by weight, minimum.

[T.D. ATF–133, 48 FR 24673, June 2, 1983. Redesignated by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

Subpart F—Uses of Specially Denatured Alcohol and Specially Denatured Rum

§ 21.141 List of products and processes using specially denatured alcohol and rum, and formulas authorized therefor.

This section lists, alphabetically by product or process, formulas of specially denatured alcohol authorized for use in those products or processes, and lists the code numbers assigned thereto. Specially denatured rum, as well as specially denatured alcohol, may be used in tobacco sprays and flavors, Code No. 460, under Formula No. 4.

USES OF SPECIALLY DENATURED ALCOHOL [1]

Product or process	Code No.	Formulas authorized
Acetaldehyde	551	1, 2–B, 29.
Acetic acid	512	29, 35–A.
Adhesives and binders	036	1, 3–A, 3–C, 12–A, 23–A, 30.
Aldehydes, miscellaneous.	552	1, 2–B, 29.
Alkaloids (processing)	344	1, 2–B, 2–C, 3–A, 3–C, 12–A, 13–A, 17, 23–A, 30, 32, 35–A.
Animal feed supplements.	910	35–A.
Antibiotics (processing)	343	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.
Antifreeze, proprietary	760	1.
Antiseptic, bathing solution (restricted).	220	46.
Antiseptic solutions, U.S.P. or N.F.	244	23–A, 37, 38–B, 38–F.
Bath preparations	142	1, 3–A, 3–B, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Bay rum	112	23–A, 37, 38–B, 39, 39–B, 39–D, 40, 40–A, 40–B, 40–C.
Biocides, miscellaneous	410	1, 3–A, 3–B, 3–C, 23–A, 23–H, 27–A, 27–B, 30, 37, 38–B, 39–B, 40, 40–A, 40–B, 40–C.
Blood and blood products (processing).	345	1, 3–A, 3–C, 12–A, 13–A, 23–A, 30.
Brake fluids	720	1, 3–A, 3–C.
Candy glazes	015	13–A, 23–A, 35, 35–A, 45.
Cellulose coatings	011	1, 3–A, 3–C, 23–A, 30.
Cellulose compounds (dehydration).	311	1, 2–B, 3–A, 3–C, 32.
Cellulose intermediates	034	1, 3–A, 3–C, 13–A, 19, 23–A, 32.
Chemicals (miscellaneous).	579	1, 2–B, 2–C, 3–A, 3–C, 6–B, 12–A, 13–A, 17, 20, 29, 30, 32, 36.
Cleaning solutions	450	1, 3–A, 3–C, 23–A, 23–H, 30, 36, 39–B, 40, 40–A, 40–B, 40–C.
Coatings, miscellaneous	016	1, 3–A, 3–C, 23–A.
Collodions, industrial	034	1, 3–A, 3–C, 13–A, 19, 23–A, 32.
Collodion, U.S.P.	241	13–A, 19, 32.
Colognes	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Crude drugs (processing).	341	1, 2–B, 3–A, 3–C, 23–A, 30.
Cutting oils	730	1, 3–A, 3–C.
Dehydration products, miscellaneous.	315	1, 2–B, 3–A, 3–C.
Dentifrices	131	31–A, 37, 38–B, 38–C, 38–D.
Deodorants (body)	114	23–A, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Detergents, household	450	1, 3–A, 3–C, 23–A, 23–H, 30, 36, 39–B, 40, 40–A, 40–B, 40–C.
Detergents, industrial	440	1, 3–A, 3–C, 23–A, 30.
Detonators	574	1, 6–B.
Disinfectants	410	1, 3–A, 3–B, 3–C, 23–A, 23–H, 27–A, 27–B, 30, 37, 38–B, 39–B, 40, 40–A, 40–B, 40–C.

USES OF SPECIALLY DENATURED ALCOHOL [1]—Continued

Product or process	Code No.	Formulas authorized
Drugs and medicinal chemicals.	575	1, 2–B, 2–C, 3–A, 3–C, 6–B, 12–A, 13–A, 17, 29, 30, 32.
Drugs, miscellaneous (processing).	349	1, 2–B, 3–A, 3–C, 13–A, 23–A, 30, 35–A, 38–B.
Duplicating fluids	485	1, 3–A, 3–C, 30.
Dyes and intermediates	540	1, 2–B, 2–C, 3–A, 3–C, 12–A, 29, 36.
Dyes and intermediates (processing).	351	1, 2–B, 3–A, 3–C, 12–A.
Dye solutions, miscellaneous.	482	1, 3–A, 3–C, 23–A, 30.
Embalming fluids, etc	420	1, 3–A, 3–C, 22, 23–A.
Esters, ethyl (miscellaneous).	523	1, 2–B, 2–C, 6–B, 12–A, 13–A, 29, 32, 35–A.
Ether, ethyl	561	1, 2–B, 13–A, 29, 32.
Ethers, miscellaneous	562	1, 2–B, 13–A, 29, 32.
Ethyl acetate	521	1, 2–B, 29, 35–A.
Ethylamines	530	1, 2–B, 2–C, 3–A, 3–C, 12–A, 29, 36.
Ethyl chloride	522	1, 2–B, 29, 32.
Ethylene dibromide	571	1, 2–B, 29, 32.
Ethylene gas	572	1, 2–B, 29, 32.
Explosives	033	1, 2–B, 3–A, 3–C.
External pharmaceuticals, not U.S.P. or N.F.	210	23–A, 23–F, 23–H, 27, 27–A, 27–B, 33, 36, 37, 38–B, 38–F, 39–B, 40, 40–A, 40–B, 40–C.
External pharmaceuticals, miscellaneous, U.S.P. or N.F.	249	23–A, 25, 25–A, 33, 38–B, 40–B.
Fluid uses, miscellaneous.	750	1, 3–A, 3–C, 23–A, 30.
Food products, miscellaneous (processing).	332	1, 2–B, 3–A, 3–C, 13–A, 23–A, 30, 32, 35–A.
Fuel uses, miscellaneous.	630	1, 3–A, 3–C, 28–A.
Fuels, airplane and supplementary.	612	1, 3–A, 3–C, 28–A.
Fuels, automobile and supplementary.	611	1, 3–A, 3–C, 28–A.
Fuels, proprietary heating.	620	1, 3–A, 3–C, 28–A.
Fuels, rocket and jet	613	1, 3–A, 3–C, 28–A.
Fungicides	410	1, 3–A, 3–B, 3–C, 23–A, 23–H, 27–A, 27–B, 30, 37, 38–B, 39–B, 40, 40–A, 40–B, 40–C.
Glandular products (processing).	342	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.
Hair and scalp preparations.	111	3–B, 23–A, 23–F, 23–H, 37, 38–B, 39, 39–A, 39–B, 39–C, 39–D, 40, 40–A, 40–B, 40–C.
Hormones (processing)	342	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.
Incense	470	3–A, 3–C, 22, 37, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Inks	052	1, 3–A, 3–C, 13–A, 23–A, 30, 32, 33.
Insecticides	410	1, 3–A, 3–B, 3–C, 23–A, 23–H, 27–A, 27–B, 30, 37, 38–B, 39–B, 40, 40–A, 40–B, 40–C.

USES OF SPECIALLY DENATURED ALCOHOL [1]—Continued

Product or process	Code No.	Formulas authorized
Iodine solutions (including U.S.P. and N.F. tinctures).	230	25, 25–A.
Laboratory reagents (for sale).	811	3–A, 3–C, 30.
Laboratory uses, general (own use only).	810	3–A, 3–C, 30.
Lacquer thinners	042	1, 23–A.
Liniments, U.S.P. or N.F.	243	27, 27–B, 38–B.
Lotions and creams (body, face, and hand).	113	23–A, 23–H, 31–A, 37, 38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Medicinal chemicals (processing).	344	1, 2–B, 2–C, 3–A, 3–C, 12–A, 13–A, 17, 23–A, 30, 32, 35–A.
Miscellaneous chemicals (processing).	358	1, 2–B, 2–C, 3–A, 3–C, 12–A, 13–A, 17, 23–A, 30, 35–A.
Miscellaneous products (processing).	359	1, 2–B, 2–C, 3–A, 3–C, 12–A, 13–A, 17, 23–A, 30, 35–A.
Mouth washes	132	37, 38–B, 38–C, 38–D, 38–F.
Organo-silicone products.	576	2–B, 3–A, 3–C, 30.
Pectin (processing)	331	1, 2–B, 3–A, 3–C, 13–A, 23–A, 30, 35–A.
Perfume materials (processing).	352	1, 2–B, 3–A, 3–C, 12–A, 13–A, 30.
Perfumes and perfume tinctures.	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Petroleum products	320	1, 2–B, 3–A, 3–C.
Photoengraving dyes and solutions.	481	1, 3–A, 3–C, 13–A, 30, 32.
Photographic chemicals (processing).	353	1, 2–B, 3–A, 3–C, 13–A, 30.
Photographic film and emulsions.	031	1, 2–B, 3–A, 3–C, 13–A, 19, 30, 32.
Pill and tablet manufacture.	349	1, 2–B, 3–A, 3–C, 13–A, 23–A, 30, 35–A, 38–B.
Plastics, cellulose	021	1, 2–B, 3–A, 3–C, 12–A, 13–A, 30.
Plastics, non-cellulose (including resins).	022	1, 2–B, 3–A, 3–C, 12–A, 13–A, 30.
Polishes	051	1, 3–A, 3–C, 30.
Preserving solutions	430	1, 3–A, 3–C, 12–A, 13–A, 22, 23–A, 30, 32, 37, 38–B, 42, 44.
Product development and pilot plant (own use only).	812	All formulas.
Proprietary solvents	041	1, 3–A.
Refrigerating uses	740	1, 3–A, 3–C, 23–A, 30.
Resin coatings, natural	014	1, 23–A.
Resin coatings, synthetic.	012	1, 3–A, 3–C, 23–A, 30.
Resins, synthetic	590	3–A, 3–C, 29, 30, 35–A.
Room deodorants	470	3–A, 3–C, 22, 37, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Rosin (processing)	354	1, 3–A, 3–C, 12–A.
Rotogravure dyes and solutions.	481	1, 3–A, 3–C, 13–A, 30, 32.
Rubber (latex) (processing).	355	1, 3–A, 3–C.
Rubber, synthetic	580	29, 32.
Rubbing alcohol	220	23–H.
Scientific instruments	710	1, 3–A, 3–C.

USES OF SPECIALLY DENATURED ALCOHOL [1]—Continued

Product or process	Code No.	Formulas authorized
Shampoos	141	1, 3–A, 3–B, 3–C, 23–A, 27–B, 31–A, 36, 38–B, 39–A, 39–B, 40, 40–A, 40–B, 40–C.
Shellac coatings	013	1, 23–A.
Soaps, industrial	440	1, 3–A, 3–C, 23–A, 30.
Soaps, toilet	142	1, 3–A, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Sodium ethylate, anhydrous (restricted).	524	2–B.
Sodium hydrosulfite (dehydration).	312	1, 2–B, 3–A, 3–C.
Soldering flux	035	1, 3–A, 3–C, 23–A, 30.
Solutions, miscellaneous.	485	1, 3–A, 3–C, 23–A, 30, 40–C.
Solvents and thinners (other than proprietary solvents or special industrial solvents).	042	1, 23–A, 30.
Solvents, special (restricted sale).	043	1, 3–A, 3–C.
Stains (wood)	053	1, 3–A, 3–C, 23–A, 30.
Sterilizing solutions	430	1, 3–A, 3–C, 12–A, 13–A, 22, 23–A, 30, 32, 37, 38–B, 42, 44.
Theater sprays	470	3–A, 3–C, 22, 37, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Tobacco sprays and flavors.	460	4.
Toilet waters	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Transparent sheetings	032	1, 2–B, 3–A, 3–C, 13–A, 23–A.
Unclassified uses [2]	900	1, 3–A, 3–C.
Vaccine (processing)	343	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.
Vinegar	511	18, 29, 35–A.
Vitamins (processing)	342	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.
Xanthates	573	1, 2–B, 29.
Yeast (processing)	342	1, 2–B, 3–A, 3–C, 12–A, 13–A, 23–A, 30, 32, 35–A.

[1] Other products or processes may be authorized under § 21.31(c).

[2] Persons desiring other formulas for this use should indicate the fact in the space provided for this purpose on ATF Form 5150.19.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; T.D. ATF–435, 66 FR 5475, Jan. 19, 2001; T.D. ATF–442, 66 FR 11854, Mar. 1, 2001]

Subpart G—Denaturants Authorized for Denatured Spirits

§ 21.151 List of denaturants authorized for denatured spirits.

Following is an alphabetical listing of denaturants authorized for use in denatured spirits:

DENATURANTS AUTHORIZED FOR COMPLETELY DENATURED ALCOHOL (C.D.A), SPECIALLY DENATURED ALCOHOL (S.D.A.), AND SPECIALLY DENATURED RUM (S.D.R.)

Acetaldehyde	S.D.A. 29.
Acetone, U.S.P	S.D.A. 23–A, 23–H.
Acetaldol	C.D.A. 18.
Almond oil, bitter, N.F.X	S.D.A. 38–B.
Alpha Terpineol	S.D.A. 38–B.
Ammonia, aqueous	S.D.A. 36.
Ammonia solution, strong, N.F	S.D.A. 36.
Anethole, N.F	S.D.A. 38–B.
Anise oil, N.F	S.D.A. 38–B.
Bay oil (myrcia oil), N.F.XI	S.D.A. 23–F, 38–B, 39–D.
Benzaldehyde, N.F	S.D.A. 38–B.
Benzene	S.D.A. 2–B, 2–C, 12–A.
Bergamot oil, N.F.XI	S.D.A. 23–F. 38–B.
Bone oil (Dipple's oil)	S.D.A. 17.
Boric acid, N.F	S.D.A. 38–F.
Brucine alkaloid	S.D.A. 40.
Brucine sulfate, N.F.IX	S.D.A. 40.
n-Butyl alcohol	S.D.A. 44.
tert-Butyl alcohol	S.D.A. 39, 39–A, 39–B, 40, 40–A, 40–B, 40–C.
Camphor, U.S.P	S.D.A. 27, 27–A, 38–B.
Caustic soda, liquid	S.D.A. 36.
Cedar leaf oil, U.S.P.XIII	S.D.A. 38–B.
Chloroform	S.D.A. 20.
Chlorothymol, N.F.XII	S.D.A. 38–B, 38–F.
Cinchonidine	S.D.A. 39–A.
Cinchonidine sulfate, N.F.IX	S.D.A. 39–A.
Cinnamic aldehyde (cinnamaldehyde), N.F.IX.	S.D.A. 38–B.
Cinnamon oil, N.F	S.D.A. 38–B.
Citronella oil, natural	S.D.A. 38–B.
Clove oil, N.F	S.D.A. 27–A, 38–B.
Coal tar, U.S.P	S.D.A. 38–B.
Denatonium benzoate, N.F.	S.D.A. 1, 40–B.
Diethyl phthalate	S.D.A. 39–B, 39–C.
Ethyl acetate	S.D.A. 29, 35, 35–A.
Ethyl ether	S.D.A. 13–A, 19, 32.
Eucalyptol, N.F.XII	S.D.A. 37, 38–B.
Eucalyptus oil, N.F	S.D.A. 38–B.
Eugenol, U.S.P	S.D.A. 38–B.
Formaldehyde solution, U.S.P	S.D.A. 22, 38–C, 38–D.
Gasoline	C.D.A. 18, 19; S.D.A. 28–A.
Gasoline, unleaded	C.D.A. 18, 19, 20; S.D.A 28–A.
Gentian violet	S.D.A. 33.
Gentian violet, U.S.P	S.D.A. 33.
Glycerin (Glycerol), U.S.P	S.D.A. 31–A.
Green soap, U.S.P	S.D.A. 27–B.
Guaiacol, N.F.X	S.D.A. 38–B.

DENATURANTS AUTHORIZED FOR COMPLETELY DENATURED ALCOHOL (C.D.A), SPECIALLY DENATURED ALCOHOL (S.D.A.), AND SPECIALLY DENATURED RUM (S.D.R.)—Continued

Heptane	C.D.A. 18, 19; S.D.A. 2–B, 28–A.
Hydrochloric acid, N.F	S.D.A. 38–F.
Iodine, U.S.P	S.D.A. 25, 25–A.
Isopropyl alcohol	S.D.A. 3–C.
Kerosene	C.D.A. 18, 19, 20.
Kerosene (deodorized)	C.D.A. 18, 19, 20.
Lavender oil, N.F	S.D.A. 27–B, 38–B.
Menthol, U.S.P	S.D.A. 37, 38–B, 38–C, 38–D, 38–F.
Mercuric iodide, red, N.F.XI	S.D.A. 42.
Methyl alcohol	S.D.A. 1, 3–A, 30.
Methylene blue, U.S.P	S.D.A. 4; S.D.R. 4.
Methyl isobutyl ketone	C.D.A. 18, 19; S.D.A. 1, 23–H.
Methyl *n*-butyl ketone	C.D.A. 18, 19; S.D.A. 1.
Methyl salicylate, N.F	S.D.A. 38–B, 46.
Mustard oil, volatile (allyl isothiocyanate), U.S.P.XII.	S.D.A. 38–B.
Nicotine solution	S.D.A. 4; S.D.R. 4.
Nitropropane, mixed isomers of	C.D.A. 18, 19; S.D.A. 1.
Peppermint oil, N.F	S.D.A. 38–B.
Phenol, U.S.P	S.D.A. 38–B, 46.
Phenyl mercuric benzoate	S.D.A. 42.
Phenyl mercuric chloride, N.F.IX	S.D.A. 42.
Phenyl mercuric nitrate, N.F	S.D.A. 42.
Phenyl salicylate (salol), N.F.XI	S.D.A. 38–B.
Pine needle oil, dwarf, N.F.	S.D.A. 38–B.
Pine oil, N.F.	S.D.A. 38–B.
Pine tar, U.S.P	S.D.A. 3–B.
Polysorbate 80, N.F	S.D.A. 38–F.
Potassium iodide, U.S.P	S.D.A. 25, 25–A, 42.
Pyridine bases	S.D.A. 6–B.
Pyronate	C.D.A. 18.
Quassia, fluid extract, N.F.VII	S.D.A. 39.
Quassin	S.D.A. 40.
Quinine, N.F.X	S.D.A. 39–A.
Quinine bisulfate, N.F.XI	S.D.A. 39–A, 39–D.
Quinine dihydrochloride, N.F.XI	S.D.A. 39–A.
Quinine sulfate, U.S.P	S.D.A. 39–D.
Resorcinol (Resorcin), U.S.P	S.D.A. 23–F.
Rosemary oil, N.F. XII	S.D.A. 27, 38–B.
Rubber hydrocarbon solvent	C.D.A. 18, 19, 20; S.D.A. 2–B, 2–C, 28–A.
Safrole	S.D.A. 38–B.
Salicylic acid, U.S.P	S.D.A. 23–F, 39.

DENATURANTS AUTHORIZED FOR COMPLETELY DENATURED ALCOHOL (C.D.A), SPECIALLY DENATURED ALCOHOL (S.D.A.), AND SPECIALLY DENATURED RUM (S.D.R.)—Continued

Sassafras oil, N.F.XI	S.D.A. 38–B.
Shellac (refined)	S.D.A. 45.
Soap, hard, N.F.XI	S.D.A. 31–A.
Sodium iodide, U.S.P	S.D.A. 25, 25–A.
Sodium, metallic	S.D.A. 2–C.
Sodium salicylate, U.S.P	S.D.A. 39, 39–D.
Spearmint oil, N.F	S.D.A. 38–B.
Spearmint oil, terpeneless	S.D.A. 38–B.
Spike lavender oil, natural	S.D.A. 38–B.
Storax, U.S.P	S.D.A. 38–B.
Sucrose octaacetate	S.D.A. 40–A.
Thimerosal, U.S.P	S.D.A. 42.
Thyme oil, N.F.XII	S.D.A. 38–B.
Thymol, N.F	S.D.A. 37, 38–B, 38–F.
Tolu balsam, U.S.P	S.D.A. 38–B.
Toluene	S.D.A. 2–B, 2–C, 12–A.
Turpentine oil, N.F.XI	S.D.A. 38–B.
Vinegar	S.D.A. 18.
Zinc chloride, U.S.P	S.D.A. 38–F.

[T.D. ATF–133, 48 FR 24673, June 2, 1983, as amended by T.D. ATF–442, 66 FR 12854, Mar. 1, 2001]

Subpart H—Weights and Specific Gravities of Specially Denatured Alcohol

§ 21.161 Weights and specific gravities of specially denatured alcohol.

The weight of one gallon of each formula of specially denatured alcohol at 15.56 °C. (60 °F.) is as listed in this section. The specific gravity of each formula of specially denatured alcohol at 15.56 °C./15.56 °C. (60 °F./60 °F.) in air is as listed in this section. (Weight of 1 gallon of water at 15.56 °C. (60 °F.) is 8.32823 pounds in air.)

WEIGHTS AND SPECIFIC GRAVITIES OF SPECIALLY DENATURED ALCOHOL [1]

[Slight deviations from this table may occur due to variations in specific gravities of authorized denaturants. Values for 190 proof determined experimentally in air. Other values calculated from these gravities.]

S.D.A. Formula No.	Finished formula (gals)	190 proof		192 proof		200 proof	
		Wt./gal. in air (lbs)	Sp. gr. in air	Wt./gal. in air (lbs)	Sp. gr. in air	Wt./gal. in air (lbs)	Sp. gr. in air
1	104.0	6.788	0.8151	6.756	0.8112	6.611	0.7938
2–B	100.5	6.795	.8159	6.762	.8119	6.612	.7939
2–C	99.5	.....	.....	.....	.....	6.959	.8356
3–A	105.0	6.787	.8149	6.755	.8111	6.611	.7938
3–B	101.0	6.810	.8177	6.777	.8137	6.627	.7957
3–C	105.0	6.784	.8146	6.752	.8107	6.608	.7935
4	100.8	6.823	.8193	6.791	.8154	6.640	.7973
6–B	100.5	6.801	.8166	6.768	.8127	6.618	.7947
12–A	105.0	6.820	.8189	6.789	.8152	6.645	.7979
13–A	109.7	6.740	.8093	6.710	.8057	6.572	.7891
17	100.05	6.795	.8159	6.762	.8119	6.611	.7938
18	195.4	7.802	.9368	7.785	.9348	7.708	.9255

WEIGHTS AND SPECIFIC GRAVITIES OF SPECIALLY DENATURED ALCOHOL [1]—Continued

[Slight deviations from this table may occur due to variations in specific gravities of authorized denaturants. Values for 190 proof determined experimentally in air. Other values calculated from these gravities.]

S.D.A. Formula No.	Finished formula (gals)	190 proof		192 proof		200 proof	
		Wt./gal. in air (lbs)	Sp. gr. in air	Wt./gal. in air (lbs)	Sp. gr. in air	Wt./gal. in air (lbs)	Sp. gr. in air
19	197.9	6.468	.7766	6.452	.7747	6.375	.7655
20	104.9	7.062	.8480	7.030	.8441	6.886	.8268
22	109.5	7.037	.8450	7.007	.8414	6.868	.8247
23–A	107.9	6.788	.8151	6.758	.8115	6.619	.7948
23–F	101.5	6.808	.8175	6.776	.8136	6.627	.7957
23–H	109.45	6.785	.8147	6.755	.8111	6.617	.7945
25	100.9	7.080	.8501	7.047	.8462	6.897	.8282
25 [2]	100.9	7.083	.8505	7.050	.8465	6.900	.8285
25–A	102.5	7.119	.8548	7.087	.8510	6.939	.8332
25–A [2]	102.5	7.117	.8546	7.085	.8507	6.938	.8331
27	104.7	6.846	.8220	6.814	.8182	6.670	.8009
27–A	105.2	6.867	.8245	6.835	.8207	6.692	.8035
27–B	112.0	7.027	.8438	6.998	.8403	6.862	.8239
28–A	101.0	6.786	.8148	6.753	.8109	6.603	.7929
29	100.76	6.808	.8175	6.775	.8135	6.624	.7954
30	110.0	6.785	.8147	6.755	.8111	6.617	.7945
31–A	111.5	7.167	.8606	7.138	.8571	7.002	.8408
32	104.8	6.769	.8128	6.737	.8089	6.593	.7916
33	102.9	6.893	.8277	6.861	.8238	6.714	.8062
35 [3]	135.0	6.956	.8352	6.933	.8325	6.820	.8189
35 [4]	129.75	6.963	.8361	6.937	.8330	6.820	.8189
35–A [3]	105.0	6.817	.8185	6.785	.8147	6.641	.7974
35–A [4]	104.25	6.826	.8196	6.794	.8158	6.649	.7984
36	102.7	6.837	.8209	6.804	.8170	6.657	.7993
37	100.9	6.794	.8158	6.762	.8119	6.612	.7939
38–B	101.3	6.804	.8170	6.772	.8131	6.622	.7951
38–C	102.6	6.832	.8203	6.800	.8165	6.652	.7987
38–D	102.7	6.863	.8241	6.830	.8201	6.682	.8023
38–F	100.9	6.828	.8199	6.796	.8160	6.646	.7980
39	102.0	6.867	.8245	6.834	.8206	6.686	.8028
39–A	100.5	6.810	.8177	6.777	.8137	6.627	.7957
39–B	102.7	6.857	.8233	6.825	.8195	6.677	.8017
39–C	101.0	6.819	.8188	6.792	.8155	6.642	.7975
39–D	101.3	6.819	.8188	6.787	.8149	6.637	.7969
40	100.1	6.795	.8159	6.762	.8119	6.611	.7938
40–A	100.2	6.798	.8163	6.765	.8123	6.613	.7941
40–B	100.1	6.794	.8158	6.761	.8118	6.610	.7937
40–C	103.0	6.788	.8151	6.756	.8112	6.609	.7936
42	100.0	6.797	.8161	6.764	.8122	6.613	.7941
44	110.0	6.790	.8153	6.760	.8117	6.622	.7951
45	129.8	7.545	.9060	7.520	.9030	7.403	.8889
46	100.1	6.805	.8171	6.772	.8131	6.621	.7950

[1] Where alternate denaturants are permitted, the above weights are based on the first denaturant or combination listed in the formula.
[2] With sodium iodide.
[3] Calculated on the basis of 85 percent ethyl acetate.
[4] Calculated on the basis of 100 percent ethyl acetate.

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AUTHORITY: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

SOURCE: T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 22 appear by T.D. ATF–435, 66 FR 5476, Jan. 19, 2001 and by T.D. ATF–463 and T.D. ATF–462, 66 FR 42733, 42736, Aug. 15, 2001.

Subpart A—Scope

§ 22.1 General.

The regulations in this part relate to tax-free alcohol and cover the procurement, storage, use, and recovery of tax-free alcohol.

§ 22.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 22.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 29—Stills and Miscellaneous Regulations.
27 CFR Part 30—Gauging Manual.
27 CFR Part 71—Rules of Practice in Permit Proceedings.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
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.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–207, 50 FR 23682, June 5, 1985; T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart B—Definitions

§ 22.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

Alcohol. Spirits having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

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 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22.

CFR. The Code of Federal Regulations.

Clinic. When used in this part the term includes veterinary clinics.

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

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration ''I declare under the penalities 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.''

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

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

Hospital. When used in this part the term includes veterinary hospitals.

Initial order. The first order of tax-free alcohol placed by a permittee or Governmental agency with a distilled spirits plant or vendor, and, the first order placed following the issuance of an amended or corrected permit.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters (ml). The symbol for milliliter or milliliters is ''ml''.

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw tax-free alcohol from the premises of a distilled spirits plant and use such alcohol under specified conditions.

Permittee. Any person holding a permit, on Form 5150.9, issued under this part to withdraw and use tax-free alcohol.

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

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

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

Restoration. Restoring to the original state of recovered tax-free alcohol, including redistillation of the recovered alcohol to 190° or more of proof and the removal of foreign materials by redistillation, filtration, or other suitable means.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine, having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5475, Jan. 19, 2001]

Subpart C—Administrative Provisions

AUTHORITIES

§ 22.20 Delegations of the Director.

All of the regulatory authorities of the Director contained in this Part 22 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.9, Delegation Order—Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22. ATF delegation orders, such as ATF Order 1130.9, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site ((http://www.atf.treas.gov/).

[T.D. ATF–435, 66 FR 5476, Jan. 19, 2001]

§ 22.21 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including applications, notices, claims, reports, 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–435, 66 FR 5476, Jan. 19, 2001; T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application*. A permittee, after receiving approval from the appropriate ATF

officer, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the appropriate ATF officer. The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by appropriate ATF officer*. The appropriate ATF officer 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 appropriate ATF officer will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval*. A permittee may not employ an alternate method or procedure until the appropriate ATF officer has approved its use. The permittee 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, a permittee may apply to the appropriate ATF officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by appropriate ATF officer*. The appropriate ATF officer 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*. A permittee may not employ an emergency variation from the requirements until the appropriate ATF officer 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 permittee 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 permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval*. The appropriate ATF officer may withdraw approval for an alternate method or procedure or an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the appropriate ATF officer finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512–0335)

(Act of August 16, 1954, Chapter 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 9183, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5476, Jan. 19, 2001]

§ 22.23 Allowance of claims.

The appropriate ATF officer is authorized to allow claims for losses of tax-free alcohol.

§ 22.24 Permits.

(a) The appropriate ATF officer shall issue permits on Form 5150.33 covering the withdrawal of tax-free alcohol by the United States or a Governmental agency as provided in § 22.172.

(b) The appropriate ATF officer shall issue the permit to withdraw and use tax-free alcohol, Form 5150.9 required under this part.

§ 22.25 Right of entry and examination.

An appropriate ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records required by this part to be kept on those premises. An appropriate ATF officer may also inspect and take samples of tax-free alcohol to which those records relate.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985. Redesignated by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.26 Detention of containers.

(a) *Summary detention*. An appropriate ATF officer may detain any container containing, or supposed to contain, alcohol when the appropriate ATF officer believes the alcohol was withdrawn, sold, transported, or used in violation of law of this part. The appropriate ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations*. Summary detention may not exceed 72 hours without process of law or intervention of the appropriate ATF officer. The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on its premises during detention.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5311))

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985. Redesignated by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

LIABILITY FOR TAX

§ 22.31 Persons liable for tax.

All tax-free alcohol removed, sold, transported, or used in violation of law or regulations in this part, is subject to all provisions of law relating to taxable alcohol, including the requirement for payment of tax on the alcohol. The person removing, selling, transporting, or using tax-free alcohol in violation of law or regulations pertaining to tax-free alcohol shall be required to pay the distilled spirits tax on the alcohol.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

DESTRUCTION OF MARKS AND BRANDS

§ 22.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing tax-free alcohol shall immediately destroy or obliterate the marks, brand, and labels required by this chapter to be placed on packages of tax-free alcohol.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

DOCUMENT REQUIREMENTS

§ 22.35 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the permittee or other authorized person shall:

(1) Insert the declaration ''I declare under the penalties of perjury that I have examined this _____(insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete''; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the permittee or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6056))

§ 22.36 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an appropriate ATF officer during business hours.

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF–271, 53 FR 17545, May 17, 1988, unless otherwise noted.

§ 22.37 Liability for special tax.

(a) *Tax-free alcohol permittee.* Except as otherwise provided in this section, every person who is required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover alcohol free of tax for nonbeverage purposes shall pay a special (occupational) tax at the rate of $250 per year. A separate tax shall be paid for each tax-free alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing the business of a tax-free alcohol permittee, 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 permittee engaged in nonbeverage tax-free distilled spirits operations 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.* Special (occupational) tax liability is incurred at each place of business for which a permit under subpart D of this part to procure, use, and/or recover distilled spirits free of tax has been issued. 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.

(d) *Exception for United States.* Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

(e) *Exception for certain educational institutions.* (1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research as specified in § 22.104, which holds a permit to procure and use distilled spirits free of tax under this part, is not required to pay special tax under this subpart if—

(i) The university, college, or institution procures less than 25 gallons of tax free spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1) (i) and (ii) of this section during any calendar year, shall pay special tax as provided in paragraph (a) of this section for the special tax year (July 1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

[T.D. ATF–271, 53 FR 17545, May 17, 1988, as amended by T.D. ATF–285, 53 FR 12610, Mar. 28, 1989; T.D. ATF–337, 58 FR 19061, Apr. 12, 1993]

§ 22.38 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 § 22.38a).

(4) The exact location of the place of business, by name and number of building or street, of 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 corporate taxpayer) for the period specified on § 22.164.

(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, 7100)

§ 22.38a 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 § 70.105 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)

SPECIAL TAX STAMPS

§ 22.39 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 § 22.38(c), 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 appropriate ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

§ 22.40 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 permittee 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 permittee 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 tax-free alcohol operation, 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 permittee shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The permittee 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 permittee 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 D—Qualification

APPLICATION FOR PERMIT, FORM 5150.22

§ 22.41 Application for industrial alcohol user permit.

(a) *Users*. Each person desiring to withdraw and use tax-free alcohol shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9, except permittees who were previously qualified to withdraw and use tax-free alcohol on the effective date of this regulation.

(b) *Filing*. All applications and necessary supporting documents, as required by this subpart, shall be filed with the appropriate ATF officer. All data, written statements, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of tax-free alcohol in a number of institutions under its control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the tax-free alcohol to be withdrawn.

§ 22.42 Data for application, Form 5150.22.

(a) Unless waived under § 22.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of tax-free alcohol in proof gallons, which will be procured during a 12-month period (one calendar year).

(4) Location, or locations where tax-free alcohol is to be used, if different from the business address.

(5) Statement showing the specific manner in which, or purposes for which, tax-free alcohol will be withdrawn and used.

(6) Statement that tax-free alcohol will be stored in accordance with the requirements of this part.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 22.45.

(8) Listing of the principal equipment for the recovery and restoration of alcohol (including the serial number, kind, capacity, name and address of manufacturer, and name and address of owner if different from applicant).

(9) List of any trade name(s) under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the tax-free alcohol activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the appropriate ATF officer may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity the appropriate ATF officer may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 22.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) of this section is on file with any appropriate ATF officer, the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 22.43 Exceptions to application requirements.

(a) The appropriate ATF officer may waive detailed application and supporting data requirements, other than

the requirements of paragraphs (a)(1) through (a)(6) of § 22.42, and of paragraph (a)(8) of that section as it relates to recovery, in the case of—

(1) All applications, Form 5150.22 filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the permittee files an application to amend the permit and the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 22.57(a)(2).

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.44 Disapproval of application.

The appropriate ATF officer may, in accordance with part 71 of this chapter, disapprove an application for a permit to withdraw and use tax-free alcohol, if on examination of the application (or inquiry), the appropriate ATF officer has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and use alcohol free of tax;

(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 their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(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 their application; or

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

§ 22.45 Organizational documents.

The supporting information required by § 22.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated).

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate officers, if applicable, are directly responsible for the tax-free alcohol activities of the business.

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* 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.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons must be submitted to the appropriate ATF officer if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the

name of another for the interested person.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5476, Jan. 19, 2001]

INDUSTRIAL ALCOHOL USER PERMIT, ATF F 5150.9

§ 22.48 Conditions of permits.

Permits to withdraw and use tax-free alcohol will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use or recovery of tax-free alcohol are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

§ 22.49 Duration of permits.

Permits to withdraw and use tax-free alcohol are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 22.51, or voluntarily surrendered. The provisions of § 22.58 are considered part of the terms and conditions of all permits.

§ 22.50 Correction of permits.

If an error on a permit is discovered, the permittee shall immediately return the permit to the appropriate ATF officer for correction.

§ 22.51 Suspension or revocation of permits.

The appropriate ATF officer may institute proceedings under part 71 of this chapter to suspend or revoke a permit whenever there is reason to believe that the permittee—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

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

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

(f) Is, by reason of its operations, no longer warranted in procuring and using tax-free alcohol authorized by the permit; or

(g) Has not engaged in any of the operations authorized by the permit for a period exceeding two years.

§ 22.52 Rules of practice in permit proceedings.

The regulations of part 71 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 22.53 Powers of attorney.

An applicant or permittee shall execute and file a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act in its behalf. Form 1534 is not required for persons whose authority is furnished in accordance with § 22.42(a)(10).

§ 22.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw tax-free alcohol from a distilled spirits plant.

§ 22.55 Posting of permits.

Permits issued under this part will be kept posted and available for inspection on the permit premises.

CHANGES AFTER ORIGINAL QUALIFICATION

§ 22.57 Changes affecting applications and permits.

(a) *General*—(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the appropriate ATF officer to amend the application.

(2) *Changes affecting waivers.* When any waiver under § 22.43 is terminated

by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* All written notices to amend an application on Form 5150.22 will—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The appropriate ATF officer may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked ''No change since Form 5150.22, Serial No. _____.''

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the appropriate ATF officer) to those offices, the incumbents of which are responsible for the operations covered by the permit.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 22.45(c)(1), a permittee may, upon filing written notice to the appropriate ATF officer and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 22.58.

(Approved by the Office of Management and Budget under control number 1512–0335)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 22.58 Automatic termination of permits.

(a) *Permit not transferable.* Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall within 10 days of the change, give written notice to the appropriate ATF officer. The written notice shall be accompanied by (or within 30 days of the change) an application and supporting documents on Form 5150.22 for a new permit. If an application on Form 5150.22 for a new permit is not filed within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application on Form 5150.22 for a new permit is filed within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit will remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and the permittee shall forward it to the appropriate ATF officer for cancellation.

(c) *Proprietorships.* In the event of a change in proprietorship of a business

of a permittee (as for instance, by reason of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit under the same conditions provided for in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.59 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.60 Continuing partnerships.

(a) *Continuing partnerships*. If, under the laws of a particular State, a partnership is not terminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use tax-free alcohol under the prior qualifications of the partnership.

(b) *Requalification*. If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 22.58(b).

(c) *More than one partner*. The rule set forth in this section also applies if there is more than one surviving partner.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.61 Change in name of permittee.

When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit has been issued by the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0335)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 22.62 Change in trade name.

Where there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0335)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.63 Change in location.

When there is to be a change in location, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information, to amend the application and permit has been filed and an amended permit has been issued by the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0335)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–435, 66 FR 5476, Jan. 19, 2001; T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.64 Return of permits.

Following the termination, surrender or revocation of a permit, or the issuance of a new or amended permit, caused by a change, the permittee shall

(a) Obtain and destroy all photocopies of the previous permit from its suppliers, and

(b) Return the original of the permit or obsolete permit to the appropriate ATF officer for cancellation.

REGISTRY OF STILLS

§ 22.66 Registry of stills.

The provisions of subpart C of part 29 of this chapter are applicable to stills on the premises of a permittee used for distilling. As provided in § 29.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

[T.D. ATF–207, 50 FR 23682, June 5, 1985]

PERMANENT DISCONTINUANCE OF USE OF TAX-FREE ALCOHOL

§ 22.68 Notice of permanent discontinuance.

A permittee who permanently discontinues the use of tax-free alcohol shall file a written notice with the appropriate ATF officer to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(1) A request to cancel the permit,

(2) A statement of the disposition made, as provided in § 22.154, of all tax-free and recovered alcohol, and

(3) The date of discontinuance.

(Approved by the Office of Management and Budget under control number 1512–0335)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

Subpart E [Reserved]

Subpart F—Premises and Equipment

§ 22.91 Premises.

All persons qualified to withdraw and use tax-free alcohol shall have premises suitable for the business being conducted and adequate for the protection of the revenue. Storage facilities shall be provided on the premises for tax-free alcohol received or recovered. The storage facilities may consist of a combination of storerooms, compartments, or stationary storage tanks.

§ 22.92 Storage facilities.

(a) Storerooms or compartments shall be so constructed and secured as to prevent unauthorized access and will be equipped for locking. These storage facilities shall be of sufficient capacity to hold the maximum quantity of tax-free alcohol which will be on hand at one time.

(b) Each stationary storage tank used to hold tax-free alcohol shall be equipped for locking in such a manner as to control access to the spirits. All stationary storage tanks shall be equipped with an accurate means of measuring the spirits.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 22.93 Equipment for recovery and restoration of tax-free alcohol.

(a) *Location.* All equipment used to recover and restore tax-free alcohol for reuse shall be located on the permit premises.

(b) *Construction.* (1) Distilling apparatus, pipelines and other equipment used for recovery and restoration of tax-free alchohol shall be constructed and secured in such a manner as to prevent unauthorized access and so arranged as to be readily inspected.

(2) Storage tanks shall be provided for the collection of recovered tax-free alcohol. Each storage tank shall—

(i) Be durably marked as to use and capacity;

(ii) Be equipped with, or for, an accurate means of measuring the spirits; and

(iii) Be equipped for locking to control unauthorized access to the spirits.

Subpart G—Use of Tax-Free Alcohol

§ 22.101 Authorized uses.

Alcohol may be withdrawn free of tax from the bonded premises of a distilled spirits plant for the use of any State or political subdivision of a State, or the District of Columbia, for nonbeverage

purposes. Alcohol may also be withdrawn by persons eligible to use tax-free alcohol, for nonbeverage purposes and not for resale or use in the manufacture of any product for sale. Tax-free alcohol shall be withdrawn and used only as provided by law and this part, as follows:

(a) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(b) For any laboratory for use exclusively in scientific research;

(c) For use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at a hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engage in making analyses, or test, for hospitals or sanitariums; or

(d) For the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment of patients outside of the clinic).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, (26 U.S.C. 5214))

§ 22.102 Prohibited uses.

(a) *Usage*. Under no circumstances may tax-free alcohol withdrawn under this part be used for beverage purposes, food products, or in any preparation used in preparing beverage or food products.

(b) *Selling*. Persons qualified under this part are prohibited from selling tax-free alcohol, using tax-free alcohol in the manufacture of any product for sale, or selling any products resulting from the use of tax-free alcohol. A separate charge may be made by a hospital, sanitarium or clinic for medicines compounded with tax-free alcohol and dispensed to patients for use on the premises, as provided in §§ 22.105 and 22.106. Hospitals may not furnish tax-free alcohol for use of physicians in their private practice.

(c) *Removal from premises*. Persons qualified under this part may not remove tax-free alcohol or products resulting from the use of tax-free alcohol from the permit premises unless specifically authorized by the terms of their permit, or permission is obtained from the appropriate ATF officer, except that:

(1) Products made through the use of tax-free alcohol which contain no alcohol may be removed to other premises for the sole purpose of further research; or

(2) Under the provisions of §§ 22.105 and 22.106, clinics operated for charity and not for profit may compound bona fide medicines with tax-free alcohol, and dispense the medicine from the premises for use by its patients outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(d) *Liability for tax*. Permittees who use tax-free alcohol in any manner prohibited by this section become liable for the tax on the alcohol. Any permittee who sells tax-free alcohol also becomes liable for special (occupational) tax as a liquor dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1343, as amended, 1362, as amended (26 U.S.C. 5001, 5121, 5214))

§ 22.103 States and the District of Columbia.

Except as otherwise provided in this section, tax-free alcohol withdrawn by a State or political subdivision of a State, or the District of Columbia shall be used solely for mechanical and scientific purposes, and except on approval of the appropriate ATF officer, the use of tax-free alcohol or the use of any resulting product will be confined to the premises under the control of the State or political subdivision of a State, or the District of Columbia. Tax-free alcohol withdrawn for use in hospitals, clinics, and other establishments specified in §§ 22.104 through 22.108, operated by a State, political subdivision of a State, or the District of Columbia, shall be used in the manner prescribed for those establishments.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.104 Educational organizations, colleges of learning, and scientific universities.

(a) *Educational organizations*. Educational organizations authorized to withdraw and use tax-free alcohol under § 22.101 are those organizations

which normally maintain a regular faculty and curriculum and which normally have a regularly enrolled body of students in attendance at the place where their educational activities are regularly carried on and which are exempt from Federal income tax under 26 U.S.C. 501(a).

(b) *Colleges of learning*. Colleges of learning, for the purposes of this subpart, have a recognized curriculum and confer degrees after specified periods of attendance at classes or research work.

(c) *Scientific universities*. Scientific universities include any university incorporated or organized under any Federal or State law which provides training in the sciences.

(d) *Uses*. Tax-free alcohol withdrawn by educational organizations, scientific universities, and colleges of learning shall be used only for scientific, medicinal, and mechanical purposes. Use of tax-free alcohol and resulting products are limited by the provisions of § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.105 Hospitals, blood banks, and sanitariums.

(a) Tax-free alcohol withdrawn for use by hospitals, blood banks, and sanitariums shall be used exclusively for medicinal, mechanical (analysis or test) and scientific purposes and in the treatment of patients. The use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined to the permit premises, except as provided in this section and § 22.102. Medicines compounded with tax-free alcohol on the premises of a hospital or sanitarium, for use of patients on the premises, may not be sold, but a separate charge may be made for the medicine.

(b) A hospital, operating a clinic on premises, may withdraw tax-free alcohol for use in the clinic, if the clinic is operated for charity and not for profit. Medicines compounded with tax-free alcohol may be dispensed to patients at a clinic for use outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(c) A hospital or sanitarium, operating a pathological or other laboratory on premises, may withdraw tax-free alcohol for authorized use in the laboratory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.106 Clinics.

Tax-free alcohol withdrawn by clinics operated for charity and not for profit shall be used only for medicinal, scientific, and mechanical purposes and in the treatment of patients. Medicine compounded with tax-free alcohol may be dispensed to patients for use off the premises, if the furnishing of the medicine is not conditioned upon payment. A separate charge may be made for medicine coumpounded on the clinic premises with tax-free alcohol for use of patients on the premises. Except as provided in this section and in § 22.102, the use of tax-free alcohol shall be confined strictly to the premises of the clinic.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.107 Pathological laboratories.

(a) Pathological laboratories, not operated by a hospital or sanitarium, may withdraw and use tax-free alcohol if exclusively engaged in making analyses or tests for hospitals or sanitariums. If a pathological laboratory does not exclusively conduct analyses or tests for hospitals or sanitariums, it does not qualify for the permit issued under this part.

(b) A pathological laboratory which uses tax-free alcohol for any other purpose, except as provided in this section, shall become liable for the tax on the alcohol.

(c) Except as provided in § 22.102, the use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined strictly to the permit premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1362, as amended (26 U.S.C. 5001, 5214))

§ 22.108 Other laboratories.

Laboratories, other than pathological laboratories specified in § 22.107, may withdraw and use tax-free alcohol exclusively in scientific research. The use of tax-free alcohol or of products

resulting from the use of tax-free alcohol shall be confined strictly to the laboratory premises, except as provided in § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Subpart H—Withdrawal and Receipt of Tax-Free Alcohol

§ 22.111 Withdrawals under permit.

(a) *General*. The permit, Form 5150.9, issued under subpart D of this part, authorizes a person to withdraw tax-free alcohol from the bonded premises of a distilled spirits plant or, under the provisions of 26 U.S.C. 5688(a)(2)(B), receive alcohol from the General Services Administration.

(b) *Photocopying of permit, Form 5150.9*. (1) As provided in § 22.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw tax-free alcohol.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant for the ''initial order'' from that distilled spirits plant.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy shall be signed, dated, and contain the word ''COPY'' across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants when (i) an amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of use of tax-free alcohol.

(c) *Withdrawals under permit*. (1) When a permittee places an initial order for tax-free alcohol it shall forward a signed copy of the permit, for retention by the distilled spirits plant, along with the purchase request.

(2) When the permittee places a subsequent order for tax-free alcohol, the purchase request, in addition to any other information, shall contain the permit identification number along with a statement that the permittee possesses a valid permit to withdraw tax-free alcohol, a copy of which is on file.

(3) Shipments shall not be made by a proprietor of a distilled spirits plant until it is in possession of a signed copy of a valid permit, Form 5150.9, unless the appropriate ATF officer authorizes the shipment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 22.112 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of tax-free alcohol to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorized by the permit, Form 5150.9. Recovered alcohol and alcohol received from the General Services Administration shall be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, tax-free alcohol and recovered alcohol shall be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 22.113 Receipt of tax-free alcohol.

(a) When tax-free alcohol is received, it shall be placed in the storage facilities prescribed by § 22.91 and kept there under lock until withdrawn for use. Unless required by city or State fire code regulations or authorized by the appropriate ATF officer or the terms of the permit, the permittee may not remove tax-free alcohol from the original packages or containers in which received until the alcohol is withdrawn for use. If the tax-free alcohol is transferred to ''safety'' containers in accordance with fire code regulations, the containers to which they are transferred shall be appropriately marked to identify the package from which transferred, the quantity transferred, the date of transfer, and the name and address of the vendor.

(b) When tax-free alcohol is received, the permittee shall ascertain and account for any losses in transit in accordance with subpart I of this part. The permittee shall note any loss or deficiency in the shipment on the record of receipt.

(c) Records of receipt shall consist of the consignors invoice or bill. Records of receipt may be filed in accordance with the permittee's own filing system as long as it does not cause inconvenience to appropriate ATF officers desiring to examine the records. The filing system shall systematically and accurately account for the receipt of all tax-free alcohol.

§ 22.114 Alcohol received from the General Services Administration.

Any nonprofit charitable institution holding a permit on Form 5150.9, and receiving alcohol from the General Services Administration under the provisions of 26 U.S.C. 5688(a)(2)(B), shall include any quantity of alcohol received in computing the quantity of tax-free alcohol that may be procured under its permit during the calendar year. The alcohol, on receipt, shall be placed in the storage facilities prescribed in § 22.91 and kept there under lock until withdrawn for use.

Subpart I—Losses

§ 22.121 Liability and responsibility of carriers.

(a) A person or carrier transporting tax-free alcohol to a consignee or returning the alcohol to the consignor is responsible for the safe delivery and is accountable for any tax-free alcohol not delivered.

(b) A person or carrier transporting tax-free alcohol in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol subject to and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C 5001))

§ 22.122 Losses in transit.

(a) *Reporting losses.* Upon discovering any loss of tax-free alcohol while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's appropriate ATF officer of the facts and circumstances relating to the loss.

(b) *Recording losses.* At the time the shipment or report of loss is received, the consignee shall determine the quantity of tax-free alcohol lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 22.113. For the purpose of maintaining the records prescribed in subpart M of this part, receipts of tax-free alcohol shall only include the quantity actually received.

(c) *Claims.* A claim for allowances of losses of tax-free alcohol shall, as prescribed in § 22.125, be filed:

(1) If the quantity lost in transit exceeds 1 percent of the total quantity shipped and is more than 5 proof gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowances of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

§ 22.123 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by subpart M of this part, the quantity of tax-free or recovered alcohol lost on premises—

(1) At the end of each semi-annual period when the inventory required by § 22.162 is taken, or

(2) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowances of losses of tax-free alcohol shall be filed as prescribed in § 22.125, in the following circumstances—

(1) if the quantity lost during any semi-annual inventory period exceeds 1 percent of the quantity to be accounted for during that period, and is more than 10 proof gallons, or

(2) if the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowances of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.124 Incomplete shipments.

(a) Subject to the provisions of this part and Part 19 of this chapter, when containers of tax-free alcohol have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the distilled spirits plant.

(b) When tax-free alcohol is returned to the distilled spirits plant, in accordance with this section, the carrier shall inform the proprietor, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's appropriate ATF officer of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 22.122, the proprietor of the distilled spirits plant shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable date required by § 22.125.

§ 22.125 Claims.

(a) Claims for allowances of losses of tax-free or recovered alcohol shall be filed, on Form 2635 (5620.8), within 30 days from the date the loss is ascertained, and shall contain the following information:

(1) Name, address, and permit number of claimant;

(2) Identification and location of the container(s) from which the tax-free or recovered alcohol was lost, and the quantity lost from each container;

(3) Total quantity of tax-free or recovered alcohol covered by the claim and the aggregate quantity involved;

(4) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss; and

(5) Name of carrier where a loss in transit is involved.

(b) The carriers statement regarding a loss in transit, prescribed by § 22.122 or 22.124, shall accompany the claim.

(c) The appropriate ATF officer may require additional evidence to be submitted in support of the claim.

Subpart J—Recovery of Tax-Free Alcohol

§ 22.131 General.

Any person or permittee conducting recovery operations of tax-free alcohol shall be qualified by the terms of their permit to do so, under the provision of subpart D of this part. Restoration of recovered tax-free alcohol may only be accomplished on the permit premises or by the proprietor of a distilled spirits plant.

§ 22.132 Deposit in storage tanks.

(a) Recovered alcohol shall be accumulated and kept in separate storage tanks conforming to § 22.93. Recovered alcohol shall be measured before being redistilled or reused.

(b) Recovered alcohol may be removed from storage tanks for packaging and shipment to a distilled spirits plant for redistillation.

§ 22.133 Shipment for redistillation.

(a) Unless a permittee intends to redistill recovered alcohol to its original state, the recovered alcohol shall be shipped in containers to a distilled spirits plant for restoration.

(b) Containers shall be labeled with—

(1) The name, address, and permit number of permittee,

(2) The quantity of recovered alcohol in gallons,

(3) The words ''Recovered tax-free alcohol'', and

(4) A package identification number or serial number in accordance with paragraph (c)(1) or (c)(2) of this section.

(c)(1) A package identification number shall apply to all of the packages filled at the same time. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and

shall consist of the following elements, in the order shown—

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from ''A'' through ''L'', representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with ''A'' representing the second lot of the day, ''B'' representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as ''83K19,'' '83K19A,'' and ''83K19B.''

(2) A consecutive serial number shall be marked on each package, beginning with the number ''1'' and continuing in regular sequence. When any numbering series reaches ''1,000,000,'' the user may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

§ 22.134 Records of shipment.

A consignor shipping recovered alcohol or tax-free alcohol to a distilled spirits plant shall prepare and forward a record of shipment to the consignee. The record of shipment may consist of a shipping invoice, bill, or bill of lading, or another document intended for the same purpose. The record of shipment shall accurately identify and account for the tax-free or recovered alcohol being shipped. A permittee shall file one copy of the record of shipment with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512–0334)

Subpart K—Destruction

§ 22.141 General.

A permittee may terminate liability for payment of tax, prescribed by law, when tax-free or recovered alcohol is destroyed in accordance with this subpart.

§ 22.142 Destruction.

(a) A permittee may destroy tax-free or recovered alcohol upon

(1) The filing of a notice of intention to destroy with the appropriate ATF officer at least 7 days prior to the proposed date of destruction, or

(2) Furnishing the notice to an appropriate ATF officer at the premises who may supervise the destruction or transmit the notice to the appropriate ATF officer.

(b) The notice of intention to destroy shall contain—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction, and

(3) The quantity involved and, if applicable, the package identification numbers of containers.

(c) If, by the date and time specified in the notice, an appropriate ATF officer has not supervised the destruction, or the appropriate ATF officer has not advised the permittee to the contrary, the spirits may be destroyed in the manner stated in the notice.

(d) Following the destruction, if unsupervised by an ATF officer, the permittee shall annotate a copy of the notice with the name of the individual who accomplished or supervised the destruction. This notice shall serve as a record of destruction and shall be maintained with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512–0335)

Subpart L—Return, Reconsignment and Disposition of Tax-Free or Recovered Alcohol

§ 22.151 Return.

A permittee may, following the receipt of tax-free alcohol and for any legitimate reason, return the spirits to any distilled spirits plant if the consignee consents to the shipment. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134 for shipment of recovered alcohol.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.152 Reconsignment in transit.

(a) *Reconsignment.* Tax-free alcohol may be reconsigned to another permittee or returned to the consignor if, prior to, or on arrival at the premises

of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment shall be annotated ''Reconsignment.''

(Approved by the Office of Management and Budget under control number 1512–0334)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–443, 66 FR 13015, Mar. 2, 2001]

§ 22.153 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all tax-free alcohol in transit and all alcohol on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the alcohol, for a period of 60 days following the date of revocation. Any tax-free or recovered alcohol not disposed of within the specified 60-day period, is subject to seizure and forfeiture.

§ 22.154 Disposition on permanent discontinuance of use.

(a) *Tax-free alcohol.* Tax-free alcohol on hand at the time of discontinuance of use, may be disposed of by

(1) Returning the spirits to a distilled spirits plant, as provided in § 22.151,

(2) Destruction, as provided in § 22.142, or

(3) Shipping to another permittee, in accordance with § 22.155.

(b) *Recovered tax-free alcohol.* Upon permanent discontinuance of use, a permittee may dispose of recovered tax-free alcohol by

(1) Shipment to a distilled spirits plant, as provided in § 22.133,

(2) Destruction, as provided in § 22.142, or

(3) Upon the filing of an application with the appropriate ATF officer, any other approved method.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.155 Emergency disposition to another permittee.

(a) In the case of an emergency, a permittee may, upon the filing of a notice with the area supervisor, dispose of tax-free alcohol to another permittee, when the quantity involved does not exceed 10 proof gallons. In the case of a medical emergency or disaster, the area supervisor is authorized to verbally approve, with the required notice to follow, disposals of tax-free alcohol to another permittee or Government agency in excess of 10 proof gallons. The tax-free alcohol disposed of shall be in original unopened containers. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134.

(b) The notice required by this section shall (1) explain the nature of the emergency, (2) identify the consignee by name, address and permit number, and (3) list the quantity of alcohol and package identification number of the container(s) involved.

(c) The consignor permittee may not receive remuneration for tax-free alcohol given to another permittee in case of an emergency, as authorized by this section.

(Notice approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

Subpart M—Records of Transactions

§ 22.161 Records.

(a) *General.* All persons qualified under this part shall keep accurate records of all receipts, shipments, usage, destructions and claims pertaining to the withdrawal and use of tax-free alcohol. These records shall be in sufficient detail to enable the permittee to reconcile any losses or gains for the semi-annual inventory, and to enable appropriate ATF officers to verify all transactions and to ascertain whether there has been compliance with law and regulations. All records required by this section shall identify tax-free alcohol by proof, date of transaction, and quantity involved, and shall include alcohol received from the

General Services Administration and the recovery of alcohol and its disposition. Records shall be kept current at all times.

(b) *Records of receipt and shipment.* Records of receipt and shipment shall consist of the consignor's or consignee's (as the case may be) invoice, bill or bill of lading, or another document used for the intended purpose. Records of receipt shall record only the quantity of tax-free alcohol actually received. Losses in transit shall not be considered as received, but may be the subject of a claim for allowances of losses, as prescribed in Subpart I of this part.

(c) *Records of usage.* For the purpose of this subpart, tax-free or recovered alcohol shall be considered as ''used'' when permanently removed from a permittee's supply storeroom, compartment, or tank for any authorized use. Records of usage shall identify the tax-free alcohol by quantity, proof, and purpose of removal (office, department or location to which dispensed). This record shall list separately, the usage of tax-free alcohol from recovered alcohol or alcohol received from the General Services Administration.

(d) *Records of destruction.* Records of destruction shall consist of a copy of the notice of intention to destroy, prescribed in § 22.141, signed by an appropriate ATF officer or employee witnessing the destruction.

(e) *Claims.* Claims for allowance of losses of tax-free alcohol, required to be filed under Subpart I of this part, shall consist of Forms 2635 (5620.8) and supporting data.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.162 Inventories.

Each permittee shall take a physical inventory of the tax-free and recovered alcohol in its possession semi-annually for the periods ending June 30 and December 31 of each year; or other inventory periods which are approximately 6 months apart, upon filing written notice with the appropriate ATF officer establishing other inventory periods. These inventories may be recorded separately or as an entry in the record of usage with any necessary adjustments (losses or gains). If an inventory results in a loss in excess of the quantities prescribed by Subpart I of this part, the permittee shall file a claim for allowance of loss.

(Notice approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

§ 22.163 Time for making entries.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same day the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 22.164 Filing and retention of records.

Each person required to maintain records of operations and transactions under this part shall:

(a) Keep on file all records and copies of claims for a period of not less than 3 years following the date of transaction or, at the discretion of the appropriate ATF officer, an additional 3-year period; and

(b) Maintain all records at the permit premises, except that the records may be kept at a central location by a State or political subdivision of a State, or the District of Columbia which distributes tax-free alcohol to multiple dependent agencies, institutions, or departments.

§ 22.165 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, ''original record'' means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

Subpart N—Use of Tax-Free Spirits by the United States or Government Agency

§ 22.171 General.

(a) The United States or any of its Government agencies may withdraw tax-free spirits for nonbeverage purposes from a distilled spirits plant under this part, as authorized by 26 U.S.C. 5214(a)(2). Before any tax-free spirits may be withdrawn, a permit to procure the spirits shall be obtained from the appropriate ATF officer. Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure tax-free spirits.

(b) The provisions of subpart M of 27 CFR part 251 cover the withdrawal of imported spirits, free of tax, for use of the United States or any of its Government agencies.

(26 U.S.C. 5214, 5271, 5272, 5276)

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF–285, 54 FR 12610, Mar. 28, 1989]

§ 22.172 Application and permit, Form 5150.33.

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and shall be regulated by the same provisions of this subpart as it refers to permits on Forms 5150.33.

(b) A Government agency shall apply for a permit to obtain tax-free spirits on Form 5150.33. Upon approval, Form 5150.33 will be returned to the Government agency, and shall serve as authority to procure spirits free of tax.

(c) A Government agency may specify on its application for a permit to procure tax-free spirits, Form 5150.33, that it desires a single permit authorizing all sub-agencies under its control to procure tax-free spirits; or each Government location (agency, department, bureau, and etc.) desiring to procure tax-free spirits for nonbeverage purposes may individually submit an application for a permit on Form 5150.33.

(d) An 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 for the head of the agency or sub-agency shall be furnished with the application.

(e) Tax-free spirits obtained by Government agencies may not be used for non-Government purposes.

[T.D. ATF–199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

§ 22.173 Procurement of tax-free spirits.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for tax-free spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit shall contain an attachment listing all other locations authorized to procure tax-free spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 22.174 Receipt of shipment.

On receipt of a shipment of tax-free spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the appropriate ATF officer.

§ 22.175 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use tax-free spirits, the permit shall be returned to the appropriate ATF officer for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 22.176 Disposition of excess spirits.

At the time of discontinuance of use of tax-free spirits, a Government agency may dispose of any excess tax-free spirits (a) by transferring the spirits to another Government agency holding a permit, (b) by returning the spirits to a vendor, or (c) in any manner authorized by the appropriate ATF officer. Tax-free spirits may not be disposed of to the general public.

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AUTHORITY: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: T.D. ATF–299, 55 FR 24989, June 19, 1990, unless otherwise noted.

Subpart A—Scope

§ 24.1 General.

The regulations in this part relate to the establishment and operation (including incidental activities) of wine premises and to the treatment and classification of wine.

§ 24.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia. (Sec. 201, Pub. L. 85–859, 72 Stat. 1337, as amended (26 U.S.C. 5065))

§ 24.4 Related regulations.

Regulations related to this part are listed below:

26 CFR Part 301—Procedure and Administration.
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 9—American Viticultural Areas.
27 CFR Part 16—Alcoholic Beverage Health Warning Statement
27 CFR Part 18—Production of Volatile Fruit-Flavor Concentrates.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 29—Stills and Miscellaneous Regulations.
27 CFR Part 30—Gauging Manual.
27 CFR Part 71—Rules of Practice in Permit Proceedings.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
27 CFR Part 252—Exportation of Liquors.
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.

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–459, 66 FR 38550, July 25, 2001; T.D. ATF–463, 66 FR 42734, Aug. 15, 2001; T.D. ATF–462, 66 FR 42736, Aug. 15, 2001; T.D. ATF–470, 66 FR 58944, Nov. 26, 2001]

Subpart B—Definitions

§ 24.10 Meaning of terms.

When used in this part and in the forms prescribed under this part, terms will have the meanings ascribed in this section. Words in the plural form also include the singular, and *vice versa*, and words indicating the masculine gender also include the feminine. The terms ''includes'' and ''including'' do not exclude items not enumerated which are in the same general class. The definitions in this section do not supersede or affect the requirements of part 4 of this chapter, relative to the labeling of wine under the provisions of the Federal Alcohol Administration Act (49 Stat. 981; 27 U.S.C. 205).

Affiliated persons or firms. When used in connection with ''own production'', one or more bonded wine premises proprietors associated as members of the same farm cooperative, or any one or more bonded wine premises proprietors affiliated within the meaning of section 117(a)(5) of the Federal Alcohol Administration Act, as amended (49 Stat. 989; 27 U.S.C. 211).

Agricultural wine. Wine made from suitable agricultural products other than the juice of grapes, berries, or other fruits.

Allied products. Commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine.

Amelioration. The addition to juice or natural wine before, during, or after fermentation, of either water or pure dry sugar, or a combination of water and sugar to adjust the acid level.

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 1130.5, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 24—Wine.

Artificially carbonated wine. Effervescent wine artificially charged with carbon dioxide and containing more than 0.392 grams of carbon dioxide per 100 milliliters.

Bonded wine cellar. Premises established under the provisions of this part. For the purposes of this part a wine premises designated a bonded winery is also a bonded wine cellar.

Bonded wine premises. Premises established under the provisions of this part on which operations in untaxpaid wine are authorized to be conducted.

Bonded wine warehouse. Bonded warehouse facilities established under the provisions of this part on wine premises by a warehouse company or other person for the storage of wine and allied products for credit purposes.

Bonded winery. Premises established under the provisions of this part on which wine production operations are conducted and other authorized operations may be conducted.

Bottle. A container four liters or less in capacity, regardless of the material from which it is made, used to store wine or to remove wine from the wine premises.

Bottler. A proprietor of wine premises established under the provisions of this part who fills wine into a bottle.

Brix. The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution at 60 degrees F. (20 degrees C.) (Percent by weight of sugar).

Bulk container. Any container larger than 60 liters.

Business day. Any day, other than Saturday, Sunday, or a legal holiday. (The term ''legal holiday'' includes all holidays in the District of Columbia and statewide holidays in a particular State in which a claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Calendar year. The period which begins January 1 and ends on the following December 31.

Case. Two or more bottles, or one or more containers larger than four liters, enclosed in a box or fastened together by some other method.

Chaptalization (Brix adjustment). The addition of sugar or concentrated juice of the same kind of fruit to juice before or during fermentation to develop alcohol by fermentation.

Cider. See definitions for hard cider and tax exempt cider. For a description of an additional product which may be called cider, see § 4.21(e)(5) of this chapter.

Concentrate plant. An establishment qualified under part 18 of this chapter for the production of volatile fruit-flavor concentrate.

Container. A receptacle, regardless of the material from which it is made, used to store wine or to remove wine from wine premises. (Also see the definition of bulk container for containers larger than 60 liters).

Director. The Director, Bureau of Alcohol, Tobacco and Firearms (ATF), the Department of the Treasury, Washington, DC.

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

Distilled spirits plant. An establishment qualified under part 19 of this chapter (excluding alcohol fuel plants) for producing, warehousing, or processing of distilled spirits (including denatured spirits), or manufacturing of articles.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Effervescent wine. A wine containing more than 0.392 grams of carbon dioxide per 100 milliliters.

Electronic fund transfer (EFT). Any transfer of funds effected by a proprietor's financial institution, 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.

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.''

Export or 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 will include shipments to any possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico and to the territories of the Virgin Islands, American Samoa, and Guam will also be treated as exportations.

Fiduciary. A guardian, trustee, executor, receiver, administrator, conservator, or any person acting in any fiduciary capacity for any person.

Financial institution. A bank or other financial institution, 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 financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury account at the Federal Reserve Bank.

Fold. The ratio of the volume of the fruit must or juice to the volume of the volatile fruit-flavor concentrate produced from the fruit must or juice; for example, one gallon of volatile fruit-flavor concentrate of 100-fold would be the product from 100 gallons of fruit must or juice.

Foreign wine. Wine produced outside the United States.

Formula wine. Special natural wine, agricultural wine, and other than standard wine (except for distilling material and vinegar stock) produced on bonded wine premises under an approved formula.

Fruit wine. Wine made from the juice of sound, ripe fruit (other than grapes). Fruit wine also includes wine made from berries or wine made from a combination of grapes and other fruit (including berries).

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

Grams per liter. For the purposes of this part, the unit of measure equivalent to the ''parts per thousand'' unit of measure prescribed in the Internal Revenue Code of 1986, as amended.

Grape wine. Wine made from the juice of sound, ripe grapes.

Hard cider. Still wine derived primarily from apples or apple concentrate and water (apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, must represent more than 50 percent of the volume of the finished product) containing no other fruit product nor any artificial product which imparts a fruit flavor other than apple; containing at least one-half of 1 percent and less than 7 percent alcohol by volume; having the taste, aroma, and characteristics generally attributed to hard cider; and sold or offered for sale as hard cider.

Heavy bodied blending wine. Wine made from fruit without added sugar, with or without added wine spirits, and conforming to the definition of natural wine in all respects except as to maximum total solids content.

High-proof concentrate. A volatile fruit-flavor concentrate (essence) that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e., without the addition of other substances.

In bond. When used with respect to wine or spirits, ''in bond'' refers to wine or spirits possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes any wine or spirits on the bonded wine premises or a distilled spirits plant, or in transit between bonded premises (including in the case of wine, bonded wine premises). Additionally, the term refers to wine withdrawn without payment of tax under 26 U.S.C. 5362 and to spirits withdrawn without payment of tax under 26 U.S.C. 5214 (a)(5) or (a)(13) with respect to which relief from liability has not yet occurred.

Invert sugar syrup. A substantially colorless solution of invert sugar which

has been prepared by recognized methods of inversion from pure dry sugar and contains not less than 60 percent sugar by weight (60 degrees Brix).

Juice. The unfermented juice (concentrated or unconcentrated) of grapes, other fruit (including berries) and authorized agricultural products exclusive of pulp, skins, or seeds.

Kind. Kind means the class and type of wine prescribed in this part and in 27 CFR part 4.

Lees. The settlings of wine.

Liquid sugar. A substantially colorless refined sugar and water solution containing not less than the equivalent of 60 percent pure dry sugar by weight (60 degrees Brix).

Liter. A metric unit of capacity equal to 1,000 cubic centimeters at 20 degrees C. or 33.814 United States fluid ounces at 68 degrees F. of alcoholic beverage.

Lot. Wine of the same type. When used with reference to a ''lot of wine bottled'', lot means the same type of wine bottled or packed on the same date into containers.

Must. Unfermented juice or any mixture of juice, pulp, skins, and seeds prepared from grapes or other fruit (including berries).

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by subparts F and L of this part and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids.

Nonbeverage wine. Wine, or wine products made from wine, rendered unfit for beverage use in accordance with § 24.215.

Own production. When used with reference to wine in a bonded winery, the term means wine produced by fermentation in the same bonded winery, whether or not produced by a predecessor in interest at the bonded winery. The term includes wine produced by fermentation in bonded wineries owned or controlled by the same or affiliated persons or firms when located within the same State.

Packer. A proprietor of wine premises established under the provisions of this part who fills wine into a container larger than four liters.

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

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 United States 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.

Proprietor. The person qualified under this part to operate a wine premises, and includes the term ''winemaker'' when the context so requires.

Pure dry sugar. Refined sugar 95 percent or more by weight dry, having a dextrose equivalent of not less than 95 percent on a dry basis, and produced from cane, beets, or fruit, or from grain or other sources of starch.

Reconditioning. The conduct of operations, after original bottling or packing, to restore wine to a merchantable condition. The term includes relabeling or recasing operations.

Same kind of fruit. In the case of grapes, all of the species and varieties of grapes. In the case of fruits other than grapes, this term includes all of the several species and varieties of any given kind; except that this will not preclude a more precise identification of the composition of the product for the purpose of its designation.

Secretary. The Secretary of the Treasury or the Secretary's designated delegate.

Sparkling wine or champagne. An effervescent wine containing more than 0.392 gram of carbon dioxide per 100 milliliters of wine resulting solely from the secondary fermentation of the wine within a closed container.

Special natural wine. A product produced from a base of natural wine (including heavy bodied blending wine) to which natural flavorings are added, and

made pursuant to an approved formula in accordance with subpart H of this part.

Specially sweetened natural wine. A product made with a base of natural wine and having a total solids content in excess of 17 percent by weight (17 degrees Brix dealcoholized wine) and an alcohol content of not more than 14 percent by volume.

Spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions or mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated.

Standard wine. Natural wine, specially sweetened natural wine, special natural wine, and standard agricultural wine, produced in accordance with subparts F, H, and I of this part.

Still wine. Wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters.

Sugar. Pure dry sugar, liquid sugar, and invert sugar syrup.

Sweetening. The addition of juice, concentrated juice or sugar to wine after the completion of fermentation and before taxpayment.

Tax exempt cider. Cider produced in accordance with § 24.76

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid wine. Wine on which the tax imposed by law has been determined, regardless of whether the tax has actually been paid or the payment of tax has been deferred.

Taxpaid wine bottling house. Premises established under the provisions of this part primarily for bottling or packing taxpaid wine.

Taxpaid wine premises. Premises established under the provisions of this part on which taxpaid wine operations other than bottling are authorized to be conducted.

This chapter. Title 27, Code of Federal Regulations, chapter I (27 CFR chapter I).

Total solids. The degrees Brix of unfermented juice or dealcoholized wine.

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

U.S.C. The United States Code.

United States wine. Wine produced on bonded wine premises in the United States.

Unmerchantable wine. Wine which has been taxpaid, removed from bonded wine premises, and subsequently returned to a bonded wine premises under the provisions of § 24.295 for the purpose of reconditioning, reformulation or destruction.

Vinegar. A wine or wine product not for beverage use produced in accordance with the provisions of this part and having not less than 4.0 grams (4.0 percent) of volatile acidity (calculated as acetic acid and exclusive of sulfur dioxide) per 100 milliliters of wine.

Volatile fruit-flavor concentrate. Any concentrate produced by any process which includes evaporations from any fruit mash or juice.

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

Wine premises. Premises established under the provisions of this part on which wine operations or other operations are authorized to be conducted.

Wine spirits. Brandy or wine spirits authorized under 26 U.S.C. 5373 for use in wine production.

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–398, 63 FR 44783, Aug. 21, 1998; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

Subpart C—Administrative and Miscellaneous Provisions

AUTHORITIES

§ 24.19 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this Part 24 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.5, Delegation Order—

Delegation of the Director's Authorities in 27 CFR Part 24—Wine. ATF delegation orders, such as ATF Order 1130.5, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.20 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form will be furnished as indicated by the headings on the form and the instructions on or pertaining to the form and as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/). (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.21 Modified forms.

(a) *General*. The appropriate ATF officer may approve the use of a modified form in lieu of the prescribed form required by this part, when in the judgment of the appropriate ATF officer:

(1) Good cause has been shown for the use of the modified form and

(2) The use of the modified form will not result in a net increase in cost to the Government or hinder the effective administration of this part.

Except to adapt tax returns for use with data processing equipment, no proposal for modification of a prescribed form relating to qualification, to the giving of any bond, or to the assessment, payment, or collection of tax will be approved under this section.

(b) *Application*. The proprietor who desires to modify a prescribed form shall submit a written application to the appropriate ATF officer. The application will state the reasons a modified form is necessary and be accompanied by a copy of the proposed form with typical entries.

(c) *Conditions*. A modified form may not be used until the application has been approved by the appropriate ATF officer. Authorization for the use of a modified form is conditioned on compliance with the procedures, conditions, and limitations specified in the approval of the application. The use of a modified form does not relieve the proprietor from any requirement of this part. Authority for use of a modified form may be withdrawn whenever in the judgment of the appropriate ATF officer the effective administration of this part is hindered by the continuation of the authority. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.22 Alternate method or procedure.

(a) *General*. The proprietor, on specific approval of the appropriate ATF officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. As used in this section, an alternate method or procedure also includes alternate construction or equipment. No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, will be authorized under this section. The appropriate ATF officer may approve an alternate method or procedure, subject to stated conditions, when in the judgment of the appropriate ATF officer:

(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, will not result in an increase in cost to the Government, and

will not hinder the effective administration of this part.

(b) *Application.* The proprietor who desires to employ an alternate method or procedure shall submit a written application to the appropriate ATF officer. The application will specifically describe the proposed alternate method or procedure, and will set forth the reasons therefor. Alternate methods or procedures will not be employed until the application is approved by the appropriate ATF officer.

(c) *Conditions.* The proprietor shall, during the period of authorization for 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 appropriate ATF officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization. (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5556))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

§ 24.25 Emergency variations from requirements.

(a) *General.* The appropriate ATF officer may approve construction, equipment, and methods of operation other than as specified in this part, when in the judgment of such officer an emergency exists, the proposed variations from the specified requirements are necessary, and the proposed variations:

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

(b) *Application.* The proprietor must submit a written application to the appropriate ATF officer within 24 hours of any temporary approval granted under paragraph (c) of this section, which describes the proposed variation, and sets forth the reasons therefor.

(c) *Temporary approval.* The proprietor who desires to employ an emergency variation from requirements must contact the appropriate ATF officer and request temporary approval until the written application, required by paragraph (b) of this section, is acted upon. The appropriate ATF officer will be a subordinate of the ATF officer designated in paragraph (a) of this section. Where the emergency threatens life or property, the proprietor may take immediate action to correct the situation without prior notification; however, the proprietor must promptly contact the appropriate ATF officer and file with that officer a report concerning the emergency and the action taken to correct the situation.

(d) *Conditions.* The proprietor must, during the period of variation from requirements granted under this section, comply with the terms of the approved application. A failure to comply in good faith with any procedures, conditions, and limitations will automatically terminate the authority for a variation. Upon termination of the variation, the proprietor must fully comply with requirements of regulations for which the variation was authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate ATF officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the variation.

[T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.26 Authority to approve.

The appropriate ATF officer is authorized to approve, except as otherwise provided in this part, all applications, bonds, consents of surety, qualifying documents, claims, and any other documents required by or filed under this part, whether for original establishment, for changes subsequent to establishment, for discontinuance of business, for remission, abatement, credit, or refund of tax, or for any other purpose. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.27 Segregation of operations.

The appropriate ATF officer may require the proprietor to segregate operations within any wine premises established under this part, by partitions or otherwise, to the extent deemed necessary to prevent jeopardy to the revenue, to prevent confusion between operations, to prevent substitution with respect to the several methods of producing effervescent wine, and to prevent the commingling of standard wine with other than standard wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.28 Installation of meters, tanks, and other apparatus.

The appropriate ATF officer may require the proprietor to install meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install a required apparatus will not be permitted to conduct business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.29 Claims.

The appropriate ATF officer may require the proprietor or other person liable for the tax on wine or spirits to file a claim and to submit evidence of loss in any case where wine or spirits are lost or destroyed.(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5043, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.30 Supervision.

The appropriate ATF officer may require that operations on wine premises be supervised by any number of appropriate ATF officers necessary for the protection of the revenue or for the enforcement of 26 U.S.C. chapter 51 and applicable regulations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5366, 5553))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

§ 24.31 Submission of forms and reports.

The appropriate ATF officer may require the proprietor to submit to an appropriate ATF officer copies of prescribed transaction forms, records, reports, or source records used to prepare records, reports or tax returns. (Sec. 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5555))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

§ 24.32 Records.

The appropriate ATF officer may require the proprietor to maintain any record required by this part in a prescribed format or arrangement or otherwise change the method of recordkeeping in any case where the required information is not clearly or accurately reflected. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.35 Right of entry and examination.

Under 26 U.S.C. 7601, 7602, and 7606, appropriate ATF officers have authority to inspect during normal business hours the records, stocks, and wine premises (including any portion designated as a bonded wine warehouse) of the proprietor to determine compliance with all provisions of the internal revenue laws and regulations. In addition, for the purposes prescribed in 27 CFR 70.22, appropriate ATF officers may examine financial records, books of account, and any other books, papers, records, and data relevant to an inquiry. Any denial or interference with any inspection by the proprietor, or by agents or employees of the proprietor,

is a violation of 26 U.S.C. 7342 and may be subject to an appropriate penalty. (August 16, 1954, Ch. 736, 68A Stat. 872, as amended, 901, as amended, 903, as amended (26 U.S.C. 5560, 7342, 7601, 7602, 7606))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.36 Instruments and measuring devices.

All instruments and measuring devices required by this part to be furnished by the proprietor for the purpose of testing and measuring wine, spirits, volatile fruit-flavor concentrate, and materials will be maintained by the proprietor in accurate and readily usable condition. The appropriate ATF officer may disapprove the use of any equipment or means of measurement found to be unsuitable for the intended purpose, inaccurate, or not in accordance with regulations. In this case, the proprietor shall promptly provide suitable and accurate equipment or measuring devices. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5357, 5366, 5368, 5552))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.37 Samples for the United States.

Appropriate ATF officers are authorized to take samples of wine, spirits, volatile fruit-flavor concentrate, or any other material which may be added to wine products, for analysis, testing, etc., free of tax to determine compliance with the provisions of law and regulation. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1392, as amended, 1396, as amended (26 U.S.C. 5362, 5373, 5511, 7510))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

FACILITIES AND ASSISTANCE

§ 24.40 Gauging and measuring.

Appropriate ATF officers may require the proprietor to furnish the necessary facilities and assistance to gauge or measure wine or spirits in any container or to examine any apparatus, equipment, container, or material on wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended, 1395, as amended, 1396, as amended (26 U.S.C. 5357, 5366, 5368, 5555))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.41 Office facilities.

The appropriate ATF officer may require the proprietor to furnish temporarily a suitable work area, desk and equipment necessary for the use of appropriate ATF officers in performing Government duties whether or not such office space is located at the specific premises where regulated operations occur or at corporate business offices where no regulated activity occurs. Such office facilities will be subject to approval by the appropriate ATF officer.

[T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

EMPLOYER IDENTIFICATION NUMBER

§ 24.45 Use on returns.

The employer identification number (as defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number will be shown on each return filed pursuant to the provisions of this part, including amended returns. Failure of the taxpayer to include the employer identification number on any return filed pursuant to the provisions of this part may result in the assertion and collection of the penalty prescribed in 27 CFR 70.113 of this chapter. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

§ 24.46 Application.

(a) An employer identification number will be assigned pursuant to application on Internal Revenue Service (IRS) Form SS–4 filed by the taxpayer. IRS Form SS–4 may be obtained from the director of the service center or from any district director.

(b) An application on IRS Form SS–4 will be made by the taxpayer who, prior to filing the first return, has neither secured nor made application for an employer identification number. An application on IRS Form SS–4 will be filed on or before the seventh day after the date on which the first return is filed.

(c) Each taxpayer shall make application 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 tax return under the provisions of this part. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.47 Execution of IRS Form SS–4.

(a) *Preparation*. The application on IRS Form SS–4, together with any supplementary statement, will be prepared in accordance with the form instructions and applicable regulations. The application will be filed with the director of the internal revenue service center as instructed on the Form SS–4.

(b) *Signature*. The application will be signed by:

(1) The individual, if the taxpayer is an individual; or,

(2) The president, vice president, other principal officer, or other person authorized to sign, if the taxpayer is a corporation; or,

(3) A responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or,

(4) The fiduciary, if the taxpayer is a trust or estate. (Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

(Approved by the Office of Management and Budget under control number 1512–0492)

SPECIAL (OCCUPATIONAL) TAXES

§ 24.50 Payment of special (occupational) tax.

(a) *General*. Every proprietor of a bonded wine premises or a taxpaid wine bottling house shall pay a special (occupational) tax at the rate specified by § 24.51. The tax will be paid on or before the date of commencing business as a bonded wine premises or taxpaid wine bottling house, and thereafter every year on or before July 1. On commencing business, the tax will be computed from the first day of the month in which the liability is incurred, through the following June 30. Thereafter, the tax will be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable*. Proprietors of a bonded wine premises or a taxpaid wine bottling house incur special (occupational) tax at each place of business in which an occupation subject to special (occupational) 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 (occupational) tax, if the divisions of the premises are otherwise contiguous. A proprietor of a bonded wine premises or a taxpaid wine bottling house does not incur additional special (occupational) tax liability for sales of wine made at a location other than on wine premises described in the application, ATF F 5120.25, if the location where the sales are made is contiguous to the bonded wine premises or the taxpaid wine bottling house in the manner described in this paragraph. (26 U.S.C. 5081, 5142, 5143)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.51 Rates of special (occupational) tax.

(a) *General*. Title 26 U.S.C. 5081(a) (2), (3), and (4) impose a special (occupational) tax of $1,000 per year on every proprietor of a bonded wine premises or a taxpaid wine bottling house.

(b) *Reduced rate for small proprietors*. Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any proprietor of a bonded wine premises or a taxpaid wine bottling house whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special (occupational) tax imposed by § 24.50 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 will be included, not just the gross receipts of the business subject to special (occupational) 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 (occupational) 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 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'' is 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 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 will 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 will be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3). (26 U.S.C. 448, 5061, 5081)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.52 Exemption from special (occupational) tax.

(a) *General*. The proprietor of a bonded wine premises or a taxpaid wine bottling house will not be required to pay special (occupational) tax as a wholesale dealer or retail dealer on account of the sale, at the bonded wine premises or the taxpaid wine bottling house, or at the principal business office as designated in writing to the appropriate ATF officer, of wine which, at the time of sale, is stored at the bonded wine premises or taxpaid wine bottling house, or has been removed from the bonded wine premises to a taxpaid wine premises, the operations of which are integrated with the operations of the bonded wine premises and which is adjacent to or in the immediate vicinity of the bonded wine premises. The proprietor may not have more than one place of sale, as to each bonded wine premises or taxpaid wine bottling house, that will be exempt from special (occupational) tax under this section.

(b) *Place of exemption*. Unless the proprietor has claimed the exemption elsewhere, it will be presumed that the exemption is claimed at the bonded wine premises or taxpaid wine bottling house where the wine or spirits are stored. If exemption from payment of special (occupational) tax is to be claimed for sales at the principal business office rather than for sales at the bonded wine premises or taxpaid wine bottling house, the proprietor shall state such intention in the approved application or file a notice in letter form of this intention with the appropriate ATF officer. Where the exemption is claimed for a place other than the bonded wine premises or taxpaid wine bottling house, the special (occupational) tax will be paid for any sales made at the bonded wine premises or taxpaid wine bottling house.

(c) *Exception*. Where the proprietor of a bonded wine premises or a taxpaid wine bottling house has not paid special (occupational) tax as a wholesale dealer and consummates sales of wine to another dealer at the purchaser's place of business through a delivery route sales personnel or otherwise, the proprietor of the bonded wine premises or taxpaid wine bottling house shall be

required to pay special (occupational) tax as a wholesale dealer.

(d) *Wholesaler's special (occupational) tax.* A wholesale dealer in liquors who has paid the appropriate special (occupational) tax as provided in part 194 of this chapter will not again be required to pay special (occupational) tax as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchaser's place of business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113, 5142))

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

§ 24.53 Special (occupational) tax returns.

(a) *General.* Special (occupational) tax is paid by filing ATF F 5630.5, Special Tax Registration and Return, with payment of tax, in accordance with the instructions on the form.

(b) *Preparation of ATF F 5630.5.* Unless correctly preprinted on a renewal form, all of the information called for on F 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 (occupational) tax.

(3) The employer identification number (see § 24.45).

(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 will be the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer).

(5) The class(es) of special (occupational) 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 (occupational) tax. ''Owner of the business'' includes 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 (occupational) tax for the same period at more than one location or for more than one class of tax shall:

(1) File one special (occupational) tax return, ATF F 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Unless correctly printed on a renewal form, prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF F 5630.5), employer identification number, and period covered by the return. The list will show, by States, the name, address, and tax class of each location for which special (occupational) tax is being paid. The original of the list will be filed with ATF in accordance with instructions on the return, and the copy will be retained at the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer) for the period specified in § 24.300(d).

(d) *Signing of ATF F 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 corporate 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 where the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF F 5630.5 will 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)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

§ 24.54 Special (occupational) tax stamps.

(a) *Issuance of special (occupational) tax stamps.* Upon filing a properly executed return on ATF F 5630.5, together with the full remittance, the taxpayer will be issued an appropriately designated special (occupational) 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 § 24.53(c), 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 case of a corporate taxpayer).

(b) *Distribution of special (occupational) tax stamps for multiple locations.* On receipt of the special (occupational) tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF F 5630.5. Unless correctly printed on the renewal stamp, the taxpayer shall designate one stamp for each location and shall type or print 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 (occupational) tax stamps.* All stamps denoting payment of special (occupational) tax will be kept available for inspection by appropriate ATF officers, at the location for which designated, during business hours. (26 U.S.C. 5146, 6806)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.55 Changes in special (occupational) 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 F 5630.5, the proprietor shall file an amended special (occupational) tax return as soon as practicable after the change covering the new corporate or firm name, or trade name. No new special (occupational) tax is required to be paid. The proprietor shall attach the special (occupational) 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 bonded wine premises or taxpaid wine bottling house, the successor shall pay a new special (occupational) tax and obtain the required special (occupational) 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 (occupational) tax was paid, without paying a new special (occupational) tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special (occupational) tax return on ATF F 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special (occupational) tax has been paid and who fails to register the succession is liable for special (occupational) 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; and

(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 proprietor shall, within 30 days after the change, file with ATF an amended special (occupational) tax return covering the new location. The proprietor shall attach the special (occupational) tax stamp or stamps for endorsement of the change in location. No new special (occupational) tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special (occupational) tax and obtain a new special (occupational) tax stamp. (26 U.S.C. 5143, 7011)

(Approved by the Office of Management and Budget under control numbers 1512–0472 and 1512–0492)

ASSESSMENTS

§ 24.60 General.

Where the appropriate ATF officer determines by examination of records, inventories, or otherwise that the proprietor has incurred liability for the tax on wine, distilled spirits, or special (occupational) tax, and the proprietor does not pay the tax upon notification of the liability, the tax will be assessed. (August 16, 1954, Ch. 736, 68A Stat. 767, as amended (26 U.S.C. 6201))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.61 Assessment of tax.

When wine or spirits in bond are lost or destroyed (except wine or spirits on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the wine or spirits fails to file a claim when required pursuant to § 24.29 or when the claim is denied, the tax will be assessed. In any case where wine is produced, imported, or received otherwise than as authorized by law, or where wine or spirits are removed, possessed, or knowingly used in violation of applicable law, or volatile fruit-flavor concentrate is sold, transported, or used in violation of law, the tax will be assessed. (Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1323, as amended, 1332, as amended, 1335, as amended, 1381, as amended, 1387, as amended, 1392, as amended (26 U.S.C. 5001, 5008, 5043, 5061, 5370, 5391, 5512))

(Approved by the Office of Management and Budget under control number 1512–0492)

§ 24.62 Notice.

If an investigation or an examination of records discloses that liability for the tax on wine or distilled spirits, or special (occupational) tax has been incurred by the proprietor, the appropriate ATF officer will notify the proprietor by letter of the basis and the amount of the proposed assessment in order to afford the proprietor an opportunity to submit a protest, with supporting evidence, within 45 days, or to request a conference with regard to the tax liability. However, if collection of the tax liability may be jeopardized by a delay, the appropriate ATF officer may take immediate jeopardy assessment action pursuant to 26 U.S.C. 6861. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370, 6862))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

CLAIMS

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

(a) *Claim for remission of tax on spirits.* All claims for remission of tax required by this part, relating to the loss or destruction of spirits in bond, will be filed with the appropriate ATF officer within 30 days of discovery of the loss. A claim filed under this paragraph will set forth the following information:

(1) The name, registry number, and location of the distilled spirits plant which produced the spirits;

(2) The serial numbers of the containers from which the spirits were lost, the quantity lost from each, and the total quantity of spirits covered by the claim;

(3) The total amount of tax for which claim is filed;

(4) The date of the loss or destruction (or, if not known, the date of discovery);

(5) The nature and cause (if known) of the loss will be stated specifically and in sufficient detail to disclose all material facts and circumstances surrounding the loss;

(6) If lost in transit, the name of the carrier and the points between which shipped; and

(7) If lost by theft, evidence establishing that the loss did not occur as the result of negligence, connivance, collusion, or fraud on the part of the proprietor, owner, consignor, consignee, bailee or carrier, or the agents or employees of any of them.

(b) *Claim for allowance of loss on wine.* A claim for allowance of loss required by this part, relating to the loss or destruction of wine in bond, will be filed with the appropriate ATF officer. A claim for allowance of loss for wine lost in transit, by fire or other casualty, or any other extraordinary or unusual losses, including a loss by theft, will be filed immediately. Any other claim for allowance of loss will be attached to and submitted with the ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period in which the inventory required by § 24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final report filed. A claim filed under this paragraph will set forth the information required by paragraphs (a)(5) to (a)(7) of this section and, in addition, will set forth the following information:

(1) The original volume of wine which sustained the loss, the tax class, the quantity of wine lost, and the percentage of wine lost;

(2) Where the claim covers losses sustained at bonded wine premises during the tax year, the claimant shall state:

(i) The quantities of wine on hand at the beginning of the tax year, received in bond during the tax year, and produced during the tax year;

(ii) Where the percentage of loss is calculated separately by tax class, the volume of wine by tax class; and

(iii) If effervescent wine is produced, the volume of wine produced by fermentation in bottles, by artificial carbonation, and by bulk processing; and

(3) Claims covering losses of wine during transit in bond will show the volume lost from each container, the serial number, if any, and the volume shipped.

(c) *Claim for abatement, credit or refund.* A claim for an abatement of an assessment under § 24.61, or credit or refund of tax which has been paid or determined, will be filed with the appropriate ATF officer in accordance with the provisions of this paragraph and the provisions of 27 CFR part 70, subpart F. A claim filed under this paragraph with respect to spirits, wine, or volatile fruit-flavor concentrate, will set forth the applicable information required by paragraphs (a) and (b) of this section. In addition, any claim filed under this paragraph will set forth the following information:

(1) The date of the assessment for which abatement is claimed; and

(2) The name, registry number, and address of the premises where the tax was assessed (or name, address, and title of any other person who was assessed the tax, if the tax was not assessed against the proprietor).

(d) *Indemnification or recompense.* A claim filed under paragraph (a) or (b) of this section will specify whether the claimant has been or will be indemnified or recompensed for the spirits or wine lost and, if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wine, less the tax.

(e) *Supporting documents.* A claim filed under paragraph (a), (b), or (c) of this section will be supported by affidavits of persons having personal knowledge of the loss or destruction. In addition, if filed for tax on wine or spirits lost in transit, the claim will be supported by a copy of the carrier's bill of lading. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended,

1382, as amended (26 U.S.C. 5008, 5370, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1991, as amended by T.D. ATF–338, 58 FR 19063, Apr. 12, 1993; T.D. ATF–376, 61 FR 31030, June 19, 1996; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.66 Claims on wine returned to bond.

(a) *General.* A claim for credit or refund, or relief from liability, of tax on unmerchantable United States wine returned to bonded wine premises will be filed with the appropriate ATF officer within six months after the date of the return of the wine to bond. A single claim may not be filed under this section for a quantity on which credit or refund of tax would be in an amount less than $25. This limitation does not apply with respect to any returned wine on which the six month period for filing a claim will expire.

(b) *Filing.* A claim filed under this section will set forth the following information:

(1) The kind, volume, and tax class of the wine;

(2) As to each tax class, the amount of tax previously paid or determined; and

(3) The date the wine was returned to bond.

(c) *Indemnification or recompense.* A claim filed under this section will specify whether the claimant has been or will be indemnified or recompensed for the wine returned to bond and if so, the amount and nature of indemnity or recompense and the actual value of the wine, less the tax. (Sec. 201., Pub. L. 85–859, 72 Stat. 1332, as amended, 1380, as amended (26 U.S.C. 5044, 5361, 5371))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.67 Other claims.

The requirements with respect to a claim for:

(a) Remission of tax on wine withdrawn without payment of tax under the provisions of § 24.292, and lost in transit to the port of export, vessel or aircraft, foreign-trade zone, customs bonded warehouse, or manufacturing bonded warehouse, as applicable, are contained in 27 CFR part 252.

(b) Refund or credit of any tax imposed on wine or other liquors by 26 U.S.C. chapter 51, part I, subchapter A, 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 the amount was excessive, are contained in 27 CFR part 70 subpart F.

(c) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on wines or other liquors previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official as a result of

(1) A major disaster,

(2) Fire, flood, casualty, or other disaster, or

(3) Breakage, destruction, or damage (excluding theft) resulting from vandalism or malicious mischief, are found in 27 CFR part 70, subpart G.

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–376, 61 FR 31030, June 19, 1996]

§ 24.68 Insurance coverage.

The remission, abatement, refund, credit, or other relief, of taxes on wine or spirits provided for under this part will be allowed only to the extent that the claimant is not indemnified or recompensed for such tax by any valid claim of insurance or otherwise. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5064, 5371))

§ 24.69 Filing of claims.

(a) *Claims.* All claims filed under this part for abatement, refund, credit, or remission of tax will be filed on ATF F 5620.8 (2635). Each claim filed under this part will:

(1) Show the name, address, and title of the claimant;

(2) Be signed by the claimant or the duly authorized agent of the claimant; and

(3) Be executed under the penalties of perjury.

(b) *Supporting documents.* Forms, supporting statements, and any other documents required by this part to be submitted with a claim will be attached to the claim and be considered a part of the claim. The appropriate ATF officer may require the submission of additional evidence in support of any claim filed under this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5064, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.70 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. Where a claim for credit of tax is filed, the claimant shall, upon receipt of notification of allowance of credit from the appropriate ATF officer, make an adjusting entry on the next tax return (or returns) to the extent necessary to exhaust the credit. The claimant shall also make an explanatory statement on each tax return specifically identifying the notification of allowance of credit. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return until ATF has acted on the claim. (Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1335, as amended, 1381, as amended, 1395, as amended (26 U.S.C. 5043, 5044, 5061, 5370, 5555))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

TAX EXEMPT WINE

§ 24.75 Wine for personal or family use.

(a) *General.* Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(b) *Quantity.* The aggregate amount of wine that may be produced exempt from tax with respect to any household may not exceed:

(1) 200 gallons per calendar year for a household in which two or more adults reside, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) *Definition of an adult.* For the purposes of this section, an adult is any individual who is 18 years of age or older. However, if the locality in which the household is located has established by law a greater minimum age at which wine may be sold to individuals, the term ''adult'' will mean an individual who has attained that age.

(d) *Proprietors of bonded wine premises.* Any adult, defined in § 24.75(c), who operates a bonded wine premises as an individual owner or in partnership with others, may produce wine and remove it from the bonded wine premises free of tax for personal or family use, subject to the limitations in § 24.75(b).

(e) *Limitation.* This exemption should not in any manner be construed as authorizing the production of wine in violation of applicable State or local law. Except as provided in § 24.75(d), this exemption does not otherwise apply to partnerships, corporations, or associations.

(f) *Removal.* Wine produced under this section may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions, such as home winemaker's contests, tastings or judgings, but may not under any circumstances be sold or offered for sale. The proprietor of a bonded wine premises shall pay the tax on any wine removed for personal or family use in excess of the limitations provided in this section and shall also enter all quantities removed for personal or family use on ATF F 5120.17, Report of Bonded Wine Premises Operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

(Approved by the Office of Management and Budget under control number 1512–0216)

[T.D. ATF–299, 55 FR 24989, June 19, 1991, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993; T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 24.76 Tax exempt cider.

Cider, when produced solely from the noneffervescent fermentation of apple juice without the use of any preservative method or material, and when produced at a place other than a bonded

wine premises and sold or offered for sale as cider, and not as wine or as a substitute for wine, is not subject to the tax on wine, or to the provisions of this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

§ 24.77 Experimental wine.

(a) *General.* Any scientific university, college of learning, or institution of scientific research may, without payment of tax, produce, receive, blend, treat, and store wine for experimental or research use, but not for consumption (other than organoleptic tests) or sale, and may receive wine spirits without payment of tax in quantities as may be necessary for the production of wine.

(b) *Qualification.* An institution that wants to conduct experimental wine operations must apply in letter form to the appropriate ATF officer. The application will show the name and address of the institution, the nature, extent, and purpose of the operations to be conducted, describe the operations and equipment and the location at which operations will be conducted (including identification of the building or buildings, or portions thereof, to be used), and the security measures to be provided. If wine spirits are to be used, that fact will be stated together with the estimated annual requirements in proof gallons. A secure place of storage under lock will be provided for such spirits and will be described in the application.The applicant must, when required by the appropriate ATF officer, furnish as part of the application, additional information that may be necessary to determine whether the application should be approved. Operations may not begin until authorized by the appropriate ATF officer.

(c) *Procurement of spirits.* Where the approved application provides for the use of wine spirits in experimental wine operations, such spirits may be procured to the extent stated in the approved qualifying application. However, an application will be filed with the appropriate ATF officer and authorization obtained for each wine spirits procurement.

(d) *Records.* All approved qualifying documents and applications will be retained in the files of the institution and will be exhibited on request to appropriate ATF officers. No reports concerning wine or wine spirits need be filed unless required by appropriate ATF officer, but records appropriate to the experiments to be conducted and records documenting the disposition of the wine and wine spirits will be retained and will be made available for inspection by appropriate ATF officers. If wine spirits are used, the records will show the quantities of spirits received and used each day.

(e) *Discontinuance.* When an institution discontinues experimental wine operations, all remaining wine or wine spirits will be disposed of either by destruction or shipment to premises authorized to receive wine or wine spirits. A letter application will be filed with the appropriate ATF officer and authorization obtained prior to the destruction or shipment of the wine or wine spirits. When the authorized destruction or shipment has been completed, a letter notification will be sent to the appropriate ATF officer. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5042))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

FORMULAS

§ 24.80 General.

The proprietor shall, before production, obtain approval of the formula and process by which special natural wine, agricultural wine, and other than standard wine (except distilling material or vinegar stock) are to be made. The formula must be prepared and filed on ATF F 5120.29, Formula and Process for Wine, in accordance with the instructions on the form. A nonbeverage wine formula will show the intended use of the finished wine or wine product. Any formula approved under this section will remain in effect until revoked, superseded, or voluntarily surrendered. Except for research, development, and testing, no special natural wine, agricultural wine, or, if required to be covered by an approved formula, wine other than standard wine may be

produced prior to approval by the appropriate ATF officer of a formula covering each ingredient and process (if the process requires approval) used in the production of the product. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1386, as amended, 1395, as amended (26 U.S.C. 5361, 5367, 5386, 5387, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.81 Filing of formulas.

The proprietor shall on each formula filed designate all ingredients and, if required, describe each process used to produce the wine. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production, or any other change in an approved formula, will require the filing of a new ATF F 5120.29. After a change in formula is approved, the original formula must be surrendered to the appropriate ATF officer. The proprietor shall serially number each formula, commencing with ''1'' and continuing thereafter in numerical sequence. Nonbeverage wine formulas will be prefixed with the symbol ''NB.'' The appropriate ATF officer may at any time require the proprietor to file a statement of process in addition to that required by the ATF F 5120.29 or any other data to determine whether the formula should be approved or the approval continued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.82 Samples.

Except for vinegar and salted wine as defined in § 24.215, the proprietor shall submit under separate cover at the time of filing any nonbeverage wine formula a 750 mL sample of the base wine used and a 750 mL sample of the finished wine or wine product. The latter sample will be considered representative of the finished product. Any material change in the flavor or other characteristics of the finished product from that of the approved sample will require the filing of a new formula even though the ingredients may be the same. In addition, the appropriate ATF officer may, at any time, require the proprietor to submit samples of any wine or wine product made in accordance with an approved formula or of any materials used in production. (Sec. 201, Pub. L 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control number 1512–0059)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

ESSENCES

§ 24.85 Essences.

Essences or extracts (preparations of natural constituents extracted from fruit, herbs, berries, etc.) may be used in the production of any formula wine except agricultural wine. The essences may be produced on wine premises or elsewhere. Where an essence contains spirits, use of the essence may not increase the volume of the wine more than 10 percent nor its alcohol content more than four percent by volume. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

§ 24.86 Essences produced on wine premises.

Wine, taxpaid spirits, or spirits withdrawn tax-free may be used in the production of essences on wine premises. The description of the process for producing the essence may be included as part of a formula for the production of a formula wine or a separate formula may be filed on ATF F5120.29. If a separate formula is filed for the essence, the serial number of the formula by which it is produced will be shown in the ATF F 5120.29 covering the formula wine in which it is to be used. If an essence is to be made in quantities greater than required for individual lots of formula wine, and stored on the premises, a separate formula will be filed for the essence. Essences made on wine premises with wine spirits withdrawn free of tax pursuant to 26 U.S.C.

5214(a)(5) may only be used in the production of a formula wine, and may not be removed from the premises where made. Essences made on wine premises with the use of tax-free spirits withdrawn free of tax pursuant to 26 U.S.C. 5214(a)(13) may only be used in the production of a nonbeverage wine or wine product and may not be removed from the premises where made. The ATF F 5120.29 for the production of an essence is filed in the same manner as for the production of formula wine and a sample of the essence produced will be at least four fluid ounces. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.87 Essences made elsewhere.

Before an essence not made on wine premises may be used in the production of formula wine, the manufacturer of the essence shall obtain approval from the appropriate ATF officer. The request for approval will identify the essence by name or number and by the name of the manufacturer, and a sample of at least four fluid ounces of the essence will be submitted. However, a request for approval and submission of a sample is not required if the essence is made pursuant to approval of a formula on ATF F 5530.5, Formula and Process for Nonbeverage Product. Essences made under an approved formula on ATF F 5530.5 will be described on ATF F 5120.29 by showing the name of the manufacturer, the manufacturer's nonbeverage drawback formula number, and the date of approval by the appropriate ATF officer. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

CONVEYANCE OF WINE OR SPIRITS ON WINE PREMISES

§ 24.90 Taxpaid products.

Taxpaid wine or other taxpaid products may be conveyed across bonded wine premises, but may neither be stored nor allowed to remain on bonded wine premises and will be kept separate from untaxpaid wine or spirits. However, upon payment or determination of the tax, bulk wine may remain on bonded wine premises until the close of the business day following the day the tax was paid or determined, respectively, or the bonded wine premises on which the tank is located may be alternated as taxpaid wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

§ 24.91 Conveyance of untaxpaid wine or spirits.

Untaxpaid wine or spirits may be conveyed between different portions of the same bonded wine premises. Untaxpaid wine or spirits may also be conveyed by uninterrupted transportation over any public thoroughfare, or over a private roadway if the owner or lessee of the roadway agrees, in writing, to allow appropriate ATF officers access to the roadway to perform their official duty. The conveyance of wine or spirits as authorized in this section is subject to the following conditions:

(a) The untaxpaid wine or spirits are not stored or allowed to remain on any premises other than bonded wine premises;

(b) The untaxpaid wine or spirits are kept completely separate from taxpaid wine or spirits; and

(c) A description of the means and route of conveyance and of the portions of the bonded wine premises between which wine or spirits will be conveyed, as well as a copy of any agreement furnished by the owner or lessee of a private roadway, have been submitted to and approved by the appropriate ATF officer. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1381, as amended (26 U.S.C 5357, 5365))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13684, Mar. 22, 1999]

§ 24.92 Products in customs custody.

Products in customs custody may be conveyed across bonded wine premises subject to the following conditions:

(a) The products are not stored or allowed to remain on bonded wine premises beyond the close of the business day; and

(b) The products in customs custody are kept separate from wine and spirits on bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C 5357, 5361, 5365))

SAMPLES

§ 24.95 General.

Wine or wine spirits may be withdrawn free of tax from a bonded wine premises for use by or for the account of the proprietor or the agents of the proprietor, for analysis or testing, organoleptically or otherwise. Wine or wine spirits may be used for testing purposes, and wine may be used for tasting or sampling on bonded wine premises free of tax. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended (26 U.S.C. 5362, 5372, 5373))

§ 24.96 Use off premises.

The proprietor may remove samples of wine or wine spirits free of tax for analysis or testing purposes.

(a) *Size*. The size of each sample may not be more than one liter for each lot of wine or wine spirits to be analyzed or tested unless the appropriate ATF officer authorizes a larger quantity.

(b) *Disposition of samples*. Remnants or residues of samples remaining after analysis or testing, and which are not retained as specimens, will be destroyed or returned to bonded wine premises. Free of tax samples or residues may not be consumed or sold.

(c) *Records*. The proprietor shall maintain records of all samples taken for analysis or testing, showing the size of each sample, the kind of wine or wine spirits, date of removal, and the name and address to where sent.

(d) *Labeling of samples*. Each sample taken for analysis or testing will be labeled ''Sample for Analysis Only''. The label will show the name, address, and registry number of the bonded wine premises, date, and the kind of wine or wine spirits.

(e) *Limitation*. The tax will be collected on any wine or wine spirits withdrawn under this section which are used or disposed of for purposes other than as authorized. When the quantity of wine or wine spirits withdrawn under this section exceeds the amount necessary for the purpose intended the tax will be collected on such excess. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5362, 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.97 Use on premises.

(a) *Analysis or testing*. The proprietor may take samples of wine or wine spirits free of tax for analysis or testing on bonded wine premises. The proprietor shall maintain records showing the size, kind of wine or wine spirits, date, and disposition of each sample retained as a laboratory specimen. The label of each sample retained as a laboratory specimen will be marked ''Sample for Analysis Only'' and will show the kind of wine or wine spirits.

(b) *Tasting*. The proprietor may take samples of wine free of tax for organoleptic tasting on bonded wine premises. If a room or area is set aside for public tasting purposes, a record will be maintained showing the date, quantity and kind of wine transferred to the room or area for tasting.

(c) *Limitation*. The tax will be collected on any wine or wine spirits withdrawn under this section which are used or disposed of for purposes other than as authorized. When the quantity of wine or wine spirits withdrawn under this section exceeds the amount necessary for the purpose intended the tax will be collected on such excess. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5362, 5372))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

Subpart D—Establishment and Operations

§ 24.100 General.

Each person desiring to conduct operations in wine production, as specified in § 24.101(b), (other than the production of wine free of tax as provided in §§ 24.75 through 24.77) shall, prior to commencing operations, establish wine premises, make application as provided in § 24.105, file bond, and receive permission to operate wine premises as provided in this part. After approval, the wine premises will be designated a bonded winery, bonded wine cellar or taxpaid wine bottling house. As provided in § 24.107, the designated bonded winery will be used if production operations are to be conducted. In addition, wine premises may be used, in accordance with the provisions of this part, for the conduct of certain other operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351, 5352))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

PREMISES AND OPERATIONS

§ 24.101 Bonded wine premises.

(a) *General.* A person desiring to conduct operations involving untaxpaid wine, including the use of spirits in wine production, shall file an application and bond as provided in § 24.105. Further, a warehouse company or other person may, upon obtaining the consent of the proprietor and the surety on the bond and upon filing an application, as provided in § 24.108, and receiving approval, establish at the wine premises a bonded wine warehouse for the storage of wine and allied products for credit purposes.

(b) *Authorized operations.* Except as provided in this part, no operation may be conducted on bonded wine premises other than those authorized. The following operations are authorized:

(1) The receipt, production, blending, cellar treatment, storage, and bottling or packing of untaxpaid wine;

(2) The use of wine spirits in beverage wine production and the use of spirits in nonbeverage wine production;

(3) The receipt, preparation, use, or removal of fruit, concentrated or unconcentrated fruit juice, or other materials to be used in the production or cellar treatment of wine; and

(4) The preparation, storage, or removal of commercial fruit products and by-products (including volatile fruit-flavor concentrate) not taxable as wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended (26 U.S.C. 5351, 5353, 5361))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.102 Premises established for taxpaid wine operations.

A person desiring to bottle or pack taxpaid United States or foreign wine shall file an application as provided in § 24.105 to establish a taxpaid wine bottling house premises. A person desiring to conduct taxpaid United States or foreign wine operations, other than bottling or packing taxpaid wine, at bonded wine premises shall include in their application, as provided in § 24.109, the establishment of taxpaid wine premises.

(a) *Taxpaid wine premises.* Premises on which taxpaid United States or foreign wine may be received and stored, or blended with wine of the same kind and tax class, or reconditioned, and removed.

(b) *Taxpaid wine bottling house premises.* Premises on which taxpaid United States or foreign wine may be received, stored, mixed with wine of the same kind, tax class and country of origin to facilitate handling, reconditioned, bottled or packed, and removed. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1381, as amended (26 U.S.C. 5352, 5363))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.103 Other operations.

Upon the specific approval of the appropriate ATF officer, other operations

not provided for in this part may be conducted on wine premises. Authority to conduct other operations may be obtained by submitting an application to the appropriate ATF officer. The application must specifically describe the operation to be conducted and the wine premises and equipment to be used. An appropriate ATF officer may make any inquiry necessary to determine whether the conduct of other operations on wine premises would jeopardize the revenue, conflict with wine operations, or be contrary to law. Other operations authorized under this section will be conducted in accordance with the conditions, limitations, procedures, and terms stated in the approved application. Authority to conduct other operations may be withdrawn whenever the appropriate ATF officer determines the conduct of the other operations on wine premises jeopardizes the revenue, conflicts with wine operations, or is contrary to law.

[T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

APPLICATION

§ 24.105 General.

A person desiring to establish a bonded winery, bonded wine cellar or taxpaid wine bottling house shall file an application on ATF F 5120.25, Application to Establish and Operate Wine Premises. Approval of ATF F 5120.25 will constitute authorization for the proprietor to operate. The premises may not be used for the conduct of operations under this part unless the proprietor has a valid approved application for the operations. The application will be executed under the penalties of perjury and all written statements, affidavits, and any document incorporated by reference will be considered a part of the application. In any instance where a bond is required to be given or a permit obtained to engage in an operation, the currently approved application will not be valid with respect to that operation if the bond or permit is no longer in effect. In this case, the proprietor shall again file an application and obtain approval before engaging in operations at the wine premises. A new application is not required when a strengthening bond is filed pursuant to § 24.153 or a new bond or superseding bond is filed pursuant to § 24.154. The appropriate ATF officer may require the filing of a new or an amended application in any instance where the currently approved application is inadequate or incorrect in any respect. (August 16, 1954, Ch. 736, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.106 Basic permit requirements.

Any person intending to engage in the business of producing or blending wine or purchasing wine for resale at wholesale is required under the Federal Alcohol Administration Act, as amended (49 Stat. 978; 27 U.S.C. 203) to obtain a basic permit. A State, a political subdivision of a State, or officers or employees of a State or political subdivision acting in their official capacity are exempted from this requirement. The issuance of a basic permit under the Act is governed by regulations in 27 CFR part 1. Where a basic permit is required to engage in an operation, an application for a basic permit will be filed at the time of filing an original or amended application on ATF F 5120.25. Operations requiring a basic permit may not be conducted until the basic permit application is approved. No Wine Producer's and Blender's Basic Permit or Wine Blender's Basic Permit is required for a bonded wine cellar established only for the purpose of storing untaxpaid wine even though an approved application, ATF F 5120.25, and bond are required. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.107 Designation as a bonded winery.

Bonded wine premises which will be used for the production of wine or for

production processes involving the use of wine will be designated a bonded winery unless the proprietor applies for a bonded wine cellar designation. If the proprietor of a bonded wine premises designated as a bonded winery does not engage in wine production operations, the appropriate ATF officer may notify the proprietor that the designation of the premises is changed from a bonded winery to a bonded wine cellar. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5351))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.108 Bonded wine warehouse application.

A warehouse company or other person desiring to establish a bonded wine warehouse on bonded wine premises for storing wine or allied products for credit purposes shall file an application, in letter form, with the appropriate ATF officer. The name and address of the applicant and of the bonded wine premises, and the approximate area and storage capacity (in gallons) of the bonded wine warehouse, will be stated in the application. The application will be accompanied by a signed statement from the proprietor of the bonded wine premises requesting the establishment of the warehouse, and the consent of the surety of the bond for the bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.109 Data for application.

The ATF F 5120.25 is prepared in accordance with the instructions on the form and will include the following, as applicable:

(a) Serial number;

(b) Name and principal business address of the applicant and the address of the wine premises if different from the business address;

(c) Statement of the type of business organization and of each person having an interest in the business, supported by the items of information listed in § 24.110;

(d) Indicate whether the application is for the purpose of establishing a bonded winery, bonded wine cellar, or taxpaid wine bottling house. Also, indicate whether a taxpaid wine premises is to be established if the application is for a bonded winery or bonded wine cellar;

(e) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the applicant's name;

(f) Description of the premises (see § 24.111);

(g) Trade names (see § 24.112);

(h) Description of spirits operations;

(i) With respect to wine premises to which the application relates, a list of the applicant's basic permits and bonds (including those filed with the application) showing the name of the surety for each bond;

(j) Description of volatile fruit-flavor concentrate operations (see § 24.113); and

(k) If other operations not specifically authorized by this part are to be conducted on wine premises, a description of the operations, a list of the premises, and a statement as to the relationship, if any, of the operation to wine operations on wine premises. If any of the information required by paragraph (c) of this section is on file with the appropriate ATF officer in connection with any other premises operated by the applicant, that information, if accurate and complete, may be incorporated by reference and made a part of the application. In this case, the name, address, and if any, registry number of the premises where the information is filed will be stated in the application. The applicant shall, when required by the appropriate ATF officer, furnish as part of the application, additional information as may be necessary to determine whether the application should be approved. If any of the submitted information changes during the pending application, the applicant

shall immediately notify the appropriate ATF officer of the revised information. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5361, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.110 Organizational documents.

The supporting information required by paragraph (c) of § 24.109, includes, as applicable, copies of:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation.

(2) List of the directors and officers, showing their names and addresses.

(3) Certified extracts or digests of minutes of meetings of the board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders of stock.

(b) *Articles of partnership.* True copies of the articles of partnership, if any, and of the certificate of partnership or association.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another party. If a corporation is wholly-owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need to be furnished only upon the request of the appropriate ATF officer.

(2) In the case of an individual owner or partnership, the name and address of each person interested in the wine premises, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents that may be required by the appropriate ATF officer (such as articles of incorporation, bylaws, and any certificate issued by a State authorizing operations) must be made available to any appropriate ATF officer upon request. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999]

§ 24.111 Description of premises.

The application will include a description of each tract of land comprising wine premises. The description will be by directions and distances, in feet and inches (or hundredths of feet), with sufficient particularity to enable ready determination of the bounds of the wine premises. When required by the appropriate ATF officer, a diagram of the wine premises, drawn to scale, will be furnished. The description will clearly indicate any area of the wine premises to be used as bonded wine premises, used as taxpaid wine premises, or alternated for use as bonded wine premises and taxpaid wine premises. The means employed to afford security and protect the revenue will be described. If required by the appropriate ATF officer to segregate operations within the premises, the manner by which the operations are segregated will be described. Each building on wine premises will be described as to size, construction, and use. Buildings on wine premises which will not be used for wine operations will be described only as to size and use. If the wine premises consist of a part of a building, the rooms or floors will be separately described. The activities conducted in the adjoining portions of the building and the means of ingress and egress from the wine premises will be described. (Sec. 201, Pub. L. 85–859,

72 Stat. 1379, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5365))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.112 Name of proprietor and trade names.

The applicant shall list on the application, ATF F 5120.25, the proprietor's name or the operating trade name, if different than the proprietor's name, and any bottling or packing trade names. However, if a bottling or packing trade name is listed on a basic permit issued to the proprietor under the Federal Alcohol Administration Act (49 Stat 978; 27 U.S.C. 204), that trade name is not required to be listed again on the application. If State or local law requires the registration of a trade name, the applicant shall certify that each trade name listed on the application is so registered. A trade name may not be used prior to approval of the application or issuance of a basic permit covering the use of the name. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.113 Description of volatile fruit-flavor concentrate operations.

Each applicant intending to produce volatile fruit-flavor concentrate shall include on the ATF F 5120.25 application a step-by-step description of the production procedure to be employed. The description will commence with the obtaining of juice from the fruit and continue through each step of the process to removal of volatile fruit-flavor concentrate from the system. If volatile fruit-flavor concentrate containing more than 24 percent alcohol (high-proof concentrates (essences)) is to be produced, the proprietor shall indicate any step in the production procedure at which any spirits may be fit for beverage purposes. The maximum quantity in gallons of fruit most used and volatile fruit-flavor concentrate produced in 24 hours, the maximum and minimum fold, and the maximum percent of alcohol in the volatile fruit-flavor concentrate will be stated for each kind of fruit used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1392, as amended (26 U.S.C. 5356, 5361, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.114 Registry of stills.

Any still intended for use in the production of volatile fruit-flavor concentrate will be set up on bonded wine premises. Each still is subject to the provisions of subpart C of part 29 of this chapter and will be registered. The listing of a still in the application, and the approval of the application, will, as provided in 27 CFR 29.55, constitute registration. (Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended, 1379, as amended, 1392, as amended (26 U.S.C. 5179, 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999; T.D. ATF–462, 66 FR 42737, Aug. 15, 2001]

§ 24.115 Registry number.

Upon approval of the application, the appropriate ATF officer will assign a registry number to the bonded winery, bonded wine cellar, or taxpaid wine bottling house. The registry number will be used in all correspondence and on all documents filed subsequently in connection with the operation of the premises and will be shown where required on labels and markings of containers or cases filled at the wine premises.

(Approved by the Office of Management and Budget under control numbers 1512–0058 and 1512–0503)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.116 Powers of attorney.

The proprietor shall file with the appropriate ATF officer a power of attorney for each person authorized to sign or to act on behalf of the proprietor as an attorney-in-fact. A power of attorney is not required for any person whose authority has been furnished in

the application. If not limited in duration, the power of attorney will continue in effect until written notice of revocation is received by the appropriate ATF officer or operations are terminated.

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999]

§ 24.117 Maintenance of application file.

The proprietor shall maintain an application file with the information required by § 24.109 in complete and current condition, readily available at the wine premises for inspection by appropriate ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

CHANGES SUBSEQUENT TO ORIGINAL ESTABLISHMENT

§ 24.120 Amended application.

Where there is a change in any of the information included in the current approved application, the proprietor shall, within 30 days of the change (except as otherwise provided in this part), submit an amended application to the appropriate ATF officer and set forth the information necessary to make the application file accurate and current. Where the change affects only pages or parts of pages of the current application, as many complete pages as will enable the replacement of the pages affected and maintenance of the file as provided in § 24.117 will be submitted. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.121 Changes affecting permits.

The proprietor shall follow the provisions of 27 CFR part 1 to effect any change pertaining to a permit issued under the Federal Alcohol Administration Act. (49 Stat. 978; 27 U.S.C. 203).

§ 24.122 Change in name of proprietor or trade name.

Where there is to be a change in the name of the proprietor or operating trade name, the proprietor shall file an amended application and, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. Where there is a change in or addition of a trade name, the proprietor shall file an amended application or, if a basic permit has been issued under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203), an application for amendment of the basic permit. Operations under a new name may not be conducted before approval of the amended application or issuance of an amended permit, as the case may be. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.123 Change in stockholders.

If there is a change in the list of stockholders furnished under the provisions of § 24.110(c)(1), the proprietor may, in lieu of submission within 30 days of the change under the provisions of § 24.120, submit a new list of stockholders annually on May 1, or any other approved date, to the appropriate ATF officer which has on file the list of stockholders, provided the sale or transfer of capital stock does not result in a change in the control or management of the business. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.124 Change in corporate officers.

Where there is any change in the list of corporate officers furnished under the provisions of § 24.110(a)(2), the proprietor shall submit, within 30 days of the change, an amended application

supported by a new list of corporate officers and a statement of the changes reflected in the new list. Where the proprietor has shown that certain corporate officers listed on the original application have no responsibilities in connection with the operations covered by the application, the appropriate ATF officer may waive the requirement for submitting an amended application to cover a change in those corporate officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.125 Change in proprietorship.

(a) *General*. If there is a change in the proprietorship of wine premises qualified to operate under this part, the outgoing proprietor shall comply with the requirements of § 24.140, and the successor shall, before commencing operations, apply for and obtain any required permits, file any required bonds, and file an application for and receive permission to operate in the same manner as a person qualifying a new wine premises; however, the successor may, in the manner provided in § 24.127, adopt the approved formulas of the outgoing proprietor. Wine, spirits, and winemaking materials may be transferred from an outgoing proprietor to a successor in the manner provided in § 24.140.

(b) *Fiduciary*. A successor to the proprietorship of wine premises who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall, except as otherwise provided in this section, comply with the provisions of paragraph (a) of this section. However, in lieu of filing a new bond, if a bond is required, the fiduciary may furnish a consent of surety extending the terms of any bonds of the predecessor, and any pertinent information contained in the predecessor's application may be incorporated by reference. In addition, the fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing the appointment as such fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the effective date of the court order, or the date specified for the fiduciary to assume control. If the fiduciary was not appointed by a court, the date of assuming control will coincide with the effective date of the qualifying documents filed by the fiduciary.

(c) *Exception*. A fiduciary intending to liquidate the business conducted on wine premises, i.e., disposition of any wine and spirits on hand, including use of any cellar treatment necessary to put the wine in merchantable condition, who does not intend to produce wine, or use spirits, or receive wine in bond may be exempted from qualifying as the proprietor of the wine premises upon filing with the appropriate ATF officer a statement to that effect, a copy of a foreclosure action, or a copy of the court order directing the liquidation of the business, and, if the wine premises is covered by a bond, a consent of surety wherein the surety and the fiduciary agree to remain liable on the bond. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.126 Change in proprietorship involving a bonded wine warehouse.

Where a bonded wine warehouse has been established on wine premises and it is desired to continue the operation of the bonded wine warehouse subsequent to a change in the proprietorship of the bonded winery or bonded wine cellar, the proprietor of the bonded wine warehouse shall file a letter application, accompanied by an affirming statement from the new proprietor of the bonded winery or bonded wine cellar, requesting the continuation of the bonded wine warehouse and also file evidence of sufficient bond coverage. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.127 Adoption of formulas.

The adoption of approved formulas by a successor proprietor will be in the form of an application, filed with the appropriate ATF officer. The application will list the formulas for adoption by formula number, name of product, and date of approval. The application will clearly show that the outgoing proprietor has authorized the successor proprietor's use of the approved formulas. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.128 Continuing partnerships.

If, under the laws of the particular State, the partnership is not terminated upon the death or insolvency of a partner but continues until the dissolution of the partnership is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the wine premises under the prior qualification of the partnership, provided a consent of surety is filed wherein the surety and the surviving partner agree to remain liable on any bond covering the bonded wine premises. A surviving partner who acquires the business on completion of the dissolution of the partnership shall qualify from the date of acquisition, as provided in § 24.125(a). The rule set forth in this section will also apply where there is more than one surviving partner. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.129 Change in location.

Where there is a change in the location of wine premises, the proprietor shall file an amended application and an application for amendment of the basic permit, if any, and if a bond has been filed, either a new bond or a consent of surety. Operation of wine premises may not be commenced at the new location prior to approval of the amended application and issuance of any amended permit. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.130 Change in volatile fruit-flavor concentrate operations.

If the proprietor desires to make any change in the process employed to produce volatile fruit-flavor concentrate and the change affects the accuracy of the description of process included in the application, the proprietor shall file an amended application to include the amended or new process. The new or changed process may not be used prior to approval of the amended application. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1392, as amended (26 U.S.C. 5356, 5511))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.131 Change in building construction and use of premises.

Where a change is to be made to buildings located on wine premises, or in the use of any portion of the wine premises, which affects the accuracy of the application, the proprietor shall, before making such change in construction or use, submit a notice to the appropriate ATF officer. The notice will describe the proposed change in detail. The proprietor shall include the change covered by the notice in the next amended ATF F 5120.25 required to be filed, unless the appropriate ATF officer requires immediate amendment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31077, July 9, 1991; T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

ALTERNATION

§ 24.135 Wine premises alternation.

(a) *General.* The proprietor of a bonded winery or bonded wine cellar may alternate all or a portion of wine premises for use as a taxpaid wine bottling house or use as taxpaid wine premises.

The proprietor may also alternate the use of adjacent or contiguous premises qualified under 26 U.S.C. chapter 51 (distilled spirits plant, brewery, etc.) for use as wine premises or *vice versa*. If a proprietor of a bonded wine cellar or winery wishes to use all or a portion of such premises alternately as a volatile fruit-flavor concentrate plant or vice-a-versa, the proprietor must comply with the requirements of §§ 18.40 through 18.43 of this title.

(b) *Qualifying documents*. Where the proprietor desires to alternate bonded wine premises as taxpaid wine bottling house premises or taxpaid wine premises, or other premises qualified under 26 U.S.C. chapter 51, the following qualifying documents will be filed:

(1) A statement on the application ATF F 5120.25 that an alternation of wine premises will occur;

(2) Evidence of existing bond, consent of surety, or a new bond covering the alternation;

(3) A description of how taxpaid wine or spirits, or untaxpaid wine or spirits will be identified and segregated; and

(4) Any other document or additional information the appropriate ATF officer may require.

(c) *Alternation*. After the necessary qualifying documents have been approved by the appropriate ATF officer, the proprietor may alternate wine premises as described in the application. Any portion of wine premises on which taxpaid wine is located will be considered taxpaid wine premises or taxpaid wine bottling house premises and any portion of the premises on which wine not identified as taxpaid is located will be considered bonded wine premises. The proprietor shall, prior to the initial alternation of the premises, identify by portable signs or tags, or by any other method or manner satisfactory to the appropriate ATF officer, either all taxpaid wine on taxpaid wine premises or taxpaid wine bottling house premises or all untaxpaid wine on bonded wine premises.

(d) *Segregation*. The proprietor shall keep untaxpaid wine or spirits physically separated from taxpaid wine or spirits and on the designated premises. This separation will be by use of tanks, rooms, buildings, partitions, pallet stacks, or complete physical separation, or by any other method or manner which will clearly and readily distinguish untaxpaid wine or spirits from taxpaid wine or spirits and is satisfactory to the appropriate ATF officer. Where necessary for the protection of the revenue or enforcement of 26 U.S.C. chapter 51, the appropriate ATF officer may require that the portions of wine premises alternated under this section be separated by partitions or otherwise.

(e) *Conditions*. Authority for the alternation of bonded wine premises, taxpaid wine bottling house premises, taxpaid wine premises, or other premises qualified under 26 U.S.C chapter 51 is conditioned on compliance by the proprietor with the provisions of this section. Authority for the alternation of bonded wine premises, taxpaid wine bottling house premises, taxpaid wine premises, or other premises qualified under 26 U.S.C. chapter 51 may be withdrawn whenever in the judgment of the appropriate ATF officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5363, 5365, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999; T.D. ATF–455, 66 FR 29483, May 31, 2001]

§ 24.136 Procedure for alternating proprietors.

(a) *General*. Wine premises, or parts thereof, may be operated alternately by proprietors who have each filed and received approval of the necessary applications and bonds and have qualified under the provisions of this part. Where operations by alternating proprietors are limited to parts of the wine premises, the application will describe areas, buildings, floors, or rooms which will be alternated and will be accompanied by a diagram delineating the parts of the wine premises to be alternated. A separate diagram will be submitted to depict each arrangement under which the wine premises will be

operated. Once the qualifying documents have been approved, and operations initiated, the wine premises, or parts thereof, may be alternated. Any transfer of wine, spirits, or other accountable materials from one proprietor to the other proprietor will be indicated in the records and reports of each proprietor. Operation of a bonded winery engaged in the production of wine by an alternate proprietor will be at least one calendar day in length.

(b) *Alternation.* All operations in any area, building, floor, or room to be alternated will be completely finished and all wine, spirits, and other accountable materials will be removed from the alternated wine premises or transferred to the incoming proprietor. However, wine, spirits, and other accountable materials may be retained in locked tanks at wine premises to be alternated and remain in the custody of the outgoing proprietor.

(c) *Bonds.* The outgoing proprietor who has filed bond and intends to resume operation of the alternated areas, buildings, floors, or rooms following suspension of operations by an alternating proprietor shall execute a consent of surety to continue in effect all bonds. Where wine, spirits, or other accountable materials subject to tax under 26 U.S.C. chapter 51 are to be retained in tanks on the wine premises to be alternated, the outgoing proprietor shall also execute a consent of surety to continue the liability of all bonds for the tax on the materials, notwithstanding the change in proprietorship.

(d) *Records.* Each proprietor shall maintain separate records and submit a separate ATF F 5120.17, Report of Bonded Wine Premises Operations. All transfers of wine, spirits, and other accountable materials will be reflected in the records of each proprietor. Each proprietor shall maintain a record showing the name and registry number of the incoming or outgoing proprietor, the effective date and hour of alternation, and the quantity in gallons and the percent alcohol by volume or proof of any wine, spirits, or other accountable materials transferred or received. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5351, 5352, 5354, 5356, 5361, 5362, 5363, 5367, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0058, 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993]

§ 24.137 Alternate use of the wine premises for customs purposes.

(a) *General.* The wine premises may be alternated as a Customs Bonded Warehouse under applicable customs laws and regulations, for the purpose of measuring, gauging, and bottling or packing wine. The use of the portion of the wine premises alternated as a Customs Bonded Warehouse is subject to the approval of the district director of customs and the appropriate ATF officer. When it is necessary to convey wine in customs custody across bonded wine premises, the proprietor shall comply with the provisions of § 24.92.

(b) *Qualifying documents.* Where the proprietor desires to alternate a portion of wine premises for customs use, the following qualifying documents will be filed:

(1) ATF F 5120.25 to cover the alternation;

(2) A diagram clearly depicting any area, building, floor, room or major equipment in use during the alternation; and

(3) Any other documents or additional information the appropriate ATF officer may require.

(c) *Alternation.* After approval of the qualifying documents by the appropriate ATF officer, the proprietor may alternate the wine premises. Portions of the wine premises to be excluded by curtailment or included by extension may not be used for purposes other than those authorized. Prior to the effective date and hour of the alternation, the proprietor shall remove all wine and spirits from the portion of the wine premises to be alternated for customs purposes. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as

amended, 1381, as amended (26 U.S.C. 5356, 5357, 5361, 5365, 5367))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999]

PERMANENT DISCONTINUANCE OF OPERATIONS

§ 24.140 Notice.

(a) *General*. Where all or part of the operations at a wine premises are to be permanently discontinued, the proprietor shall file with the appropriate ATF officer a notice in letter form to cover the discontinuance. The proprietor shall state in the notice the date on which operations will be discontinued and, if the wine premises are to be transferred to a successor proprietor, the name of the successor proprietor. Any basic permit issued to the proprietor under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203) for the operation discontinued will be submitted to the appropriate ATF officer with a written request for cancellation.

(b) *Bonded wine premises*. The proprietor shall certify in the notice, as applicable, that:

(1) All wine, spirits, or volatile fruit-flavor concentrate have been lawfully removed from bonded wine premises, destroyed, or transferred to a successor as of the effective date of discontinuance,

(2) No wine, spirits, or volatile fruit-flavor concentrate are in transit to bonded wine premises, and

(3) All approved applications covering the transfer of spirits to bonded wine premises have been returned to the appropriate ATF officer.

The proprietor shall submit a report marked ''Final'' on the ATF F 5120.17, Report of Bonded Wine Premises Operations. Any wine, spirits, or volatile fruit-flavor concentrate transferred to a successor will be identified as ''Transferred to successor'' on the report and identified as ''Received from predecessor'' on the initial report filed by the successor.

(c) *Taxpaid wine bottling house premises or Taxpaid wine premises*. The proprietor shall certify in the notice that all taxpaid United States or foreign wine on hand have been disposed of, or if not yet disposed of, the manner of disposition and the time period in which the disposition will occur. The proprietor shall include taxpaid United States wine on the ATF F 5120.17 report marked ''Final.'' Any United States taxpaid wine transferred to a successor will be identified as ''Transferred to successor'' on the report and identified as ''Received from predecessor'' on the initial report filed by the successor. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control numbers 1512–0058 and 1512–0216)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.141 Bonded wine warehouse.

Where all operations at a bonded wine warehouse are to be permanently discontinued, the warehouse proprietor shall file with the appropriate ATF officer a notice in letter form to cover the discontinuance. The warehouse proprietor shall state in the notice the name, registry number, and address of the wine premises on which the warehouse facilities are located and the date on which operations of the bonded wine warehouse will be discontinued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5353))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

BONDS AND CONSENTS OF SURETY

§ 24.145 General requirements.

Each person required to file a bond or consent of surety under this part must prepare, execute and submit the bond or consent of surety on the prescribed form in accordance with this part and the instructions printed on the form. A person may not commence or continue any business or operation relating to wine until all bonds and consents of surety required under this part with respect to the business or operation have

been approved by the appropriate ATF officer. (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.146 Bonds.

(a) *Wine bond.* The proprietor shall give bond on ATF F 5120.36, Wine Bond, to cover the liability for excise taxes imposed by the Internal Revenue Code of 1986, on wines produced or received by the proprietor. This includes liability for special occupational taxes and penalties and interest. The bond will apply to wine, spirits, and volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C. chapter 51, in transit to or on bonded wine premises, and to the operations of the bonded wine premises, whether the transaction or operation on which the proprietor's liability is based occurred on or off the proprietor's premises. The bond will provide that the proprietor shall faithfully comply with all provisions of law and regulation relating to activities covered by the bond. This bond has a tax obligation limit of $500 for wine removed from bonded wine premises on which the tax has been determined, but not paid, unless the total penal sum of the operations bond is $2,000 or more and the proprietor and the surety designate $1,000 of this amount as the obligation limit for wine on which the tax has been determined, but not paid.

(b) *Tax deferral bond.* Where the proprietor removes wine from bonded wine premises for consumption or sale, after determination and before payment of tax, and the tax unpaid at any one time amounts to more than $500, the proprietor shall, in addition to any other bond required by this part, furnish a tax deferral bond on ATF F 5120.36, Wine Bond, to ensure payment of the tax on the wine. Under the conditions provided in paragraph (a) of this section, this amount may be changed to $1,000 by the terms of the bond or through a consent of surety between the proprietor and the surety. The tax deferral bond and the wine bond may be submitted on the same ATF F 5120.36.

(c) *Wine vinegar plant bond.* The proprietor of a wine vinegar plant who withdraws wine from a bonded wine premises without payment of tax for use in the manufacture of vinegar shall file a bond on ATF F 5510.2, Bond Covering Removal to and Use of Wine at Vinegar Plant, to ensure the payment of the tax on the wine until such wine becomes vinegar. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993]

§ 24.147 Operations bond or unit bond.

Notwithstanding the provisions of § 24.146, each person intending to commence or to continue business as the proprietor of a bonded wine premises with an adjacent or contiguous distilled spirits plant qualified under 27 CFR part 19 for the production of distilled spirits shall, in lieu of a winery bond and the bonds required under the provisions of 26 U.S.C. 5173, as amended, give an operations bond or unit bond in accordance with the applicable provisions of 27 CFR part 19. (Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.148 Penal sums of bonds.

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum	
		Minimum	Maximum
(a) Wine Bond, AFT F 5120.36	(1) Not less than the tax on all wine or spirits in transit or unaccounted for at any one time, taking into account the appropriate small producer's wine tax credit.	$1,000	$50,000
	Where such liability exceeds $250,000		100,000
	(2) Where the unpaid tax amounts to more than $500, not less than the amount of tax which, at any one time, has been determined but not paid. Except: $1,000 of the wine operations coverage may be allocated to cover the amount of tax which, at any one time, has been determined but not paid, if the total operations coverage is $2,000 or more.	500	250,000
(b) Wine Vinegar Plant Bond ATF F 5510.2*	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time	1,000	100,000

*The proprietor of a bonded wine premises who operates an adjacent or contiguous wine vinegar plant with a Wine Bond which does not cover the operation may file a consent of surety to extend the terms of the Wine Bond in lieu of filing a wine vinegar plant bond.

(26 U.S.C. 5354, 5362)

[T.D. ATF–390, 62 FR 29666, June 2, 1997]

§ 24.149 Corporate surety.

(a) Surety bonds required by this part may be obtained only from corporate sureties which hold certificates of authority from and are 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 yearly on the first working day in July. As revisions of the circular occur, the revisions are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Financial Management Service, Department of the Treasury, Washington, DC 20226. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

§ 24.150 Powers of attorney.

Each bond, and each consent to changes in the terms of a bond, will be accompanied by a power of attorney whereby the surety authorizes the agent or officer who executed the bond or consent to act on behalf of the surety. The appropriate ATF officer may require additional evidence of the authority of the agent or officer of the surety to execute the bond or consent. The power of attorney will be prepared on a form provided by the surety and executed under the corporate seal of the surety. If the power of attorney is other than a manually signed original, the appropriate ATF officer may require a certification of validity. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 648, as amended (26 U.S.C. 6, 7))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.151 Deposit of collateral security.

(a) 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 as collateral security in lieu of corporate sureties 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). Cash, postal money orders, certified checks, cashiers' checks, or treasurers' checks may also be furnished as collateral security in lieu of corporate sureties.

(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 Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. (July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); August 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

§ 24.152 Consents of surety.

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

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.153 Strengthening bonds.

In any instance where the penal sum of the bond on file 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 covering 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 either bond to less than its full penal sum. Strengthening bonds will show the current date of execution and the effective date. (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.154 New or superseding bonds.

When, in the opinion of the appropriate ATF officer, the interests of the Government demand it, or in any case where the validity of the bond becomes impaired in whole or in part for any reason, the principal will be required to give a new bond. A new bond will be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, to continue or to liquidate the business of the principal, will execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When under the provisions of § 24.157 the surety has filed an application to be relieved of liability under any bond given under this part and the principal desires or intends to continue business or operations to which the bond relates, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds will show the current date of execution and the effective date. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1394, as amended (26 U.S.C. 5354, 5362, 5551))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.155 Disapproval and appeal from disapproval.

(a) *Disapproval.* The appropriate ATF officer may disapprove any bonded wine premises bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond, or owning, controlling, or actively participating in the management of the bonded wine premises of the individual, firm, partnership, corporation, or association giving the bond, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of any law of the United States, if such provision relates to internal revenue or customs taxation of distilled spirits, wine, or beer, or if such offense has been compromised with the person on payment of penalties or otherwise, or

(2) Any felony under a law of any State, or of the District of Columbia, or of the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal from disapproval.* Where a bond or consent of surety is disapproved by the appropriate ATF officer, the person giving the bond may appeal the disapproval to the Director. The decision of the Director will be final. (Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.156 Termination of bonds.

A bond prescribed in § 24.146 may be terminated as to future liability pursuant to application by the surety as provided in § 24.157; pursuant to approval of a superseding bond; upon receipt of notification from the principal that the business has been discontinued and all wine and spirits have been removed from the bonded wine premises as provided in § 24.140(b); or in the case of a tax deferral bond, the termination will be issued upon receipt of written notification from the principal that removals of wine requiring a tax deferral bond have been discontinued. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5354))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.157 Application by surety for relief from bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the appropriate ATF officer in whose office the bond is on file, that it desires after a specified date, to be relieved of liability under the bond. The date may not be less than 10 days after the date notice is received by the appropriate ATF officer in the case of a tax deferral bond, and not less than 90 days after the date the notice is received in the

case of a bonded wine premises bond or wine vinegar plant bond. The surety will also file with the appropriate ATF officer an acknowledgment, or other evidence of service, of a notice on the principal. The 10 day or 90 day period does not commence until both the acknowledgment or other evidence of service and the notice are filed. If a notice is not thereafter withdrawn in writing, the rights of the principal as supported by the bond will be terminated on the date specified in the notice, and the surety will be relieved from liability to the extent set forth in § 24.158. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.158 Extent of relief.

(a) *General.* The surety on any bond required by this part who has filed a notice for relief from liability as provided in § 24.157 will be relieved from liability under bond as set forth in this section.

(b) *Wine bond.* Where a new or superseding bond is filed, the surety of the existing bond will be relieved of future liability with respect to wine, spirits, volatile fruit-flavor concentrate, or any other commodities subject to tax under 26 U.S.C. chapter 51 on hand or in transit to bonded wine premises on or after the effective date of the new or superseding bond. Notwithstanding such relief, the surety will remain liable for the tax on all wine or volatile fruit-flavor concentrate produced at, and for wine, spirits, and volatile fruit-flavor concentrate consigned to, the bonded wine premises, and for all other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety will, in addition to the continuing liabilities specified above, remain liable for all wine, spirits, volatile fruit-flavor concentrate, or other commodities subject to tax under 26 U.S.C. chapter 51 on hand or in transit to bonded wine premises on the date specified in the notice, until all the wine, spirits, volatile fruit-flavor concentrate, or commodities subject to tax under 26 U.S.C. chapter 51 have been lawfully disposed of, or a new bond has been filed covering the liability.

(c) *Tax deferral bond.* The surety will be relieved of liability for the tax on any wine removed from the bonded wine premises after the date specified in the notice. The surety will continue to be liable for the tax on wine removed for consumption or sale on or before the date specified in the notice, until all tax is fully paid.

(d) *Wine vinegar plant bond.* The surety will be relieved of liability for tax on wine withdrawn for the manufacture of vinegar after the date specified in the notice. The surety will continue to be liable for the tax on wine withdrawn on or before the date specified in the notice, until all wine is fully accounted for. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended (26 U.S.C. 5354, 5362))

(Approved by the Office of Management and Budget under control number 1512–0058)

§ 24.159 Release of collateral security.

Collateral security pledged and deposited will be released only in accordance with the provisions of 31 CFR part 225. The collateral security will not be released by the appropriate ATF officer until liability under the bond for which it was pledged has been terminated. If satisfied that the interests of the Government will not be jeopardized, the appropriate ATF officer will fix the date or dates on which a part or all of the collateral security may be released. At any time prior to the release of the collateral security, the appropriate ATF officer may, for proper cause, extend the date of release of the security for such additional length of time as deemed appropriate. (July 30, 1947, Ch. 390, Pub. L. 80–280, 61 Stat. 650 (31 U.S.C. 9301, 9303))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

Subpart E—Construction and Equipment

§ 24.165 Premises.

Wine premises will be located, constructed, and equipped, subject to approval by the appropriate ATF officer, in a manner suitable for the operations to be conducted and to afford adequate protection to the revenue. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1380, as amended, 1381, as amended (26 U.S.C. 5351, 5352, 5357, 5361, 5363))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.166 Buildings or rooms.

All buildings or rooms on wine premises in which wine operations or other operations as are authorized in this part are conducted will be located, constructed, and equipped in a manner suitable for the intended purpose and to afford adequate protection to the revenue. Each building or room will be constructed of substantial materials and separated from adjacent or contiguous buildings, rooms, or designated areas in a manner satisfactory to the appropriate ATF officer. Where spirits are to be received and stored in packages, a storage room equipped for locking will be provided. The proprietor shall make provisions to assure ATF officers have ready ingress to and egress from any building or room on wine premises, and shall furnish at the request of the appropriate ATF officer evidence that the means of ingress and egress by ATF officers are assured. Where the appropriate ATF officer finds that any building or room on wine premises is located, constructed, or equipped as to afford inadequate protection to the revenue, the proprietor will be required to make changes in location, construction, or equipment to the extent necessary to afford adequate protection to the revenue. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.167 Tanks.

(a) *General.* All tanks on wine premises used for wine operations or for other operations as are authorized in this part will be suitable for the intended purpose. Each tank used for wine operations will be located, constructed, and equipped as to permit ready examination and a means of accurately determining the contents. Any tank used for wine operations not enclosed within a building or room will be enclosed within a secure fence unless the premises where the tank is located are enclosed by a fence or wall, or all tank openings are equipped for locking and are locked when used for wine operations and there is no proprietor's representative on the wine premises, or the appropriate ATF officer has approved some other adequate means of revenue protection. All open tanks will be under a roof or other suitable covering.

(b) *Other requirements.* Each tank used for the taxpayment of wine, storage of spirits, or spirits additions will be constructed and equipped as follows:

(1) An accurate means of measuring the contents of each tank will be provided by the proprietor. When a means of measuring is not a permanent fixture of the tank, the tank will be equipped with a fixed device to allow the approximate contents to be determined readily;

(2) Safe access to all parts of a tank will be provided by the proprietor;

(3) Tanks may not be used until they are accurately calibrated and a statement of certification of accurate calibration is on file at the premises;

(4) If a tank or its means of measuring is changed as to location or position subsequent to original calibration, the tank may not be used until recalibrated; and

(5) All openings in tanks used for the storage, weighing, or measuring of spirits, or for the addition of spirits to wine, will be equipped for locking or have a similar means of revenue protection. Any vents, flame arrestors, foam devices, or other safety devices affixed to a spirits tank will be constructed to prevent extraction of the contents of the tank. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5552))

(Approved by the Office of Management and Budget under control number 1512–0058)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.168 Identification of tanks.

(a) *General*. Each tank, barrel, puncheon, or similar bulk container, used to ferment wine or used to process or store wine, spirits, or wine making materials will have the contents marked and will be marked as required by this section.

(b) *Tank markings*. (1) Each tank will have a unique serial number;

(2) Each tank will be marked to show its current use, either by permanent markings or by removable signs of durable material; and

(3) If used to store wine made in accordance with a formula, the formula number will be marked or otherwise indicated on the tank.

(c) *Puncheon and barrel markings*. Puncheons and barrels, or similar bulk containers over 100 gallons capacity, will be marked in the same manner as tanks. A permanent serial number need not be marked on puncheons and barrels, or similar bulk containers of less than 100 gallons capacity, used for storage, but the capacity will be permanently marked. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended (26 U.S.C. 5352, 5357))

(Approved by the Office of Management and Budget under control number 1512–0503)

§ 24.169 Pipelines.

Pipelines, including flexible hoses, used to convey wine, spirits, or volatile fruit-flavor concentrate will be constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. The appropriate ATF officer may approve pipelines which cannot be readily examined if no jeopardy to the revenue is created. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5552))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.170 Measuring devices and testing instruments.

(a) *Measuring devices*. The appropriate ATF officer may at any time require proprietors to provide at their own expense equipment for ascertaining the capacity and contents of tanks and other storage containers, and scales and measuring devices for weighing and measuring wine, spirits, volatile fruit-flavor concentrate, or materials received and used in the production or treatment of wine. Where winemaking materials or other materials used in the treatment of wine are used immediately upon receipt on wine premises, or received and stored on bonded wine premises in original sealed shipping containers with a stated capacity, the quantity shown on the commercial invoice or other document covering the shipment may be accepted by the proprietor and entered into records in lieu of measuring the materials upon receipt.

(b) *Testing instruments*. The proprietor shall have ready access to equipment for determining the alcohol content unless the proprietor only receives and stores on wine premises bottled or packed wine with evidence showing the alcohol content has been determined. The proprietor who bottles or packs wine shall have ready access to equipment for determining the net contents of bottled or packed wine. The appropriate ATF officer may require other testing instruments based upon the proprietor's operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1395, as amended (26 U.S.C. 5357, 5552))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

Subpart F—Production of Wine

§ 24.175 General.

The kinds of wine which may be produced on bonded wine premises are as follows:

(a) Natural wine produced in accordance with subparts F and G of this part;

(b) Special natural wine produced in accordance with subpart H of this part;

(c) Agricultural wine produced in accordance with subpart I of this part; and

(d) Other than standard wine produced in accordance with subpart J of this part. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5361, 5382, 5384, 5385, 5386, 5387))

§ 24.176 Crushing and fermentation.

(a) *Natural wine production.* Water may be used to flush equipment during the crushing process or to facilitate fermentation but the density of the juice may not be reduced below 22 degrees Brix. However, if the juice is already less than 23 degrees Brix, the use of water to flush equipment or facilitate fermentation is limited to a juice density reduction of no more than one degree Brix. At the start of fermentation no material may be added except water, sugar, concentrated fruit juice from the same kind of fruit, malo-lactic bacteria, yeast or yeast cultures grown in juice of the same kind of fruit, and yeast foods, sterilizing agents, precipitating agents or other approved fermentation adjuncts. Water may be used to rehydrate yeast to a maximum to two gallons of water for each pound of yeast; however, except for an operation involving the preparation of a yeast culture starter and must mixture for later use in initiating fermentation, the maximum volume increase of the juice after the addition of rehydrated yeast is limited to 0.5 percent. After fermentation natural wines may be blended with each other only if produced from the same kind of fruit.

(b) *Determination of wine produced.* Upon completion of fermentation or removal from the fermenter, the volume of wine will be accurately determined, recorded and reported on ATF F 5120.17, Report of Bonded Wine Premises Operations, as wine produced. Any wine or juice remaining in fermentation tanks at the end of the reporting period will be recorded and reported on ATF F 5120.17.

[T.D. ATF–312, 56 FR 31078, July 9, 1990, as amended by ATF–338, 58 FR 19064, Apr. 12, 1993]

§ 24.177 Chaptalization (Brix adjustment).

In producing natural grape wine from juice having a low sugar content, pure dry sugar or concentrated grape juice may be added before or during fermentation to develop alcohol. In producing natural fruit wine from juice having a low sugar content, sugar, or concentrated juice of the same kind of fruit may be added before or during fermentation to develop alcohol. The quantity of sugar or concentrated juice added may not raise the original density of the juice above 25 degrees Brix. If grape juice or grape wine is ameliorated after chaptalization, the quantity of pure dry sugar added to juice for chaptalization will be included as ameliorating material. If fruit juice or fruit wine is ameliorated after chaptalization, pure dry sugar added under this section is not considered as ameliorating material. However, if fruit juice or fruit wine is ameliorated after chaptalization and liquid sugar or invert sugar syrup is used to chaptalize the fruit juice, the volume of water contained in the liquid sugar or invert sugar syrup will be included as ameliorating material. (Sec. 201, Pub. L. 85–859, 72 Stat. 1385, as amended (26 U.S.C. 5382, 5384))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991; T.D. ATF–413, 64 FR 46844, Aug. 27, 1999]

§ 24.178 Amelioration.

(a) *General.* In producing natural wine from juice having a fixed acid level exceeding 5.0 grams per liter, the winemaker may adjust the fixed acid level by adding ameliorating material (water, sugar, or a combination of both) before, during and after fermentation. The fixed acid level of the

juice is determined prior to fermentation and is calculated as tartaric acid for grapes, malic acid for apples, and citric acid for other fruit. Each 20 gallons of ameliorating material added to 1,000 gallons of juice or wine will reduce the fixed acid level of the juice or wine by 0.1 gram per liter (the fixed acid level of the juice or wine may not be less than 5.0 gram per liter after the addition of ameliorating material).

(b) *Limitations.* (1) Amelioration is permitted only at the bonded wine premises where the natural wine is produced.

(2) The ameliorating material added to juice or wine may not reduce the fixed acid level of the ameliorated juice or wine to less than 5.0 grams per liter.

(3) For all wine, except for wine described in paragraph (b)(4) of this section, the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting fixed acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(4) For wine produced from any fruit (excluding grapes) or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice. (26 U.S.C. 5383, 5384).

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–403, 64 FR 50253, Sept. 16, 1999; T.D. ATF–458, 66 FR 37578, July 19, 2001]

§ 24.179 Sweetening.

(a) *General.* In producing natural wine, sugar, juice or concentrated fruit juice of the same kind of fruit may be added after fermentation to sweeten wine. When juice or concentrated fruit juice is added, the solids content of the finished wine may not exceed 21 percent by weight. When liquid sugar or invert sugar syrup is used, the resulting volume may not exceed the volume which would result from the maximum use of pure dry sugar only.

(b) *Grape wine.* Any natural grape wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 17 percent total solids by weight if the alcohol content is more than 14 percent by volume or 21 percent total solids by weight if the alcohol content is not more than 14 percent by volume.

(c) *Fruit wine.* Any natural fruit wine of a winemaker's own production may have sugar added after amelioration and fermentation provided the finished wine does not exceed 21 percent total solids by weight and the alcohol content is not more than 14 percent by volume.

(d) *Specially sweetened natural wine.* Specially sweetened natural wine is produced by adding to natural wine of the winemaker's own production sufficient pure dry sugar, juice or concentrated fruit juice of the same kind of fruit, separately or in combination, so that the finished product has a total solids content between 17 percent and 35 percent by weight, and an alcohol content of not more than 14 percent by volume. Natural wine containing added wine spirits may be used in the production of specially sweetened natural wine; however, wine spirits may not be added to specially sweetened natural wine. Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine (including juice or concentrated fruit juice to which wine spirits have been added), in the further production of specially sweetened natural wine only if the wines (or juice) so blended are made from the same kind of fruit. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1386, as amended (26 U.S.C. 5382, 5383, 5384, 5385))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991]

§ 24.180 Use of concentrated and unconcentrated fruit juice.

Concentrated fruit juice reduced with water to its original density, or to 22 degrees Brix, or to any degree of Brix

between its original density and 22 degrees Brix, and unconcentrated fruit juice reduced with water to not less than 22 degrees Brix, is considered juice for the purpose of standard wine production. Concentrated fruit juice reduced with water to any degree of Brix greater than 22 degrees Brix may be further reduced with water to any degree of Brix between its original density and 22 degrees Brix.The proprietor, prior to using concentrated fruit juice in wine production, shall obtain a statement in which the producer certifies the kind of fruit from which it was produced and the total solids content of the juice before and after concentration. Concentrated or unconcentrated fruit juice may be used in juice or wine made from the same kind of fruit for the purposes of chaptalizing or sweetening, as provided in this part. Concentrated fruit juice, or juice which has been concentrated and reconstituted, may not be used in standard wine production if at any time it was concentrated to more than 80 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–413, 64 FR 46845, Aug. 27, 1999]

§ 24.181 Use of sugar.

Only sugar, as defined in § 24.10, may be used in the production of standard wine. The quantity of sugar used will be determined either by measuring the increase in volume or by considering that each 13.5 pounds of pure dry sugar results in a volumetric increase of one gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended, 1385, as amended, 1387, as amended (26 U.S.C. 5382, 5383, 5384, 5392))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991]

§ 24.182 Use of acid to correct natural deficiencies.

(a) *General.* Acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies; however, no acid may be added to juice or wine which is ameliorated to correct natural deficiencies except that in the production of grape wine, tartaric acid may be used to reduce the pH of the juice or wine. If tartaric acid is used to correct the pH of grape juice or wine, the fixed acid level of the juice shall be measured prior to the addition of any tartaric acid to determine the maximum quantity of ameliorating material allowed. In addition, when using tartaric acid to reduce the pH of ameliorated grape juice or wine, the pH cannot be reduced below 3.0.

(b) *Grape wine.* Tartaric acid or malic acid, or a combination of tartaric acid and malic acid, may be added prior to or during fermentation, to grapes or juice from grapes. In addition, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. However, the use of these acids, either prior to, during or after fermentation, may not increase the fixed acid level of the finished wine (calculated as tartaric acid) above 9.0 grams per liter. In cases where the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as tartaric acid).

(c) *Fruit wine.* Only citric acid may be added to citrus fruit, juice or wine, only malic acid may be added to apples, apple juice or wine, and only citric acid or malic acid may be added to other fruit (including berries) or to juice or wine derived from other fruit (including berries) to correct natural deficiencies to 9.0 grams per liter of finished wine; however, if the wine contains 8.0 or more grams of total solids per 100 milliliters of wine, acids may be added to correct natural deficiencies to the extent that the finished wine does not contain more than 11.0 grams per liter of fixed acid (calculated as malic acid for apples and citric acid for other fruit (including berries).

(d) *Other use of acid.* A winemaker desiring to use an acid other than the acids allowed in paragraphs (a) and (b)

of this section to correct natural deficiencies shall follow the procedure prescribed in § 24.250. A winemaker desiring to use acid to stabilize standard wine shall follow the requirements prescribed by § 24.244. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991; T.D. ATF–350, 58 FR 52230, Oct. 7, 1993]

§ 24.183 Use of distillates containing aldehydes.

Distillates containing aldehydes may be received on wine premises for use in the fermentation of wine and then returned to the distilled spirits plant from which distillates were withdrawn as distilling material. Distillates produced from one kind of fruit may not be used in the fermentation of wine made from a different kind of fruit. Distillates containing aldehydes which are received at bonded wine premises and not immediately used will be placed in a locked room or tank on bonded wine premises. Distillates containing aldehydes may not be mingled with wine spirits. If the distillates contain less than 0.1 percent of aldehydes, the proprietor shall comply with any additional condition relating to the receipt, storage, and use which the appropriate ATF officer may require to assure that the distillates are properly used and accounted for. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.184 Use of volatile fruit-flavor concentrate.

(a) *General*. In the cellar treatment of natural wine of the winemaker's own production there may be added volatile fruit-flavor concentrate produced from the same kind of fruit or from the same variety of berry or grape so long as the proportion of volatile fruit-flavor concentrate added to the wine does not exceed the equivalent proportion of volatile fruit-flavor concentrate of the original juice or must from which the wine was produced.

(b) *Use of juice or must from which volatile fruit-flavor has been removed*. Juice, concentrated fruit juice, or must processed at a concentrate plant is considered to be pure juice, concentrated fruit juice, or must even though volatile fruit-flavor has been removed if, at a concentrate plant or at bonded wine premises, there is added to the juice, concentrated fruit juice, or must (or in the case of bonded wine premises, to wine of the winemaker's own production made therefrom), either the identical volatile fruit-flavor removed or an equivalent quantity of volatile fruit-flavor concentrate derived from the same kind of fruit or from the same variety of berry or grape.

(c) *Certificate required*. The proprietor, prior to the use of volatile fruit flavor concentrate in wine production, shall obtain a certificate from the producer stating the kind of fruit or the variety of berry or grape from which it was produced and the total solids content of the juice before and after concentration. (Sec. 201. Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

Subpart G—Production of Effervescent Wine

§ 24.190 General.

Effervescent wine may be made on bonded wine premises. Where the effervescence results from fermentation of the wine within a closed container, the wine is classed and taxed as sparkling wine. The use of carbon dioxide, nitrogen gas, or a combination of both, is permitted to maintain counterpressure during the transfer and bottling of sparkling wine. Wine carbonated by injection of carbon dioxide is classed and taxed as artificially carbonated wine. Sparkling wine, artificially carbonated wine, and any wine used as a base in the production of sparkling wine or artificially carbonated wine, may not have an alcohol content in excess of 14 percent by volume. However, wine containing more than 14 percent of alcohol by volume may be used in preparing a dosage for finishing sparkling wine or artificially carbonated wine. (Sec. 201,

Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382)).

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31078, July 9, 1991]

§ 24.191 Segregation of operations.

Where more than one process of producing sparkling wine or artificially carbonated wine is used, the appropriate ATF officer may require the portion of the premises used for the production and storage of wine made by each process (bottle fermented, bulk fermented or artificially carbonated) to be segregated as provided by § 24.27. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5365))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.192 Process and materials.

In preparing still wine for the production of sparkling wine or artificially carbonated wine, sugar and acid of the kinds and within the limitations prescribed in § 24.182 may be added with yeast or yeast culture to acclimate the yeast and to facilitate the process of secondary fermentation or to correct the wine. Fruit syrup, sugar, wine, wine spirits, and acid may be used in preparing a finishing dosage for sparkling wine or artificially carbonated wine provided the dosage does not exceed 10 percent by volume of the finished product. Where the proprietor desires to use more than 10 percent by volume finishing dosage, the proprietor shall file for a formula approval under § 24.80. The fruit syrup, wine spirits and wine used will come from the same kind of fruit as the wine from which the sparkling wine or artificially carbonated wine is made. In the production of sparkling wine or artificially carbonated wine, taxpaid wine spirits or wine spirits withdrawn tax-free may be used. Tax-free wine spirits may only be used in the production of sparkling wine or artificially carbonated wine which is a natural wine. In the refermentation and finishing of a sparkling wine, the acids and materials specifically authorized in § 24.246 may be used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

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§ 24.193 Conversion into still wine.

Sparkling wine or artificially carbonated wine may be dumped for use as still wine. The dumping process will allow the loss of carbon dioxide remaining in the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041, 5361))

Subpart H—Production of Special Natural Wine

§ 24.195 General.

Special natural wine is a flavored wine made on bonded wine premises from a base of natural wine. The flavoring added may include natural herbs, spices, fruit juices, natural aromatics, natural essences or other natural flavoring, in quantities or proportions such that the resulting product derives character and flavor distinctive from the the base wine and distinguishable from other natural wine. Fruit juices may not be used to give to one natural wine the flavor of another but may be used with herbs or spices to produce a wine having a distinctive flavor. Caramel and sugar may be used in a special natural wine. However, the minimum 60 degrees Brix limitations prescribed in the definition of ''Liquid pure sugar'' and ''Invert sugar syrup'' in § 24.10 do not apply to materials used in the manufacture of vermouth. Finished vermouth will contain a minimum of 80 percent by volume natural wine. Heavy bodied blending wine and juice or concentrated fruit juice to which wine spirits have been added may be used in the production of special natural wine pursuant to formula approval. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.196 Formula required.

Before producing any special natural wine, the proprietor shall receive approval of the formula by which it is to be made as provided by § 24.80. Any change in a formula will be approved in

advance as provided by § 24.81. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.197 Production by fermentation.

In producing special natural wine by fermentation, flavoring materials may be added before or during fermentation. Special natural wine produced by fermentation may be ameliorated in the same manner and to the same extent as natural wine made from the same fruit. Spirits may not be added to special natural wine with the exception of spirits contained in the natural wine used as a base or in authorized essences made on bonded wine premises as provided in § 24.86 or in approved essences made elsewhere. Upon removal of the wine from fermenters, the volume of liquid will be determined accurately and recorded as wine produced. The quantity of liquid in fermenters at the close of each reporting period will be reported on the ATF F 5120.17, Report of Bonded Wine Premises Operations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by ATF–338, 58 FR 19064, Apr. 12, 1993]

§ 24.198 Blending.

Special natural wine may be blended with other special natural wine of the same class and kind, and with heavy bodied blending wine, or natural wine of the same kind of fruit, in the further production of special natural wine. The blending of special natural wines produced under different formulas requires the filing and approval of a formula authorizing a blending; however, where two or more formulas have been approved for the production of special natural wine of the same type, e.g., producing a sweet vermouth by blending sweet vermouths produced under two or more approved formulas, the submission and approval of an additional formula is not required. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5386))

(Approved by the Office of Management and Budget under control number 1512–0059)

Subpart I—Production of Agricultural Wine

§ 24.200 General.

Agricultural wine may be produced on bonded wine premises from suitable agricultural products other than the juice of fruit. Water or sugar, or both, may be used within the limitations of this subpart in the production of agricultural wine. Agricultural wine may not be flavored or colored; however, hops may be used in the production of honey wine. Spirits may not be used in the production of the wine and a wine made from one agricultural product may not be blended with a wine made from another agricultural product. Agricultural wine made with sugar in excess of the limitations of this subpart is other than standard wine and will be segregated and clearly identified. Since grain, cereal, malt, or molasses are not suitable materials for the production of agricultural wine, these materials may not be received on bonded wine premises. Beverage alcohol products made with these materials are not classed as wine and may not be produced or stored on bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

§ 24.201 Formula required.

Before producing any agricultural wine, the proprietor shall obtain an approval of the formula and process by which it is to be made pursuant to the provisions of § 24.80. Any change in a formula will be approved in advance as provided by § 24.81. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

(Approved by the Office of Management and Budget under control number 1512–0059)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.202 Dried fruit.

In the production of wine from dried fruit, a quantity of water sufficient to restore the moisture content to that of

the fresh fruit may be added. If it is desired not to restore the moisture content of the dried fruit to that of the fresh fruit, or if the moisture content is not known, sufficient water may be added to reduce the density to 22 degrees Brix. If the dried fruit liquid after restoration is found to be deficient in sugar, sufficient pure dry sugar may be added to increase the total solids content to 25 degrees Brix. After addition of water to the dried fruit, the resulting liquid may be ameliorated with either water or sugar, or both, in such total volume as may be necessary to reduce the natural fixed acid level of the mixture to a minimum of 5.0 grams per liter; however, in no event may the volume of the ameliorating material exceed 35 percent of the total volume of the ameliorated juice or wine (calculated exclusive of pulp). Pure dry sugar may be used for sweetening. After complete fermentation or complete fermentation and sweetening, the finished product may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.203 Honey wine.

In the production of wine from honey, a quantity of water may be added to facilitate fermentation provided the density of the mixture of honey and water is not reduced below 22 degrees Brix. Hops may be added in quantities not to exceed one pound for each 1,000 pounds of honey. Pure dry sugar or honey may be added for sweetening. After complete fermentation or complete fermentation and sweetening, the wine may not have an alcohol content of more than 14 percent by volume nor may the total solids content exceed 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

§ 24.204 Other agricultural products.

In the production of wine from agricultural products, other than dried fruit and honey, water and sugar may be added to the extent necessary to facilitate fermentation; *Provided,* That the total weight of pure dry sugar used for fermentation is less than the weight of the primary winemaking material and the density of the mixture prior to fermentation is not less than 22 degrees Brix, if water, or liquid sugar, or invert sugar syrup is used. Additional pure dry sugar may be used for sweetening, provided the alcohol content of the finished wine after complete fermentation or after complete fermentation and sweetening, is not more than 14 percent by volume and the total solids content is not more than 35 degrees Brix. (Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended, 1387, as amended (26 U.S.C. 5387))

Subpart J—Production of Other Than Standard Wine

§ 24.210 Classes of wine other than standard wine.

The following classes of wine are not standard wine:

(a) High fermentation wine, produced as provided in § 24.212;

(b) Heavy bodied blending wine, produced as provided in § 24.213;

(c) Spanish type blending sherry, produced as provided in § 24.214;

(d) Wine products not for beverage use, produced as provided in § 24.215;

(e) Distilling material, produced as provided in § 24.216;

(f) Vinegar stock, produced as provided in § 24.217; and

(g) Wines other than those in classes listed in paragraphs (a), (b), (c), (d), (e), and (f), of this section produced as provided in § 24.218. (Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

§ 24.211 Formula required.

The proprietor who desires to produce wine other than standard wine shall first obtain approval of the formula by which it is to be made, except that no formula is required for distilling material or vinegar stock. The formula is filed as provided by § 24.80. Any change in the formula will be approved in advance as provided by

§ 24.81. (Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

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[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.212 High fermentation wine.

High fermentation wine is wine made with the addition of sugar within the limitations prescribed for natural wine except that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent and wine spirits have not been added. Although high fermentation wine is not a standard wine, it is produced, stored, and handled on bonded wine premises subject to the same marking or labeling requirements. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

§ 24.213 Heavy bodied blending wine.

Heavy bodied blending wine is wine made for blending purposes from grapes or other fruit without added sugar, and with or without added wine spirits, and having a total solids content in excess of 21 percent. Heavy bodied blending wine may be used in blending with other wine made from the same kind of fruit or for removal upon payment of tax, not for sale or consumption as beverage wine. Upon removal, the shipping containers and shipping records will be marked ''Heavy Bodied Blending Wine—Not for Sale or Consumption as Beverage Wine.'' (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512– 0503)

§ 24.214 Spanish type blending sherry.

Blending wine made with partially caramelized grape concentrate may be produced, stored, and handled on, or transferred in bond between, bonded wine premises, or removed upon payment of tax, not for sale or consumption as beverage wine. Wine of a high solids content and dark in color, produced under this section, is designated ''Spanish Type Blending Sherry.'' Upon removal, the shipping containers will be marked with the applicable designation and the legend ''Not for Sale or Consumption as Beverage Wine.'' Spanish type blending sherry is not standard wine and may not be blended with standard wine except pursuant to an approved formula or in the further production of this type of wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1387, as amended (26 U.S.C. 5361, 5388))

(Approved by the Office of Management and Budget under control numbers 1512–0059 and 1512–0503)

§ 24.215 Wine or wine products not for beverage use.

(a) *General.* Wine, or wine products made from wine, may be treated with methods or materials which render the wine or wine products unfit for beverage use. No wine or wine products so treated may contain more than 21 percent of alcohol by volume at the time of withdrawal free of tax from bonded wine premises; nor may any wine or wine product so withdrawn be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in the compounding. Wine or wine products produced under this section will be clearly identified and segregated from beverage wine products while stored on bonded wine premises and may be transferred in bond between bonded wine premises. The shipping records for transfers in bond of nonbeverage wine or wine products will be marked ''Not for Sale or Consumption as Beverage Wine.'' Upon removal from bonded wine premises free of tax, containers of nonbeverage wine or wine products will be marked to clearly indicate such products are not for sale or consumption as beverage wine, e.g., salted wine, vinegar, nonbeverage cooking wine.

(b) *Salted wine.* Salted wine is a wine or wine product not for beverage use produced in accordance with the provisions of this section and having not less than 1.5 grams of salt per 100 milliliter of wine. (12.5 pounds of salt/100 gallons of wine.)

(c) *Vinegar.* Vinegar is a wine or wine product not for beverage use produced in accordance with the provisions of

this section and having not less than 4.0 grams (4.0 percent) of volatile acidity (calculated as acetic acid and exclusive of sulfur dioxide) per 100 milliliters of wine. (Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1380, as amended (26 U.S.C. 5361, 5362))

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[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991]

§ 24.216 Distilling material.

Wine may be produced on bonded wine premises from grapes and other fruit, natural fruit products, or fruit residues, for use as distilling material, using any quantity of water desired to facilitate fermentation or distillation. No sugar may be added in the production of distilling material. Distillates containing aldehydes may be used in the fermentation of wine to be used as distilling material. Lees, filter wash, and other wine residues may also be accumulated on bonded wine premises for use as distilling material. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5361, 5373))

§ 24.217 Vinegar stock.

Vinegar stock may be produced on bonded wine premises with the addition of any quantity of water desired to meet commercial standards for the production of vinegar. Vinegar stock may be made only by the addition of water to wine or by the direct fermentation of the juice of grapes or other fruit with added water. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5361))

§ 24.218 Other wine.

(a) *General*. Other than standard wine not included in other sections in this subpart are considered other wine. Those wines considered to be other wine include:

(1) Wine made with sugar, water, or sugar and water beyond the limitations prescribed for standard wine.

(2) Wine made by blending wines produced from different kinds of fruit.

(3) Wine made with sugar other than pure dry sugar, liquid pure sugar, and invert sugar syrup.

(4) Wine made with materials not authorized for use in standard wine.

(b) *Production of other wine*. Other wine may be made on bonded wine premises but will remain segregated from standard wine. Other wine will have a basic character derived from the primary winemaking material. If sugar is used to make other wine, the aggregate weight of the sugar used before and during fermentation will be less than the weight of the primary wine producing material. Wine spirits may be added to other wine. Upon removal, other wine will be marked or labeled with a designation which will adequately disclose the nature and composition of the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended (26 U.S.C. 5365, 5388))

(Approved by the Office of Management and Budget under control number 1512–0503)

Subpart K—Spirits

§ 24.225 General.

The proprietor of a bonded wine premises may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant for uses as are authorized in this part. Wine spirits produced in the United States may be added to natural wine on bonded wine premises if both the wine and the spirits are produced from the same kind of fruit. In the case of natural still wine, wine spirits may be added in any State only to wine produced by fermentation on bonded wine premises located within the same State. If wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added) only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation. Spirits other than wine spirits may be received, stored and used on bonded wine premises only for the production of nonbeverage wine and nonbeverage wine products. Wooden storage tanks used for the addition of spirits may be used for the baking of wine. (Sec. 201, Pub. L. 85–859 and Sec. 455, Pub. L. 98–369, 72 Stat. 1381 as amended, 1382, as

amended, 1383, as amended, 1384, as amended (26 U.S.C. 5366, 5373, 5382, 5383)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991]

§ 24.226 Receipt or transfer of spirits.

When spirits are received at the bonded wine premises, the proprietor shall determine that the spirits are the same as described on the transfer record and follow the procedures prescribed by 27 CFR 19.510. A copy of the transfer record, annotated to show any difference between the description of spirits and quantity received, will be maintained by the proprietor as a record of receipt. If spirits are to be transferred to a distilled spirits plant or to bonded wine premises, the proprietor shall use the transfer record and procedures prescribed by 27 CFR 19.508. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.227 Transfer of spirits by pipeline for immediate use.

Spirits transferred by pipeline for immediate use are gauged either by weight or by volume on the bonded premises of the distilled spirits plant. Where the spirits are gauged on the bonded premises of the distilled spirits plant, the pipelines will be directly connected with the spirits addition tanks. The valves in the pipeline will be closed and locked with a lock at all times except when necessary to be opened for the transfer of spirits. Where the proprietor has placed wine in a spirits addition tank and has determined the quantity of spirits to be added, the spirits may be transferred. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991]

§ 24.228 Transfer of spirits by pipeline to a spirits storage tank.

Where it is desired to transfer spirits by pipeline to bonded wine premises and store the spirits prior to use, there will be provided a suitable tank for storing the spirits. The spirits to be transferred, if not gauged on the bonded premises of the distilled spirits plant, will be gauged by weight or volume on bonded wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991]

§ 24.229 Tank car and tank truck requirements.

Railroad tank cars and tank trucks used to transport spirits for use in wine production will be constructed, marked, filled, labeled, and inspected in the manner required by regulations in 27 CFR part 19. (Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5214))

§ 24.230 Examination of tank car or tank truck.

Upon arrival of a tank car or tank truck at the bonded wine premises, the proprietor shall carefully examine the car or truck to see whether the seals are intact and whether there is any evidence of tampering or loss by leaking or otherwise. Any evidence of loss will be reported to the appropriate ATF officer. The contents of the tank car or tank truck will be gauged by weight or volume at the time of receipt by the proprietor. If the tank car or tank truck has been accurately calibrated and the calibration chart is available at the bonded wine premises, the spirits may be gauged by volume in the tank car or tank truck. In any case where a volume gauge is made, the actual measurements of the spirits in the gauging tank, tank car, or tank truck, and the temperature of the spirits will be recorded on the copy of the transfer record accompanying the shipment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1381, as amended (26 U.S.C. 5206, 5214, 5366))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.231 Receipt of spirits in sealed bulk containers.

The proprietor shall examine sealed bulk containers (packages) of spirits

received at the bonded wine premises to verify that the containers are the same as those described on the transfer record accompanying the shipment. Any container which appears to have been tampered with or from which spirits appear to have been removed or lost will be gauged by the proprietor and the proprietor shall prepare and submit to the appropriate ATF officer a statement setting forth fully the circumstances and apparent cause of any loss. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5366, 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.232 Gauge of spirits.

(a) If the spirits to be used are in a spirits storage tank on bonded wine premises, or are received immediately prior to use from a distilled spirits plant not adjacent or contiguous to bonded wine premises, the proprietor shall determine the proof of the spirits and the quantity used by volume gauge or by weight. Upon completion of the transfer of spirit from the spirits storage tank to the spirits addition tank, the proprietor shall lock the spirits storage tank.

(b) If the spirits are received from the adjacent or contiguous bonded premises of a distilled spirits plant and are transferred directly into a spirits addition tank, the gauge of the spirits made on the distilled spirits plant premises will be used. The proprietor at the distilled spirits plant premises shall deliver a transfer record to the proprietor of bonded wine premises who shall acknowledge receipt of the spirits on the transfer record.

(c) If the spirits are received in packages and the quantity of spirits needed for the addition is not equal to the contents of full packages, a portion of one package may be used and the remnant package returned to the spirits storage room. The proprietor shall gauge the remnant package and attach to it a label showing the date of gauge, the weight of the remnant package, and the proof. The remnant package will be used at the first opportunity. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5368, 5373))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.233 Addition of spirits to wine.

(a) *Prior to the addition of spirits.* Wine will be placed in tanks approved for the addition of spirits. The proprietor shall accurately measure the wine, determine its alcohol content, determine the proof of the spirits to be added, calculate the quantity of spirits required, and enter the details in the record of spirits added to wine.

(b) *After the addition of spirits.* The proprietor shall thoroughly agitate the contents of the tank to assure a complete mixture of the wine and spirits. The proprietor shall then measure the volume of wine in the tank, take a representative sample of the wine, and test for alcohol content. The result of the measurement and test and the quantity of spirits added will be entered in the record of spirits added to wine. The volume of wine used and the volume of wine resulting from the addition of spirits will be entered in the bulk wine record. The alcohol content of wine after the addition of spirits may not exceed 24 percent by volume. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373, 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.234 Other use of spirits.

The proprietor producing sparkling wine, artificially carbonated wine, formula wine, or essences for which spirits are required may use tax-free wine spirits or brandy. For nonbeverage wine, tax-free spirits other than wine spirits or brandy may also be used. The spirits received by the proprietor will be locked in a secure room or locker on bonded wine premises. The spirits will remain in the original container in the storeroom until withdrawn for use. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1383, as amended (26 U.S.C. 5373, 5382))

§ 24.235 Taxpayment or destruction of spirits.

(a) *Taxpayment of spirits.* The proprietor who wants to taxpay spirits shall follow the prepayment of tax procedures of 27 CFR 19.522(c).

(b) *Destruction of spirits.* The proprietor who wants to destroy spirits shall file an application with the appropriate ATF officer stating the quantity of spirits, the proposed date and method of destruction, and the reason for destruction. Spirits may not be destroyed prior to approval by the area supervisor. (Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.236 Losses of spirits.

Losses by theft or any other cause of spirits while on bonded wine premises or in transit are to be determined and reported at the time the losses are discovered. A physical inventory of the spirits storage tanks will be taken at the close of any month during which spirits were used in wine production, or upon completion of spirits use for the month or at any other time required by the appropriate ATF officer. Any loss which has not previously been reported will be determined by the inventory. (Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008, 5373))

(Approved by the Office of Management and Budget under control number 1512–0292)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.237 Spirits added to juice or concentrated fruit juice.

Juice or concentrated fruit juice to which spirits have been added may not have an alcohol content exceeding 24 percent by volume. Although not considered to be wine, juice or concentrated fruit juice to which spirits have been added will be included in the appropriate tax class of any wine inventory and will be properly identified. Juice or concentrated juice to which wine spirits are added will be reported on the ATF F 5120.17, Report of Bonded Wine Premises Operations, as wine, but a separate record will be maintained. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993]

Subpart L—Storage, Treatment and Finishing of Wine

§ 24.240 General.

Wine will be stored on bonded wine premises in buildings or tanks constructed and secured in accordance with the provisions of §§ 24.166 and 24.167. Wine will be stored in tanks, casks, barrels, cased or uncased bottles, or in any other suitable container, which will not contaminate the wine. Specifically authorized materials and processes for the treatment and finishing of wine are listed in §§ 24.246 and 24.248 of this subpart. (Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1379, as amended, 1383, as amended, 1395, as amended (26 U.S.C. 5352, 5357, 5382, 5552))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991]

§ 24.241 Decolorizing juice or wine.

(a) *Conditions and limitations.* If the proprietor wishes to use activated carbon or other decolorizing material to remove color from juice or wine, the following conditions and limitations will be met:

(1) The wine will retain a vinous character after being treated with activated carbon or other decolorizing material;

(2) The quantity of activated carbon used to treat the wine, including the juice from which the wine was produced, may not exceed twenty-five pounds per 1,000 gallons (3.0 grams per liter) (see paragraph (b) of this section); and

(3) The wine treated with decolorizing material will have a color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per AOAC Method

11.003–11.004 (see paragraph (c) of this section). However, the proprietor may produce a wine having a color of less than 0.6 Lovibond or more than 95 percent transmittance per AOAC Method 11.003–11.004 by using normal methods and without the use of decolorizing material.

(b) *Transfer in bond.* When a consignor proprietor transfers wine treated with activated carbon or other decolorizing material to a consignee proprietor, the consignor proprietor shall record on the shipping record:

(1) The amount of wine which has been treated under the provisions of this section; and

(2) The quantity of decolorizing material used in treating the wine, including the juice from which the wine was produced, before its transfer. The consignee proprietor may further treat the wine with decolorizing material as long as the consignee proprietor has a copy of the shipping record and complies with the requirements of this section.

(c) Incorporation by reference. The ''Official Methods of Analysis of the Association of Official Analytical Chemists'' (AOAC Method 11.003–11.004; 13th Edition 1980) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register, and is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. The publication is available from the Association of Official Analytical Chemists, 11 North 19th Street, Suite 210, Arlington, Virginia 22209. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.242 Authority to use greater quantities of decolorizing material in juice or wine.

(a) *Proprietor's notice.* If the proprietor desires to remove color from juice prior to fermentation or if color in excess of that normally present in wine develops during the production or storage of a particular lot or lots, and if the proprietor desires to use activated carbon in excess of twenty-five pounds per 1,000 gallons (3.0 grams per liter) of juice or wine to remove this color, the proprietor, prior to starting the treatment, shall submit to the appropriate ATF officer a written notice for each lot of juice or wine to be treated for decolorization. The written notice will state

(1) The reason for the treatment;

(2) The volume, kind, and type of juice or wine to be treated;

(3) The kind and quantity of decolorizing material to be used; and,

(4) The length of time the decolorizing material is in contact with the juice or wine.

(b) *Action by the appropriate ATF officer on proprietor's notice.* Upon receipt of the proprietor's notice, the appropriate ATF officer may require the proprietor to submit samples representative of the lot of juice or wine for examination by the ATF laboratory.

(c) *Samples and chemical analysis*—(1) *Samples.* If the appropriate ATF officer requires samples under paragraph (b) of this section, the proprietor shall prepare samples representative of the lot of juice or wine for examination. The samples will consist of:

(i) The juice or wine before treatment with decolorizing material,

(ii) The juice or wine after treatment with decolorizing material, and

(iii) The decolorizing material used.

(2) *Chemical analysis.* If the ATF chemical analyses of the samples shows that the proposed treatment would remove only color and will not remove the vinous characteristics of the wine, the appropriate ATF officer will return an approved copy of the proprietor's written notice. If the ATF chemical analysis shows that the proposed treatment is not acceptable, the appropriate ATF officer will send the proprietor a letter stating the reason(s) for disallowing the proposed treatment. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.243 Filtering aids.

Inert fibers, pulps, earths, or similar materials, may be used as filtering aids in the cellar treatment and finishing of

wine. Agar-agar, carrageenan, cellulose, and diatomaceous earth are commonly employed inert filtering and clarifying aids. In general, there is no limitation on the use of inert materials and no records need be maintained concerning their use. However, if the inert material is dissolved in water prior to addition to wine, then the records required by § 24.301 will be maintained. Filtering aids which contain active chemical ingredients or which may alter the character of wine, may be used only in accordance with the provisions of § 24.246. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.244 Use of acid to stabilize standard wine.

Standard wine other than citrus wine, regardless of the fixed acid level, may be stabilized as a part of the finishing process by the addition of citric acid within the limitations of § 24.246. Standard wine (including citrus wine) may be stabilized by the addition of fumaric acid within the limitations of § 24.246. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 24.245 Use of carbon dioxide in still wine.

The addition of carbon dioxide to (and retention in) still wine is permitted if at the time of removal for consumption or sale the still wine does not contain more than 0.392 grams of carbon dioxide per 100 milliliters of wine. However, a tolerance of not more than 0.009 grams per 100 milliliters to the maximum limitation of carbon dioxide in still wine will be allowed where the amount of carbon dioxide in excess of 0.392 grams per 100 milliliters is due to mechanical variations which can not be completely controlled under good commercial practice. A tolerance will not be allowed where it is found that the proprietor continuously or intentionally exceeds 0.392 grams of carbon dioxide per 100 milliliters of wine or where the variation results from the use of methods or equipment determined by the appropriate ATF officer not in accordance with good commercial practice. The proprietor shall determine the amount of carbon dioxide added to wine using authorized test procedures. Penalties are provided in 26 U.S.C. 5662 for any person who, whether by manner of packaging or advertising or by any other form of representation, misrepresents any still wine to be effervescent wine or a substitute for effervescent wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1381, as amended, 1407, as amended (26 U.S.C. 5041, 5367, 5662))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.246 Materials authorized for the treatment of wine and juice.

(a) *Wine.* Materials used in the process of filtering, clarifying, or purifying wine may remove cloudiness, precipitation, and undesirable odors and flavors, but the addition of any substance foreign to wine which changes the character of the wine, or the abstraction of ingredients which will change its character, to the extent inconsistent with good commercial practice, is not permitted on bonded wine premises. The materials listed in this section are approved, as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice, within the general limitations of this section: *Provided,* That:

(1) When the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the appropriate ATF officer may cancel or amend the approval for use of the material in the production, cellar treatment, or finishing of wine; and

(2) Where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water based treating materials, may not total more than one percent of the volume of the treated wine, juice, or both wine and juice, from which such wine is produced.

(b) *Formula wine.* In addition to the material listed in this section, other material may be used in formula wine if approved for such use.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE

Materials and use	Reference or limitation
Acacia (gum arabic): To clarify and to stabilize wine	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L of wine. 21 CFR 184.1330 (GRAS) *See footnote below.
Activated carbon:	
To assist precipitation during fermentation	27 CFR 24.176. GRAS per FDA advisory opinion dated 1/26/79.
To clarify and to purify wine	The amount used to clarify and purify wine shall be included in the total amount of activated carbon used to remove excessive color in wine. 27 CFR 24.241 and 24.242 (GRAS).
To remove color in wine and/or juice from which the wine was produced.	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 25 lbs/1000 gal. (3.0 g/L). If the amount necessary exceeds this limit, a notice is required pursuant to 27 CFR 24.242 (GRAS).
Albumen (egg white): Fining agent for wine	May be prepared in a light brine 1 oz. (28.35 grams) potassium chloride, 2 lbs (907.2 grams) egg white, 1 gal. (3.785 L) of water. Usage not to exceed 1.5 gals. of solution per 1,000 gals. of wine. (GRAS).
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin: To clarify and to stabilize wine or juice.	21 CFR §§182.2727, 182.2729, 184.1155 (GRAS) and 186.1256. GRAS per FDA advisory opinion dated July 26, 1985.
Ammonium phosphate (*mono-* and *di* basic): Yeast nutrient in wine production and to start secondary fermentation in the production of sparkling wines.	The amount used shall not exceed 8 lbs. per 1000 gals. (0.96 g/L) of wine. 21 CFR 184.1141 (GRAS).
Ascorbic acid *iso*-ascorbic acid (erythorbic acid): To prevent oxidation of color and flavor components of juice and wine.	May be added to grapes, other fruit (including berries), and other primary wine making materials, or to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine. 21 CFR 182.3013 and 182.3041 (GRAS).
Calcium carbonate (with or without calcium salts of tartaric and malic acids):	
To reduce the excess natural acids in high acid wine, and in juice prior to or during fermentation..	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069 and 184.1099, and 184.1191 (GRAS).
A fining agent for cold stabilization.	The amount used shall not exceed 30 lbs/1000 gals. (3.59 g/L) of wine.
Calcium sulfate (gypsum): To lower pH in sherry wine.	The sulfate content of the finished wine shall not exceed 2.0g/L, expressed as potassium sulfate. 27 CFR 24.214. 21 CFR 184.1230 (GRAS).
Carbon dioxide (including food grade dry ice): To stabilize * * * and to preserve wine.	27 CFR 24.245. 21 CFR 184.1240 (GRAS).
Casein, potassium salt of casein: To clarify wine	GRAS per FDA opinions of 02/23/60 and 08/25/61. 27 CFR 24.243.
Citric acid:	
To correct natural acid deficiencies in wine	27 CFR 24.182 and 24.192. 21 CFR 182.1033 (GRAS).
To stabilize wine other than citrus wine	The amount of citric acid shall not exceed 5.8 lbs/1000 gals. (0.7 g/L). 27 CFR 24.244. 21 CFR 182.1033 (GRAS).
Copper sulfate:	
To remove hydrogen sulfide and/or mercaptans from wine	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine (0.5 mg/L) with the residual level of copper not to be in excess of 0.5 part per million (0.5 mg/L). 21 CFR 184.1261 (GRAS).
Defoaming agents (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpoly-siloxane, sorbitan monostearate, glyceryl mono-oleate and glyceryl dioleate): To control foaming, fermentation adjunct.	Defoaming agents which are 100% active may be used in amounts not exceeding 0.15 lbs/1000 gals. (0.018 g/L of wine. Defoaming agents which are 30% active may be used in amounts not exceeding 0.5 lbs/1000 gals. (0.06 g/L) of wine. Silicon dioxide shall be completely removed by filtration. The amount of silicon remaining in the wine shall not exceed 10 parts per million. 21 CFR 173.340 and 184.1505.
Dimethyl dicarbonate:	
To sterilize and to stabilize wine, dealcoholized wine, and low alcohol wine.	Must meet the conditions prescribed by FDA in 21 CFR 172.133. DMDC may be added to wine, dealcoholized wine, and low alcohol wine in a cumulative amount not to exceed 200 parts per million (ppm).
Enzymatic activity: Various uses as shown below	The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis*, or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Reference or limitation
Carbohydrase (*beta*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amylogluco-sidase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Catalase: To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* or bovine liver per FDA advisory opinion dated 8/18/83 (GRAS).
Cellulase: To clarify and to stabilize wine and to facilitate separation of the juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Glucose oxidase: To clarify and to stabilize wine	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion of 8/18/83 (GRAS).
Pectinase: To clarify and to stabilize wine and to facilitate separation of juice from the fruit.	The enzyme activity used shall be derived from *Aspergillus niger* per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (general): To reduce or to remove heat labile proteins.	The enzyne activity used shall be derived from *Aspergillus niger* or *Bacillus subtilis* per FDA advisory opinion dated 08/18/83 or from *Bacillus licheniformis* per 21 CFR 184.1027 (GRAS).
Protease (Bromelin): To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Ananus comosus* or *Ananus bracteatus (L)* per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Ficin): To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from *Ficus spp.* per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Papain): To reduce or to remove heat labile proteins.	The enzyme activity used shall be deived from *Carica papaya (L)* per 21 CFR 184.1585 (GRAS).
Protease (Pepsin): To reduce or to remove heat labile proteins.	The enzyme actvity used shall be derived from porcine or bovine stomachs per FDA advisory opinion dated 08/18/83 (GRAS).
Protease (Trypsin): To reduce or to remove heat labile proteins.	The enzyme activity used shall be derived from porcine or bovine pancreas per FDA advisory opinion dated 08/18/83 (GRAS).
Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate.	The urease enzyme activity shall be derived from Lactobacillus fermentum per 21 CFR 184.1924. Use is limited to not more than 200 mg/L and must be filtered prior to final packaging of the wine.
Ethyl maltol: To stabilize wine	Use authorized at a maximum level of 100mg/L in all standard wines except natural wine produced from *Vitis vinifera* grapes. FDA advisory opinion dated 12/1/86.
Ferrocyanide compounds (sequestered complexes): To remove trace metal from wine and to remove objectionable levels of sulfide and mercaptans from wine.	No insoluble or soluble residue in excess of 1 part per million shall remain in the finished wine and the basic character of the wine shall not be changed by such treatment. GRAS per FDA advisory opinion of 06/22/82.
Ferrous sulfate: To clarify and to stabilize wine	The amount used shall not exeed 3 ozs./1000 gals. (0.022 g/L) of wine. 21 CFR 184.1315 (GRAS).
Fumaric acid:	
To correct natural acid deficiencies in grape wine	The fumaric acid content of the finished wine shall not exceed 25 lbs/1000 gals (3.0 g/L). 27 CFR 24.182 and 24.192. 21 CFR 172.350.
To stabilize wine	The fumaric acid content of the finished wine shall not exceed 25 lbs/1000 gals (3.0 g/L). 27 CFR 24.244. 21 CFR 172.350.
Gelatin (food grade): To clarify juice or wine	(GRAS).
Granular cork: To smooth wine	The amount used shall not exceed 10 lbs/1000 gals. of wine (1.2 g/L). GRAS per FDA advisory opinion dated 02/25/85.
Isinglass: To clarify wine	GRAS per FDA advisory opinion dated 02/25/85.
Lactic acid: To correct natural acid deficiencies in grape wine	27 CFR 24.182 and 24.192. 21 CFR 184.1061 (GRAS).
Malic acid: To correct natural acid deficiencies in juice or wine	27 CFR 24.182 and 24.192. 21 CFR 184.1069 (GRAS).
Malo-lactic bacteria: To stabilize grape wine	Malo-lactic bacteria of the type *Leuconostoc oenos* may be used in treating wine. GRAS per FDA advisory opinion dated 02/25/85.
Maltol: To stabilize wine	Use authorized at a maximum level of 250 mg/L in all standard wine except natural wine produced from *Vitis vinifera* grapes. FDA advisory opinion dated 12/1/86.
Milk (pasteurized whole or skim)	
Fining agent for white grape wine or sherry	The amount used shall not exceed 2.0 liters of pasteurized milk per 1,000 liters of white grape wine or sherry (0.2 percent V/V).
Nitrogen gas: To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	21 CFR 184.1540 (GRAS).

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Reference or limitation
Oak chips or particles, uncharred and untreated: To smooth wine.	21 CFR 172.510.
Oxygen and compressed air:	
May be used in juice and wine	None.
Polyvinyl-polypyr-rolidone (PVPP):	
To clarify and to stabilize wine and to remove color from red or black wine or juice.	The amount used to treat the wine, including the juice from which the wine was produced, shall not exceed 60 lbs/1,000 gals. (7.19 g/L) and shall be removed during filtration. PVPP may be used in a continuous or batch process. The finished wine shall retain vinous character and shall have color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per **AOAC Method 11.003–11.004 (14th Ed.). 21 CFR 173.50.
Potassium bitartrate: To stabilize grape wine	The amount used shall not exceed 35 lbs/1000 gals. (4.19 g/L) of grape wine. 21 CFR 184.1077 (GRAS).
Potassium carbonate and/or potassium bicarbonate	
To reduce excess natural acidity in wine, and in juice prior to or during fermentation.	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1619 and 184.1613 (GRAS).
Potassium citrate: pH control agent and sequestrant in treatment of citrus wines.	The amount of potassium citrate shall not exceed 25 lbs/1000 gals. (3.0 g/L) of finished wine. 27 CFR 24.182. 21 CFR 182.1625 and 182.6625 (GRAS).
Potassium meta-bisulfite: To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22. 21 CFR 182.3637 (GRAS).
Silica gel (colloidal silicon dioxide): To clarify wine	Use shall not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1000 gals. of wine. (2.4 g/L). Silicon dioxide shall be completely removed by filtration. (GRAS).
Sorbic acid and potassium salt of sorbic acid: To sterilize and to preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine shall contain not more than 300 milligrams of sorbic acid per liter of wine. 21 CFR 182.3089 and 182.3640 (GRAS).
Soy flour (defatted): Yeast nutrient to facilitate fermentation of wine.	The amount used shall not exceed 2 lbs/1000 gals. (0.24 g/L) of wine. (GRAS).
Sulfur dioxide: To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22(b)(1). 21 CFR 182.3862 (GRAS).
Tannin:	
To adjust tannin content in apple juice or in apple wine	The residual amount of tannin shall not exceed 3.0 g/L, calculated as gallic acid equivalents (GAE). GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (polygalloylglucose).
To clarify or to adjust tannin content of juice or wine (other than apple).	The residual amount of tannin, calculated in gallic acid equivalents, shall not exceed 0.8 g/L in white wine and 3.0 g/L in red wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60. Total tannin shall not be increased by more than 150 milligrams/liter by the addition of tannic acid (poly-galloylglucose).
Tartaric acid:	
To correct natural acid deficiencies in grape juice/wine and to reduce the pH of grape juice/wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192. 21 CFR 184.1099 (GRAS).
Thiamine hydrochloride: Yeast nutrient to facilitate fermentation of wine.	The amount used shall not exceed 0.005 lb/1000 gals. (0.6 mg/L) of wine or juice. 21 CFR 184.1875 (GRAS).
Yeast, autolyzed: Yeast nutrient to facilitate fermentation in the production of grape or fruit wine.	21 CFR 172.896 and 184.1983. GRAS per FDA advisory opinion of 10/06/59.
Yeast, cell wall/membranes of autolyzed yeast: To facilitate fermentation of juice/wine.	The amount used shall not exceed 3 lbs/1000 gals. (0.36 g/L) of wine or juice. (GRAS).

*GRAS—An acronym for ''generally recognized as safe.'' The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by advisory opinion issued by the U.S. Food and Drug Administration.

**AOAC—Association of Official Analytical Chemists.

***To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)) [T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31079, July 9, 1991; T.D. ATF–350, 58 FR 52231, Oct. 7, 1993; T.D. ATF–350, 60 FR 38959, July 31, 1995; T.D. ATF–371, 61 FR 21079, May 9, 1996; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.247 Materials authorized for the treatment of distilling material.

The materials listed in this section as well as the materials listed in § 24.246 are approved as being acceptable in good commercial practice for use by proprietors in the treatment of distilling material within the limitations specified in this section: *Provided*, That when the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the appropriate ATF officer may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Ammonium phosphate (*mono-* and *di* basic.	Yeast nutrient in distilling material	The amount used shall not exceed 10 lbs/1000 gals. (1.2 g/L). 21 CFR 184.1141 (GRAS).[1] See footnote below.
Benzoic acid, potassium and sodium salts of benzoic acid.	To prevent fermentation of the sugar in wine being accumulated as distilling material.	The amount used shall not exceed 0.1% (w/v) as benzoic acid. GRAS per FDA advisory opinions dated 9/22/82 and 9/8/83. 21 CFR 184.1021 and 184.1733 (GRAS).
Enzyme activity	.....	The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (*alpha-* Amylase).	To convert starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from *Aspergillus niger, Aspergillus oryzae, Bacillus subtilis,* or barley malt per FDA advisory opinion of 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Bacillus licheniformis* per 21 CFR 184.1027.
Carbohydrase (*beta-* Amylase).	To convent starches to fermentable carbohydrates.	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amylogluco-sidase).	To convent starches to fermentable carbohydrates.	The amylase enzyme actvity shall be derived from *Aspergillus niger* or *Aspergillus oryzae* per FDA advisory opinion dated 8/18/83 or from *Rhizopus oryzae* per 21 CFR 173.130 or from *Rhizopus niveus* per 21 CFR 173.110.
Copper sulfate	To eliminate hydrogen sulfide and mercaptans.	The finished brandy or wine spirits produced from distilling material to which copper sulfate has been added shall not contain more than 2 parts per million (2 mg/L) residual copper. GRAS per FDA advisory opinion of 7/23/69.
Hydrogen peroxide	To reduce the bisulfite aldehyde complex in distilling material.	The amount used shall not exceed 200 parts per million. 21 CFR 184.1366 (GRAS).
Potassium permanganate	Oxidizing agent	The finished brandy or wine spirits produced from distilling material to which potassium permanganate has been added must be free of chemical residue resulting from such treatment. (GRAS)
Sodium hydroxide	Acid neutralizing agent	The finished brandy or wine spirits produced from distilling material to which sodium hydroxide has been added must be free of chemical residue resulting from such treatment. 21 CFR 184.1763 (GRAS).
Sulfuric acid	To effect favorable yeast development in distilling material; to prevent fermentation of the sugar in wine being accumulated as distilling material; to lower pH to 2.5 in order to prevent putrefaction and/or ethyl acetate development.	27 CFR 24.216 (GRAS), 21 CFR 184.1095 (GRAS).

[1] GRAS—An acronym for ''generally recognized as safe.'' The term means that the treating material has an FDA listing in title 21, Code of Federal Regulations, part 182 or part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.C.S. 5381, 5382, 5385, 5386, and 5387)). [T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

Any process which changes the character of the wine to the extent inconsistent with good commercial practice is not permitted on bonded wine premises. The processes listed in this section are approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling material, within the general limitations of this section: *Provided*, That when the specified use or limitation of any process on this list is determined to be unacceptable for use in foods and beverages by the U.S. Food and Drug Administration, the appropriate ATF officer may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of wine, juice, and distilling material.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL

Processes	Use	Reference or limitation
Elimination of sulfur dioxide by physical process.	To reduce the sulfur dioxide content of juice.	Use of a physical process to remove sulfur dioxide from juice must not alter the basic character of the juice so treated
Ion exchange	Various applications in the treatment of juice or wine:	Anion, cation, and non-ionic resins, except those anionic resins in the mineral acid state, may be used in batch or continuous column processes as total or partial treatment of wine, provided that with regard to juice or finished wine; 1. Such treatment does not alter the fruit character of the juice or wine. 2. The treatment does not reduce the color of the juice or wine to less than that normally contained in such juice or wine. 3. Treatment does not increase inorganic anions in the juice or wine by more than 10 mg/L. 4. The treatment does not reduce the metallic cation concentration in the juice or wine to less than 300 mg/L. 5. The treatment does not reduce natural or fixed acid in grape wine below 4 g/L for red table wines, 3 g/L for white table wines, 2.5 g/L for all other grape wines, 4 g/L for wine other than grape wine. 6. Treatment does not reduce the pH of the juice or wine to less than pH 2.8 nor increase the pH to more than pH 4.5. 7. The resins used have not imparted to the juice or wine any material or characteristic (incidental to the resin treatment) which may be prohibited under any other section of the regulations in this part. The winemaker may employ conditioning and/or regenerating agents consisting of water, fruit acids common to the wine or juice being treated, and inorganic acids, salts and/or bases provided the conditioned or regenerated resin is rinsed with water until the resin and container are essentially free from unreacted (excess) conditioning or regenerating agents prior to the introduction of the juice or wine. 21 CFR 173.25.
Reverse osmosis [1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Permeable membranes which are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine ''other than standard.'' Use shall not alter vinous character.
Spinning cone column [1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Use shall not alter vinous character. For standard wine, the same amount of essense must be added back to any lot of wine as was originally removed.
Thermal gradient processing	To separate wine into low alcohol and high alcohol wine fractions.	The fractions derived from such processing shall retain vinous character. Such treatment shall not increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. The addition of water other than that originally present in the wine prior to processing will render standard wine ''other than standard.''

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL—Continued

Processes	Use	Reference or limitation
	To separate juice into low Brix and high Brix juice fractions.	The low Brix fraction derived from such processing may be used in wine production. The high Brix fraction derived from such processing shall not be diluted with water for use in wine production.
Thin-film evaporation under reduced pressure [1].	To separate wine into a low alcohol wine fraction and into a higher alcohol distillate.	Use shall not alter vinous character. Water separated with alcohol during processing may be recovered by refluxing in a closed continuous system and returned to the wine. The addition of water other than that originally present in the wine prior to processing, will render standard wine ''other than standard.''
Ultrafiltration	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes.	Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Use shall not alter vinous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910.

[1] This process must be done on distilled spirits plant premises. However, reverse osmosis, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31081, July 9, 1991; T.D. ATF–350, 58 FR 52232, Oct. 7, 1993; T.D. ATF–371, 61 FR 21079, May 9, 1996; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.249 Experimentation with new treating material or process.

(a) *General*. The proprietor may, under the provisions of this section, conduct on bonded wine premises such experimentation with a treating material or process as the appropriate ATF officer finds may be conducted in a manner that will not jeopardize the revenue, conflict with wine operations, or be contrary to law.

(b) *Application*. The proprietor who wants to conduct experimentation must file an application with the appropriate ATF officer setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. The proposed experimentation must not be conducted until the appropriate ATF officer has determined that the conduct of such experimentation must not jeopardize the revenue, conflict with wine operations, or be contrary to law, and has approved the application.

(c) *Segregation of operations*. Experimentation authorized under this section will be conducted with the degree of segregation from wine operations as may be required by the appropriate ATF officer under the provisions of § 24.27.

(d) *Records*. The proprietor shall, with respect to each experiment authorized by this section, keep records of the kind and quantity of materials received and used and the volume of wine treated and the manner by which disposed.

(e) *Disposition of the wine*. The disposition of the wine subjected to experimental treatment will conform to the conditions stated in the authorization to conduct the experimentation. (Sec. 201, Pub. L. 85–859 (72 Stat. 1383, as amended (26 U.S.C. 5361, 5382))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999]

§ 24.250 Application for use of new treating material or process.

(a) *General*. If the proprietor desires to use a material or process which is not specifically authorized in §§ 24.246, 24.247, 24.248, or elsewhere in this part, an application shall be filed with the appropriate ATF officer to show that the proposed material or process is a cellar treatment consistent with good commercial practice.

(b) *Data required.* The application will include the following:

(1) The name and description of the material or process;

(2) The purpose, the manner, and the extent to which the material or process is to be used together with any technical bulletin or other pertinent information relative to the material or process;

(3) A sample, if a proposed material;

(4) Documentary evidence of the U.S. Food and Drug Administration's approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated;

(5) The test results of any laboratory-scale pilot study conducted by the winemaker in testing the material and an evaluation of the product and of the treatment including the results of tests of the shelf life of the treated wine;

(6) A tabulation of pertinent information derived from the testing program conducted by the chemical manufacturer demonstrating the function of the material or process;

(7) A list of all chemicals used in compounding the treating material and the quantity of each component;

(8) The recommended maximum and minimum amounts, if any, of the material proposed to be used in the treatment and a statement as to the volume of water required, if any, to facilitate the addition of the material or operation of the process; and

(9) Two 750-milliliter samples representative of the wine before and after treatment. Information of a confidential or proprietary nature to the manufacturer or supplier of the treating material or process may be forwarded by the manufacturer or supplier to the appropriate ATF officer with a reference to the application filed by the winemaker. Information contained within the winemaker's application can be disclosed to the public, subject to the limitations of 26 U.S.C. 6103 and 7213.

(c) *Use of cellar treatment.* The proprietor may not use the proposed treating material or process until a determination has been made by the appropriate ATF officer that the intended use of the material or process is acceptable in good commercial practice.

(d) *Processing of application.* After evaluation of the data submitted with the application, the appropriate ATF officer will make a decision regarding the acceptability of the proposed treatment in good commercial practice. The appropriate ATF officer will notify the proprietor of the approval or disapproval of the application. (Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999]

BOTTLING, PACKING, AND LABELING OF WINE

§ 24.255 Bottling or packing wine.

(a) *General.* Proprietors of a bonded wine premises and a taxpaid wine bottling house premises shall be held strictly responsible for the correct determination of the quantity and alcohol content of wine removed. As required by § 24.170, appropriate and accurate measures and instruments for measuring and testing the wine will be provided at each wine premises.

(b) *Bottle or other container fill.* Proprietors of bonded wine premises and taxpaid wine bottling house premises shall fill bottles or other containers as nearly as possible to conform to the amount shown on the label or blown in the bottle or marked on any container other than a bottle; but in no event may the amount of wine contained in any individual bottle, due to lack of uniformity of the bottles, vary from the amount stated more than 1.0 percent for 15.0 liters and above, 1.5 percent for 1.0 liter to 14.9 liters, 2.0 percent for 750 mL, 3.0 percent for 375 mL, 4.5 percent for 187 mL and 100 mL, and 9.0 percent for 50 mL; and in such case, there will be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled. Short-filled bottles or other containers of wine which are sold or otherwise disposed of by the proprietor to employees for personal consumption need not be labeled, but, if labeled, need not show an accurate statement of net contents.

(c) *Tax tolerance*. The net contents of bottles or other containers of untaxpaid wine in the same tax class filled during six consecutive tax return periods, as determined from the bonded wine premises proprietor's fill test records, shall not vary by more than 0.5 percent from the net contents as stated on the bottles or other containers. The bonded wine premises proprietor is liable for the tax on the entire amount of wine in the same tax class when that wine is removed from bond, without benefit of tolerance, when the fill of bottles or other containers exceeds a 0.5 percent average of a period which consists of six consecutive tax returns, or when filling is not conducted in compliance with good commercial practice.

(d) *Fill tests*. The proprietor shall test at representative intervals wine bottled or packed during the bottling or packing operation of each bottling or packing line to determine if the wine contained in the bottle or other container is in agreement with that stated on the label, bottle, or other container.

(e) *Alcohol tests*. The proprietor shall test the alcohol content by volume to determine the tax class of the wine and to ensure the alcohol content to be stated on the label is in agreement with the requirement of § 24.257. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5368))

(Approved by the Office of Management and Budget under control numbers 1512–0298 and 1512–0503)

§ 24.256 Bottle aging wine.

Wine bottled or packed and stored for the purpose of aging need not have labels affixed until the wine is removed for consumption or sale. However, the bins, pallets, stacks, cases or containers of unlabeled wine will be marked in some manner to show the kind (class and type) and alcohol content of the wine. If the unlabeled wine is stored at a location other than the bottling or packing winery, the registry number of the bottling or packing winery will also be shown. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5662))

(Approved by the Office of Management and Budget under control number 1512–0503)

§ 24.257 Labeling wine containers.

(a) The proprietor must label each bottle or other container of beverage wine prior to removal for consumption or sale. The minimum type size for information required by this section is: 2 millimeters for containers of more than 187 milliliters and 1 millimeter for containers of 187 milliliters or less. The maximum type size for alcohol content statements is 3 millimeters unless the container is larger than 5 liters. The label must be securely affixed and show:

(1) The name and address of the wine premises where bottled or packed;

(2) The brand name, if different from above;

(3) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

(4) The kind of wine, shown as follows:

(i) If the wine contains 7 percent or more alcohol by volume and must have label approval under 27 CFR part 4, the kind of wine is the class, type, or other designation provided in that part.

(ii) If the wine has an exemption from label approval, an adequate statement of composition may be used instead of the class and type in 27 CFR part 4.

(iii) If the wine contains less than 7 percent alcohol by volume, an adequate statement of composition may be used instead of the class and type in 27 CFR part 4. The rules in 27 CFR part 4 pertaining to label approval and standards of fill do not apply to wine under 7 percent alcohol by volume. The rules in 27 CFR part 16 requiring a Health Warning Statement do apply to all wines over 1/2 percent alcohol. Except for the rules noted in this section, labeling of wines under 7 percent alcohol is under the jurisdiction of the Food and Drug Administration.

(iv) The statement of composition must include enough information to identify the tax class when viewed with the alcohol content. First, the wine should be identified by the word ''wine,'' ''mead,'' ''cider'' or ''perry,'' as

applicable. If the wine contains more than 0.392 grams of carbon dioxide per 100 milliliters, the word ''sparkling'' or ''carbonated,'' as applicable, must be included in the statement of composition. If the statement of composition leaves doubt as to the tax class of the wine, the wine must be marked ''tax class 5041(b)(1) IRC'' or an equivalent phrase. For example, a still wine marked ''wine'' and ''16 percent alcohol by volume'' is adequately marked to identify its tax class as 5041(b)(2). A still wine marked ''hard cider'' and ''9 percent alcohol by volume'' is adequately marked to identify its tax class as 5041(b)(1). A still wine marked ''raspberry hard cider'' and ''9 percent alcohol by volume'' is adequately marked to identify its tax class as 5041(b)(1). A still wine eligible for the hard cider tax rate marked ''cider'' or ''hard cider'' and ''6 percent alcohol by volume'' is adequately marked to identify its tax class as 5041(b)(6). However, if a still wine that is not eligible for the hard cider tax rate is marked ''cider'' or ''hard cider'' and ''6 percent alcohol by volume'' it is not adequately marked to identify its tax class as 5041(b)(1), so the tax class must be shown.

(5) The net content of the container unless the net content is permanently marked on the container as provided in 27 CFR part 4.

(b) The information shown on any label applied to bottled or packed wine is subject to the recordkeeping requirements of § 24.314. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

(c) *Use of semi-generic designations*—(1) *In general.* Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if—

(i) There appears in direct conjunction therewith an appropriate appellation of origin, as defined in part 4 of this chapter, disclosing the true place of origin of the wine, and

(ii) The wine so designated conforms to the standard of identity, if any, for such wine contained in part 4 of this chapter or, if there is no such standard, to the trade understanding of such class or type.

(2) *Determination of whether a name is semi-generic*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Director.

(ii) *Certain names treated as semi-generic.* The following names shall be treated as semi-generic: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, Tokay. (See: 26 U.S.C. 5368, 5388, 5662)

(Approved by the Office of Management and Budget under control number 1512–0503)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–350, 58 FR 52232, Oct. 7, 1993; T.D. ATF–398, 63 FR 44783, Aug. 21, 1998; T.D. ATF–470, 66 FR 58944, Nov. 26, 2001]

§ 24.258 Certificates of approval or exemption.

The proprietor shall obtain a certificate of label approval or a certificate of exemption from label approval as required by 27 CFR part 4. (August 29, 1935, ch. 814, Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205))

§ 24.259 Marks.

(a) *Required marks.* Each container larger than four liters or each case used to remove wine for consumption or sale will be durably marked to show the following information:

(1) The serial number or filling date as provided in § 24.260;

(2) The name (or trade name) and the registry number of the bottlers wine premises;

(3) The kind (class and type) and the alcohol content of the wine. The kind of wine and alcohol content will be stated in accordance with § 24.257. The formula number will be marked on bulk containers of special natural wine or other wine produced under § 24.218;

(4) The net contents of each container larger than four liters or each case in wine gallons, or for containers larger than four liters or cases filled according to metric measure, the contents in liters. If wine is removed in cases, the cases may be marked to show the number and size of bottles or

other containers in each case in lieu of the net contents of the case; and

(5) Except for cases, the date of removal or shipment.

(b) *Application of marks.* Required marks may be cut, printed, or otherwise legibly and durably marked upon the container larger than four liters or the case or placed on a label or tag securely affixed to the case or container larger than four liters.

(c) *Location of marks.* Required marks will be placed on a container larger than four liters or on the side of a case for ready examination by appropriate ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1387, as amended, 1407, as amended (26 U.S.C. 5368, 5388, 5662))

(Approved by the Office of Management and Budget under control number 1512–0503)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.260 Serial numbers or filling date.

Each container larger than four liters or each case used for removing wine for consumption or sale will be marked with a serial number or filling date at the time of filling or when such containers or cases are prepared for removal. Serial numbers will commence with ''1'' and continue until the numeral ''1,000,000'' is reached, whereupon the series may recommence with the numeral ''1.'' However, the proprietor may initiate a new series after the numeral ''1,000,000'' has been reached provided no numeral will be used more than once during a 12-month period. If desired, a separate series of numbers with letter prefixes may be used for containers larger than four liters and for cases, or for cases filled on different bottling lines, or for removals from different loading docks. The proprietor may mark containers larger than four liters or the cases with the filling date in lieu of using a serial number or use both a serial number and the filling date. However, if the proprietor desires to change from the use of a serial number to use of a filling date, or *vice versa*, a notice will be sent to the appropriate ATF officer before making the change. Where United States or foreign wine is recased, the cases will be marked with the date of recasing, preceded by the letter ''R'', in lieu of serial number or filling date. (72 Stat. 1381; 26 U.S.C. 5367, 5368)

(Approved by the Office of Management and Budget under control number 1512–0503)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

Subpart M—Losses of Wine

§ 24.265 Losses by theft.

The proprietor shall be liable for and pay the tax on wine unlawfully removed while on bonded wine premises, or while in transit thereto or therefrom in bond, unless the proprietor or other person responsible for the tax, establishes to the satisfaction of the appropriate ATF officer that the theft did not occur as the result of connivance, collusion, fraud or negligence on the part of the proprietor or other person responsible for the tax or the owner, consignor, consignee, bailee, or carrier, or their agents or employees. (Sec. 201, Pub. L. 85–859, 72 Stat, 1381, as amended (26 U.S.C. 5370))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999; T.D. ATF–432, 65 FR 69253, Nov. 16, 2000]

§ 24.266 Inventory losses.

(a) *General.* The proprietor shall take a physical inventory of all untaxpaid wine on-hand on bonded wine premises as of the close of business each tax year, or where a cycle different from the tax year has been established as provided in § 24.313, the inventory will be taken annually at the end of that cycle, or at any time required by an ATF officer. The physical inventory of bulk and bottled or packed wine will be recorded and reported as required by § 24.313.

(b) *Bulk wine losses.* The physical inventory of bulk wine will determine losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering since the previous physical inventory required by this section. A claim for allowance of loss, under the

provisions of § 24.65, is required for inventory losses in production or storage:

(1) Where there are circumstances indicating that all or a part of the wine reported lost was unlawfully removed, or

(2) Where the loss on bonded wine premises during the annual period exceeds three percent of the aggregate volume of wine on-hand at the beginning of the annual period and the volume of wine received in bond during the annual period; or the loss exceeds six percent of the still wine produced by fermentation; or the loss exceeds six percent of the sparkling wine produced by fermentation in bottles; or the loss exceeds three percent of the special natural wine produced under § 24.195 or other wine produced under § 24.218; or the loss exceeds three percent of the artificially carbonated wine produced; or the loss exceeds three percent of the bulk process sparkling wine produced.

The percentage applicable to each tax class of wine will be calculated separately, unless the calculation is impracticable because of the mixture of different tax classes by addition of wine spirits or blending during the annual period, in which case the percentage will be calculated on the aggregate volume. Wine removed immediately after production for use as distilling material and on which the usual racking, clarifying, and filtering losses are not sustained, will not be included in the calculations.

(c) *Bottle and other container wine losses.* Wine filled into a bottle or other similar containers are not subject to losses due to spillage, leakage, soakage, evaporation, and other losses normally occurring from racking and filtering. In addition, wine that has been filled into a bottle or other similar containers can be accurately accounted for and any unexplained shortage is considered evidence of an unreported removal. Therefore, the proprietor shall pay the tax on any unexplained loss of untaxpaid bottled or packed wine disclosed by inventory or otherwise. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369, 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991]

§ 24.267 Losses in transit.

Where the loss in transit of bulk wine shipped in bond or the total daily bulk wine in bond shipments received in bond from the same winery exceeds one percent (two percent on transcontinental shipments) of the volume shipped, the proprietor of the receiving bonded wine premises shall immediately notify the appropriate ATF officer and file a claim under the provisions of § 24.65. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

§ 24.268 Losses by fire or other casualty.

The proprietor must immediately report any loss by theft, fire or other casualty, or any other extraordinary or unusual loss to the appropriate ATF officer. If required by the appropriate ATF officer, the proprietor must file a claim under the provisions of § 24.65. The volume of wine loss must be reported on ATF F 5120.17 for the reporting period during which the loss occurred. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

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[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993; T.D. ATF–409, 64 FR 13685, Mar. 22, 1999]

Subpart N—Removal, Return and Receipt of Wine

TAXPAID REMOVALS

§ 24.270 Determination of tax.

The tax on wine is determined at the time of removal from a bonded wine premises for consumption or sale. Section 5041 of title 26, United States Code, imposes an excise tax, at the rates prescribed, on all wine (including imitation, substandard, or artificial wine, and compounds sold as wine, which contain 24 percent or less of alcohol by volume) produced in or imported into the United States. Wine containing more that 24 percent of alcohol by volume is classed as distilled spirits and taxed accordingly. The tax is determined and paid on the volume of wine:

(a) In bottles or other containers filled according to United States measure recorded to the nearest 10th gallon; or,

(b) In bottles or other containers filled according to metric measure, on the volume of wine in United States wine gallons to the nearest 10th gallon; or

(c) In the case of pipeline removals, on the volume of bulk wine removed recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C. 5041))

See §§ 24.278 and 24.279 of this part for regulations concerning credit against the wine tax for certain bonded wine premises proprietors.

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–307, 55 FR 52737, Dec. 21, 1990]

§ 24.271 Payment of tax by check, cash, or money order.

(a) *General*. Unless prepaid or no tax is due, the tax on wine is paid by a semi-monthly or annual Excise Tax Return, ATF F 5000.24, which is filed with remittance (check or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form.

(b) *Return periods*. Except as provided for in paragraph (c) of this section and § 24.273, or where there is no tax due, return periods are 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. The proprietor shall file returns with remittances, 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 § 24.271(c)(3).

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994)*. (1)(i) Except as provided in paragraph (c)(1)(ii) 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 proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer*. In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 24.272, 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 proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule*. (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) 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 (c)(1)(ii) 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.

(3) *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.

(4) *Example. Payment of tax for the month of September*. (i) *Facts*. X, a proprietor 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.

(ii) *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 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). 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 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–365, 60 FR 33668, June 28, 1995]

§ 24.272 Payment of tax by electronic fund transfer.

(a) *General*. (1) During a calendar year any proprietor who is liable for a gross amount of wine excise tax equal to or exceeding $5 million combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, shall during the succeeding calendar year use a financial institution in making payment by electronic fund transfer (EFT) of wine taxes for that year. A proprietor who is required by this section to make remittance by EFT may not effect payment of wine taxes by cash, check, or money order as described in § 24.271.

(2) For the purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including wines brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawback, credit, or refund, for all premises from which the activities are conducted by the proprietor.

(3) For the purposes of this section, a proprietor includes a controlled group of corporations, as defined in 26 U.S.C. 5061 (e)(3). 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 percent 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.

(4) A proprietor who is required by this section to make remittances by EFT shall, for each bonded wine premises from which wine is withdrawn upon determination of tax, make a separate EFT remittance and file a separate tax return.

(b) *Requirements*. (1) On or before January 10 of each calendar year, except for a proprietor already remitting the tax by EFT, each proprietor who was liable during the previous calendar year for a gross amount of wine excise tax equal to or exceeding $5 million, combining tax liabilities incurred under this part and parts 26 and 251 of

this chapter, shall give written notice to the appropriate ATF officer agreeing to make remittances by EFT.

(2) For each return filed in accordance with this subpart, the proprietor shall direct the proprietor's financial institution 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 will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account by no later than the close of business on the last day for filing the return as prescribed in § 24.271. The request will take into account any time limit established by the financial institution.

(3) If the proprietor was liable during the preceding calendar year for less than $5 million in wine excise taxes, combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, the proprietor may choose either to continue remitting the tax as provided in this section or to remit the tax with return as prescribed by § 24.271. Upon filing the first return on which the proprietor chooses to discontinue remittance of the tax by EFT and to begin remittance of the tax with the tax return, the proprietor shall notify the appropriate ATF officer by attaching a written notification to the tax form stating that no wine excise tax is due by EFT because the tax liability during the preceding calendar year was less than $5 million, and that the remittance will be filed with the tax return.

(c) *Remittance.* (1) The proprietor shall show on the tax return information about remitting the tax for that return by EFT and shall file the return with ATF in accordance with the instructions on the tax form.

(2) Remittances will 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 will be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

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

(d) *Failure to make a taxpayment by EFT.* The proprietor is subject to a penalty imposed by 26 U.S.C. 5684, 6651, and 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 proprietor an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a proprietor follows when preparing returns and EFT remittances in accordance with this subpart. The United States Customs Service will provide the proprietor with instructions for preparing EFT remittances for payments to be made to the United States Customs Service for payment of excise tax on imported wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, 13685, Mar. 22, 1999; T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 24.273 Exception to filing semimonthly tax returns.

(a) Any proprietor who has not given a bond for deferred payment of wine excise tax and who:

(1) Paid wine excise taxes in an amount less than $1000 ($500 prior to May 12, 1993,) during the previous calendar year, or

(2) Is the proprietor of a newly established bonded wine premises and expects to pay less than $1000 ($500 prior to May 12, 1993,) in wine excise taxes before the end of the calendar year, may file the Excise Tax Return, ATF F 5000.24, and remittance, within 30 days after the end of the calendar year instead of semimonthly as required by § 24.271. However, if before the close of the current calendar year the wine excise tax owed will exceed the amount of

the coverage under the proprietor's operations bond for wine removed from bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals $1000 or more, the proprietor will commence semimonthly filing of the wine Excise Tax Returns and making of payments as required by § 24.271.

(b) A proprietor who files under this section is subject to the failure to pay or file provisions of § 24.274. If there is a jeopardy to the revenue, the appropriate ATF officer may deny the exceptions to filing tax returns provided in this section at any time. (Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

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

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–338, 58 FR 19064, Apr. 12, 1993; 58 FR 48424, Sept. 15, 1993; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.274 Failure to timely pay tax or file a return.

Penalties for failure to pay tax at the time required, for willful refusal to pay the tax and for fraudulent nonpayment of tax are provided for in 26 U.S.C. 5661 and 6656. In addition to these penalties, there is a penalty for the delinquent filing of a tax return, imposed as an addition to the tax shown on the return, amounting to five percent for each month or fraction thereof of the delinquency, not exceeding 25 percent in the aggregate, unless it is shown that the delinquency is due to reasonable cause and not to willful neglect. (Sec. 201, Pub. L. 85–859, 72 Stat. 1407, as amended, 1410, as amended (26 U.S.C. 5661, 5684, 6651, 6656))

§ 24.275 Prepayment of tax.

(a) *General*. The proprietor shall, before removal of wine for consumption or sale, file Excise Tax Return, ATF F 5000.24, with remittance, where:

(1) Required to prepay tax under § 24.276; or,

(2) The tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than the amount of such tax covered by the wine operations coverage of the wine bond; or,

(3) There is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds the amount of the wine operations coverage of the wine bond designated for wine removed from bonded wine premises on which tax has been determined but not paid.

The return with remittance is forwarded pursuant to the instructions printed on the return. For the purpose of complying with this section, the term ''forwarding'' means deposit in the United States mail properly addressed to ATF.

(b) *Electronic fund transfer*. When the proprietor is required by § 24.272 to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by:

(1) Completing the Excise Tax Return and by mailing it, as instructed on the form, to ATF and

(2) Directing the proprietor's financial institution to effect an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19064, Apr. 12, 1993]

§ 24.276 Prepayment of tax; proprietor in default.

When the proprietor fails to forward a payment for wine excise tax due by presentment of a check or money order, or when the proprietor is otherwise in default of payment of the tax, no wine may be removed for consumption or sale until the tax has been paid for the period of the default and until the appropriate ATF officer finds the

revenue will not be jeopardized by the late payment of the tax. Any remittance made during the period of the default will be in cash, or will be in the form of a certified, cashier's, or treasurer's check drawn on any financial institution 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 money order, as provided in 27 CFR 70.61 (payment by check or money order) or in the form of an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391 as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–301, 55 FR 47605, Nov. 14, 1990; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.277 Date of mailing or delivering of returns.

(a) When the proprietor sends the Excise Tax Return, ATF F 5000.24, with or without remittance, by United States mail, the official postmark of the United States Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return 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, is treated at the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

§ 24.278 Tax credit for certain small domestic producers.

(a) *General.* In the case of a person who produces not more than 250,000 gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by Title 26, U.S.C. (other than Chapters 2, 21 and 22), an amount computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during such year for consumption or sale. Such credit applies only to wine which has been produced at a qualified bonded wine premises in the United States. The small wine producer's tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producers' wine tax credit on wine removed during such calendar year. A proprietor who has obtained a new wine producers' basic permit may not take the small producers' wine tax credit on wine removed until wine is produced by such proprietor. ''Wine production operations'' include those activities described in paragraph (e) of this section.

(b) *Special rules relating to eligibility for wine credit*—(1) *Controlled groups.* For purposes of this section and § 24.279, the term ''person'' includes a controlled group of corporations, as defined in 26 U.S.C. 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' wherever it appears. Also, the rules for a ''controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit may be used by a person.

(2) *Credit for transferees in bond.* A person other than an eligible small producer (hereafter in this paragraph referred to as the ''transferee'') shall be allowed the credit under paragraph (a) of this section which would be allowed to the producer if the wine removed by

the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under this section if removed by such person during the calendar year,

(ii) Wine produced by such person is removed during such calendar year by the transferee to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(iii) Such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph.

(iv) At the time of taxable removal, the following information shall be provided to the transferee by the producer, in writing, and the producer and transferee shall each retain a copy with the record of taxpaid removal from bond required by § 24.310:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) *Time for determining and allowing credit.* The credit allowable by paragraph (a) of this section shall be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and shall be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by this section is treated as if it constituted a reduction in the rate of such tax.

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year shall be computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is $0.90 per gallon for wine ($0.056 for hard cider) eligible for such credit at the time it is removed for consumption or sale;

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit shall be reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit which would be taken by a person who produced 160,500 gallons of wine and hard cider during a calendar year would be reduced by 10 percent, for a net credit against the tax of $0.81 per gallon for wine or $0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed for consumption or sale during the calendar year.

(e) *Definitions*—(1) *Production.* For the purpose of determining if a person's production is within the 250,000 gallon limitation, in addition to wine produced by fermentation, production includes any increases in the volume of such wine due to the winery operations of amelioration, wine spirits addition, sweetening, and the production of formula wine. Production of champagne and other sparkling wines is not excluded for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by such person.

(2) *Removals.* For the purpose of determining if a person's removals are within the 100,000 gallon limitation, removals include wine removed from all qualified bonded wine premises within the United States by such person. Wine removed by a transferee in bond under the provisions § 24.278(b)(2) will be counted as a removal by the small producer who owns such wine, and not by the transferee in bond.

(f) *Preparation of tax return.* A person who is eligible for the credit shall show the amount of wine tax before credit on the Excise Tax Return, ATF F 5000.24, and enter the quantity of wine subject to credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for

each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person shall report on ATF F 5000.24 where such credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the names of such producers, their credit rate, and the total credit taken on behalf of each during the tax return period shall be shown in schedule B.

(g) *Denial of deduction.* Any deduction under 26 U.S.C. chapters 1–6, with respect to any tax against which the credit is allowed under paragraph (a) of this section shall only be for the amount of such tax as reduced by such credit.

(h) *Exception to credit.* The appropriate ATF officer shall deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of such credit would benefit a person who would otherwise fail to qualify for the use of such credit. (26 U.S.C. 5041(c).)

(Approved by the Office of Management and Budget under control number 1512–0540)

[T.D. ATF–390, 62 FR 29666, June 2, 1997, as amended by T.D. ATF–398, 63 FR 44783, Aug. 21, 1998; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.279 Tax adjustments related to wine credit.

(a) *Increasing adjustments.* Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to § 24.278, such adjustment shall be made on Excise Tax Return, ATF F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, it shall be made no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for such return periods. The person shall make tax adjustments for all bonded wine premises where excessive credits were taken against tax that year, and shall include interest payable. In the case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, the adjustment is the full amount of excess credit taken, and shall include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was taken, and may include the penalty payable under 26 U.S.C. 6662, at the discretion of the appropriate ATF officer. The appropriate ATF officer will provide information, when requested, regarding interest rates applicable to specific time periods, and any applicable penalties. In the case of a controlled group of bonded wine premises who took excess credits, all member proprietors who took incorrect credits shall make tax adjustments as determined in this section. In the case of a small producer who instructed a transferee in bond to take credit as authorized by § 24.278(b)(2), and subsequently determines the credit was less or not applicable, such producer shall immediately inform the transferee in bond, in writing, of the correct credit information. The transferee shall make any increasing adjustment on its next tax return based on revised credit information given by the producer or by an ATF officer.

(b) *Decreasing adjustments.* Where a person fails to deduct the credit, or deducts less than the appropriate credit provided for by § 24.278, during the calendar year, a claim may be filed for refund of tax excessively paid. Such claims will be filed in accordance with § 24.69 of this part. In the case of wine removed on behalf of a small producer by a transferee in bond, if the transferee in bond was instructed to deduct credit and failed to deduct credit or deducted less than the appropriate credit and was later reimbursed for the tax by such producer, such transferee may file the claim. The provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart F, will apply, and the producer and transferee in bond must show the conditions of

§ 24.278(b)(2) were met. (26 U.S.C. 5041(c).)

(Approved by the Office of Management and Budget under control number 1512–0492)

[T.D. ATF–390, 62 FR 29667, June 2, 1997, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

TRANSFER OF WINE IN BOND

§ 24.280 General.

Wine may be removed for transfer in bond, from one bonded wine premises to another bonded wine premises or to a distilled spirits plant. For bulk wine transferred in bond between adjacent or contiguous bonded wine premises or to an adjacent or contiguous distilled spirits plant, an accurately calibrated tank for measuring the wine is required on at least one of the premises. The volume of wine transferred will be recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 24.281 Consignor premises.

Prior to transferring wine in bond, the proprietor shall prepare a transfer record prescribed by § 24.309. Except for multiple transfers as provided in § 24.282, a transfer record will be prepared for each shipment. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record for the files and forward the original to the consignee (by the close of the next business day). (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362)

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991]

§ 24.282 Multiple transfers.

(a) *Truck*. The proprietor may use one transfer record for all wine shipped by truck on the same day to other premises. The proprietor shall prepare a shipment or delivery order for each shipment showing date of transfer, name and address of the proprietor and consignee, number of cases or containers, serial numbers of cases (if any) or container identification marks, and quantity shipped in gallons or liters. A copy of the shipping or delivery order will be retained by the proprietor and a copy sent with the shipment. On completion of lading the last truck for the day, the proprietor shall prepare and process a transfer record as provided in § 24.281.

(b) *Pipeline*. The proprietor may use one transfer record for all wine (including distilling material and vinegar stock) transferred by pipeline to adjacent premises during a month. At the end of the month, the proprietor shall prepare and process a transfer record as provided in § 24.281. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.283 Reconsignment.

Prior to or on arrival at the premises of a consignee, wine transferred in bond may be reconsigned by the consignor. The bond of the proprietor to whom the wine is reconsigned will cover the wine while in transit after reconsignment. Notice of cancellation of the shipment will be made to the other proprietors involved by the proprietor who reconsigned the wine. Where reconsignment is to other than the shipping proprietor, a new transfer record prominently marked ''Reconsignment'' will be prepared and processed as provided by § 24.281. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.284 Consignee premises.

When wine is received by transfer in bond, the consignee shall check the shipment against the transfer record and determine by volumetric measure or weight the quantity received. The date received and, if different from the quantity shipped, the quantity received will be recorded on the transfer record. See § 24.267 for provisions applicable to losses in transit. Sealed containers or cases received without apparent loss need not be measured or weighed. The consignee will retain the original of

the transfer record and any accompanying documents. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control number 1512–0298)

REMOVALS WITHOUT PAYMENT OF TAX

§ 24.290 Removal of wine as distilling material.

(a) *General.* Still wine may be removed without payment of tax to the production facilities of a distilled spirits plant for use as distilling material. The volume of distilling material may be determined at either the bonded wine premises or the distilled spirits plant.

(b) *Special natural wine.* Unmarketable special natural wine may be removed to a distilled spirits plant for use as distilling material in the production of wine spirits (but not brandy). Where sugar has been used in the production of special natural wine, the wine may not be removed for use as distilling material if the unfermented sugars therein have been fermented prior to the removal. If wine spirits produced from special natural wine contain any flavor characteristics of the special natural wine, the wine spirits may be used only in the production of a special natural wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1382, as amended, 1395, as amended (26 U.S.C. 5362, 5373, 5552))

§ 24.291 Removal of wine for vinegar production.

(a) *General.* Still wine may be removed from bonded wine premises, without payment of tax, for use in the manufacture of vinegar. Where the proprietor is also the proprietor of a vinegar plant located adjacent or contiguous to the bonded wine premises, wine may be removed without payment of tax upon filing a consent of surety extending the terms of the wine bond to cover the removal and use of wine in the manufacture of vinegar. Where the proprietor of a vinegar plant is not the proprietor of an adjacent or contiguous bonded wine premises, the proprietor of the vinegar plant may receive wine, without payment of tax, for use in the manufacture of vinegar by filing a bond under the provisions of § 24.146(c) to cover the removal to and use of wine at the vinegar plant.

(b) *Vinegar plant records.* Each proprietor of a vinegar plant to which wine is shipped, without payment of tax, for use in the manufacture of vinegar shall keep a record of all wine received and used for the manufacture of vinegar and of all vinegar produced and disposed of. The record will show the following information:

(1) The volume and alcohol content of all wine received, the date of receipt, and the name, registry number, and address of the bonded wine premises from which received;

(2) The volume and alcohol content of all wine used in the manufacture of vinegar, and the date of use;

(3) The volume and grain strength of the vinegar produced, and the date of production. (This volume will be reported on a 100-grain strength basis and will be determined by multiplying the wine gallons of vinegar produced by the grain strength thereof and dividing the result by 100); and

(4) The names and addresses of all persons to whom vinegar is shipped, the volume and grain strength shipped to each, and the date of shipment. (Grain strength is a measure of the acetic acid content of vinegar, expressed as 10 times the grams of acetic acid per 100 mL).

(c) *Inspection of vinegar plants.* The proprietor of a vinegar plant receiving wine, without payment of tax, for use in the manufacture of vinegar shall make the premises and records available for inspection by appropriate ATF officers during regular business hours. (August 16, 1954, ch. 736, 68A Stat. 903, as amended (26 U.S.C. 7606); Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control numbers 1512–0058, 1512–0292 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.292 Exported wine.

(a) *General.* Wine may be removed from a bonded wine premises without payment of tax for exportation, for use

on vessels and aircraft, for transportation to and deposit in a ''Class 6'' manufacturing bonded warehouse, for transfer to and deposit in a customs bonded warehouse, and for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation. Removals of wine for export will be in accordance with the procedures in part 252 of this chapter.

(b) *Return of wine to bonded storage.* Wines which have been lawfully withdrawn, without payment of tax, under the provisions of part 252 of this chapter may be returned to bonded wine premises from which withdrawn for storage pending subsequent removal for lawful purposes. On return of wine to bonded wine premises, the proprietor shall record the receipt showing the gallonage of each tax class received and returned to storage on bonded wine premises and shall report the return on the ATF F 5120.17, Report of Bonded Wine Premises Operations for the reporting period with an explanatory notation. All provisions of this part applicable to wine in bond at bonded wine premises and to removals from bond are applicable to returned wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19065, Apr. 12, 1993]

§ 24.293 Wine for Government use.

(a) *General.* Wine may be removed from bonded wine premises, free of tax, for use of the Government of the United States, or any agency thereof, upon receipt of a proper Government order signed by the officer in charge of the department, institution, station, or similar establishment, to which the wine is to be shipped or other officer duly authorized to sign the order. The governmental order will show the kind, quantity and alcohol content of the wine desired; and the purpose for which the wine is to be used. Wine may also be removed for use by the governments of the several states and the District of Columbia, or of any subdivision thereof, or by any agency of the governments, free of tax, from bonded wine premises for analysis, testing, research or experimentation.

(b) *Bill of lading and report of shipment.* Where wine is shipped by common carrier, the proprietor shall retain a copy of the bill of lading, covering the shipment, with the ATF F 5120.17, Report of Bonded Wine Premises Operations for the reporting period in which the shipment is made. The bill of lading will show the name and address of the agency to which the wine is shipped, identifying marks on containers or cases, and alcohol content of the wine. The governmental order, or a copy of the order, will be filed at the bonded wine premises available for inspection by appropriate ATF officers. (Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended (26 U.S.C. 5362, 5367, 7510))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–338, 58 FR 19065, Apr. 12, 1993; T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.294 Destruction of wine.

(a) *General.* Wine on bonded wine premises may be destroyed on or off wine premises by the proprietor without payment of tax. A proprietor who wants to destroy wine on or off wine premises must file with the appropriate ATF officer an application stating the kind, alcohol content, and approximate volume of wine to be destroyed, where the wine is to be destroyed, and the reason for destruction. Wine to be destroyed must be inspected, and the destruction supervised, by an appropriate ATF officer unless the appropriate ATF officer authorizes the proprietor to destroy the wine without inspection and supervision. The wine must not be destroyed until the proprietor has received authority from the appropriate ATF officer.

(b) *Record of destruction.* The proprietor shall maintain a record of the volume destroyed and include the quantity on the ATF F 5120.17, Report of Bonded Wine Premises Operations. If part of the volume of the material destroyed is not wine, the volume destroyed will be reported on the basis of actual wine content of the material,

excluding any dilution by water or other substance. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5370))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19065, Apr. 12, 1993; T.D. ATF–409, 64 FR 13686, Mar. 22, 1999]

RETURN OF UNMERCHANTABLE WINE TO BOND

§ 24.295 Return of unmerchantable wine to bond.

(a) *General.* Wine produced in the United States which has been taxpaid, removed from bonded wine premises, and subsequently determined to be unmerchantable may be returned to bonded wine premises for reconditioning, reformulation or destruction. The tax paid on United States wine may, when such wine is returned to bond, be refunded or credited, without interest, to the proprietor of the bonded wine premises to which such wine is delivered. However, no tax paid on any United States wine for which a claim has been or will be made under the provisions of 27 CFR Part 70, subpart G will be refunded or credited. If the tax on the United States wine has been determined but not paid, the person liable for the tax may, when such wine is returned to bond, be relieved of the liability. Claims for refund or credit, or relief from tax paid or determined on United States wine returned to bond are filed in accordance with § 24.66.

(b) *Receipt.* The quantity of unmerchantable taxpaid United States wine returned to bond is determined upon receipt on bonded wine premises. The quantity determined will be entered on the ATF F 5120.17, Report of Bonded Wine Premises Operations for the reporting period during which the United States wine is returned.

(c) *Records.* The proprietor shall maintain records covering each lot of unmerchantable taxpaid wine returned to bond in accordance with § 24.312. (Sec. 201, Pub. L. 85–859, 72 Stat. 1332, as amended, 1382, as amended (26 U.S.C. 5044, 5371))

(Approved by the Office of Management and Budget under control numbers 1512–0216, 1512–0298 and 1512–0492)

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TAXPAID WINE OPERATIONS

§ 24.296 Taxpaid wine operations.

(a) *General.* The proprietor may conduct taxpaid wine operations authorized by § 24.102 in an area designated as a taxpaid wine premises at a bonded wine premises or at a taxpaid wine bottling house. Taxpaid foreign wine may be received on the taxpaid wine premises for reconditioning and removal without retaxpayment or for destruction without credit of tax. Any taxpaid wine operations will be separate from all nontaxpaid wine operations and taxpaid wine will be clearly identified as provided in § 24.135. The appropriate ATF officer may require any additional segregation and identification of taxpaid wine operations as deemed necessary to protect the revenue.

(b) *Treatment and blending.* Taxpaid wine may be treated with sulfur dioxide compounds, refrigeration or pasteurization and may also be preserved, filtered or clarified by the use of methods or materials which will not change the basic character of the wine. Water may not be added to taxpaid wine. The proprietor who desires to treat wine in any manner (other than by simple filtration or the use of sulfur compounds, refrigeration or pasteurization) shall first file with the appropriate ATF officer an application giving the details of the proposed treatment. The proprietor may not use the treatment prior to approval. The proprietor may incur civil or criminal liability for using an unauthorized treatment of untaxpaid wine. Wine of the same kind (class and type), national origin and tax class may only be mixed to facilitate handling at a taxpaid wine bottling house; otherwise, the blending of taxpaid wine on such premises is prohibited. Taxpaid wine of different national origins, but of the same kind and tax class, may only be

blended on taxpaid wine premises. (Sec. 201, Pub. L. 85–859, 72 Stat. 1407 (26 U.S.C. 5352, 5661))

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

Subpart O—Records and Reports

§ 24.300 General.

(a) *Records and reports.* A proprietor who conducts wine operations shall maintain wine transaction records and submit reports as required by this part. Transaction records may be recorded in wine gallons or in liters. However, required reports will show wine volumes in wine gallons. The equivalent wine gallons of wine bottled or packed and labeled according to metric measure will be determined using the following conversion factors:

(1) *Per case.* Equivalent gallonage may be determined using the following conversion factors for cases of metric bottles:

Bottles per case	Net content each bottle	Equivalent gallonage
120	50 mL	1.58502
60	100 mL	1.58502
48	187 mL	2.37119
24	375 mL	2.37753
12	750 mL	2.37753
12	1 liter	3.17004
6	1.5 liter	2.37753
4	3 liter	3.17004

(2) *Per liter.* Equivalent gallonage may be determined by multiplying total liters by a conversion factor of 0.26417 gallons per liter.

(b) *Time of making entries.* Any operation or transaction is to be entered in records or commercial papers at the time the operation or transaction occurs, except that where records are posted from source records or from supplemental auxiliary records prepared at the time the operation or transaction occurs, entries in another record may be deferred to not later than the close of business of the third business day succeeding the day on which the operation or transaction occurs. The proprietor shall retain all source records and all supplemental or auxiliary records which support entries in other records or commercial papers in order to facilitate verification of operations by appropriate ATF officers. Source records and supplemental or auxiliary records may be used as a record of an operation or transaction and to prepare the ATF F 5120.17, Report of Bonded Wine Premises Operations, provided the record will readily allow for verification of an operation or transaction by appropriate ATF officers.

(c) *Prescribed forms.* All reports required by this part must be submitted on forms prescribed by § 24.20. Entries will be made as indicated by the headings of the columns and lines, and as required by the instructions for the form. Report forms are furnished free of cost.

(d) *Period of retention.* All prescribed returns, reports and records (including source records) will be retained by the proprietor for a period of not less than three years from the record date or the date of the last entry required to be made in the record, whichever is later. However, the appropriate ATF officer may require records to be kept an additional period not exceeding three years in any case where retention is determined to be necessary.

(e) *Data processing.* (1) Notwithstanding any other provision of this section, data maintained on data processing equipment may be kept at a location other than the wine premises if the original operation or transaction source records required by this subpart are kept available for inspection at the wine premises.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted recording media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an appropriate ATF officer.

(f) *Photographic copies of records.* The proprietor may record, copy, or reproduce records required by this part and may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original

record. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this paragraph, ''original record'' means the record required to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(g) *ATF F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations will summarize transaction entries and submit an ATF F 5120.17 on a monthly basis, except that:

(1) A proprietor who files a monthly ATF F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months, may attach a statement to the ATF F 5120.17 filed that, until a change in the inventory or a reportable operation occurs, an ATF F 5120.17 will not be filed.

(2) A proprietor may file ATF F 5120.17 reports on a calendar year basis if (i) The proprietor expects to be exempt from filing semimonthly returns under § 24.273 for the calendar year and (ii) The sum of the bulk and bottled wine to be accounted for in all tax classes is not expected to exceed 20,000 gallons for any one month during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for. To begin the annual filing of a report of bonded wine premises operations, a proprietor will state such intent in the ''Remarks'' section when filing the prior month's ATF F 5120.17. A proprietor who is commencing operations during a calendar year and expects to meet these criteria may use a letter notice to the appropriate ATF officer, and file an annual ATF F 5120.17 for the remaining portion of the calendar year. If a proprietor determines that the wine excise tax liability for the current year will exceed $1,000 or that the 20,000 gallon activity level will be exceeded in any month, an ATF F 5120.17 will be filed for that month and for all subsequent months of the calendar year. If there is a jeopardy to the revenue, the appropriate ATF officer may at any time require any proprietor otherwise eligible for annual filing of a report of bonded wine premises operations to file such report monthly. The information reported on the ATF F 5120.17 will be maintained in accordance with the requirements of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

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§ 24.301 Bulk still wine record.

A proprietor who produces or receives still wine in bond, (including wine intended for use as distilling material or vinegar stock to which water has not yet been added) shall maintain records of transactions for bulk still wine. Records will be maintained for each tax class of still wine including the date the transaction occurred. The bulk still wine record will contain the following:

(a) The volume produced by fermentation in wine gallons determined by actual measurement;

(b) The volume received, shipped taxpaid, removed (e.g., taxpaid, in bond, export, family use, samples) and used in sparkling wine production; if a tax credit under 26 U.S.C. 5041(c) may be claimed, the record will be maintained in sufficient detail to insure that such a tax credit is properly claimed;

(c) The specific type of production method used, e.g., natural fermentation, amelioration, sweetening, addition of spirits, blending;

(d) The volume of wine used and produced by amelioration, addition of spirits or sweetening, as determined by measurements of the wine before and after production.

(e) The volume of wine used for and produced by blending, if wines of different tax classes are blended together;

(f) The volume of wine used to produce formula wine, vinegar stock and distilling material;

(g) The volume of wine removed to fermenters for refermentation or removed directly to the production facilities of a distilled spirits plant or vinegar plant;

(h) Where a process authorized under § 24.248 is employed, records will be maintained to allow for verification of any limitation specified for the process employed and to ensure that the use of the process is consistent with good commercial practice;

(i) Where a treating material is dissolved or dispersed in water as authorized in this part, the volume of water added to the wine; and

(j) An explanation of any unusual transaction. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–307, 55 FR 52738, Dec. 21, 1990; T.D. ATF–312, 56 FR 31082, July 9, 1991]

§ 24.302 Effervescent wine record.

A proprietor who produces or receives sparkling wine or artificially carbonated wine in bond shall maintain records showing the transaction date and details of production, receipt, storage, removal, and any loss incurred. Records will be maintained for each specific process used (bulk or bottle fermented, artificially carbonated) and by the specific kind of wine, e.g., grape, pear, cherry. The record will contain the following:

(a) The volume of still wine filled into bottles or pressurized tanks prior to secondary fermentation or prior to the addition of carbon dioxide;

(b) The quantity of any first dosage used;

(c) Any in-process bottling losses, e.g., refilling, spillage, breakage;

(d) The volume of bottle fermented sparkling wine in process, transferred and received;

(e) The volume returned to still wine;

(f) The quantity of any finishing dosage used (See § 24.192);

(g) The volume of finished sparkling wine or artificially carbonated wine bottled or packed (amount produced);

(h) The quantity of each item used in the production of dosages, e.g., wine, sugar, spirits; and

(i) An explanation of any unusual transaction. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991]

§ 24.303 Formula wine record.

A proprietor who produces beverage formula wine shall maintain records showing by transaction date the details of production. The formula wine record will contain the following:

(a) A number for each lot produced;

(b) The approved formula number for each lot;

(c) The volume of wine used in the production;

(d) The volume produced and the gain or loss resulting from the production of each lot as determined by comparing the volume finished with the volume used (report the total loss or gain on the ATF F 5120.17 for the period in question);

(e) An explanation of any unusual loss or gain;

(f) The production of essences showing the formula number, quantities of spirits and herbs used, and the amount produced;

(g) The quantity of essences purchased, and the use, transfer or other disposition of essences produced or purchased; and

(h) A record of the receipt and use or other disposition of all herbs, aromatics, essences, extracts, or other flavoring materials used in the production of formula wine. (Sec. 201, Pub. L.

85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control numbers 1512–0059, 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19065, Apr. 12, 1993]

§ 24.304 Chaptalization (Brix adjustment) and amelioration record.

(a) *General.* A proprietor who chaptalizes juice or ameliorates juice or wine, or both, shall maintain a record of the operation and the transaction date. Records will be maintained for each kind of wine produced (grape, apple, strawberry, etc.). No form of record is prescribed, but the record maintained will contain the information necessary to enable appropriate ATF officers to readily determine compliance with chaptalization and amelioration limitations. All quantities will be recorded in wine gallons, and, where sugar is used, the quantity will be determined either by measuring the increase in volume or, for pure dry sugar by considering that each 13.5 pounds results in a volumetric increase of one gallon. If grape juice is chaptalized and subsequently this juice or wine is ameliorated, the quantity of pure dry sugar added to juice will be included as ameliorating material. If fruit juice other than grape is chaptalized and this juice or wine is ameliorated, the quantity of pure dry sugar added for chaptalization is not considered ameliorating material; however, if liquid sugar or invert sugar syrup is used, the quantity of water in such sugar is included as ameliorating material. The record will include the following:

(1) The volume of juice (exclusive of pulp) deposited in fermenters;

(2) The maximum volume of ameliorating material to which the juice is entitled, as provided in § 24.178;

(3) The volume of ameliorating or chaptalizing material used; and

(4) The volume of material authorized but not yet used.

(b) *Supporting records.* The amelioration record will show the basis for entries and calculations, including determination of the natural fixed acid level and total solids content of juice, as applicable. The records are maintained on the basis of annual accounting periods, with each period commencing on July 1 of a year and ending on the following June 30, except the record for an accounting period may be continued after June 30, where the juice or wine included therein is to be held after that date for completion. When the amelioration of wine included in the record for one accounting period is complete, the record is closed and any unused ameliorating material may not be used. The proprietor may mix wines before amelioration of the wine is completed; however, the proprietor shall additionally maintain records necessary to establish the quantity of unused authorized material to which the resultant mixture would be entitled so that ATF officers may readily ascertain compliance with amelioration limitations. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended 1385, as amended (26 U.S.C. 5367, 5384))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31082, July 9, 1991; T.D. ATF–409, 64 FR 13684, Mar. 22, 1999]

§ 24.305 Sweetening record.

A proprietor who sweetens natural wine with sugar or juice (unconcentrated or concentrated) under the provisions of this part shall maintain a record of sweetening by transaction date. The record will contain the following:

(a) The gallons and degrees Brix of the wine before sweetening;

(b) If concentrate is used, the degrees Brix of the concentrate;

(c) If sugar or juice, or both, are used, the gallon equivalent that would be required to sweeten the volume of wine to its maximum authorized total solids content;

(d) The quantity of sugar or juice used for sweetening; and

(e) The gallons and degrees Brix of the wine produced by sweetening. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.306 Distilling material or vinegar stock record.

A proprietor who produces or receives wine containing excess water which will be used expressly as distilling material or vinegar stock shall maintain a record by transaction date showing the amount and kind produced, received, from whom received, removed, and to whom sent. The proprietor shall keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, apple, strawberry). The volume of distilling material or vinegar stock produced, including wine lees refermented for use as distilling material, will be recorded upon removal from fermenting tanks. However, the provisions of this section do not apply to standard wine or unwatered wine lees recorded on the proprietor's record of bulk still wine and removed for use as distilling material or vinegar stock. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.307 Nonbeverage wine record.

A proprietor who produces nonbeverage wine or wine products shall maintain a record by transaction date of such wine produced, received and withdrawn as follows:

(a) The kind, volume, and percent alcohol by volume of wine or wine products made from wine, which was rendered unfit for beverage use;

(b) The kind and quantity of materials received and used to render wine, or wine products made from wine, unfit for beverage use;

(c) The name, volume, percent alcohol by volume, and formula number, if produced under a formula, of each nonbeverage wine or wine product produced;

(d) The volume, percent alcohol by volume, and formula number, if applicable, of the nonbeverage wine or wine products received;

(e) The volume, percent alcohol by volume, and formula number, if applicable, of the nonbeverage wine or wine products removed;

(f) The name and address of the person to whom removed; however, on any individual sale of less than 80 liters the name and address of the purchaser need not be recorded; and

(g) In the case of vinegar production, the acetic acid and ethyl alcohol content of the vinegar.

When the proprietor sends nonbeverage wine or wine products free of tax to an adjacent or contiguous premises operated by the proprietor, records required by paragraphs (e) and (g) of this section will be maintained at each location.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.308 Bottled or packed wine record.

A proprietor who bottles, packs, or receives bottled or packed beverage wine in bond shall maintain a record, by tax class, as follows:

(a) The date, kind of wine, the number and size of bottle or other container filled (if not available in another record), and volume of wine bottled or packed, received in bond, returned to bond, and removed, e.g., taxpaid removals, in bond removals, dumped to bulk or destroyed, breakage, used for tasting. The volume recorded as bottled for bottle fermented sparkling wine is determined after the disgorging and refilling process.

(b) The label used on bottles or other containers will be shown in the record by using the ''Applicant's Serial No.'' which appears as item 2 on the label approval form, ATF F 5100.31 or a similar system which will allow for verification of labels used on bottles or containers.

(c) The fill tests and alcohol tests required by § 24.255 for each lot of wine bottled or packed, or for each bottling or packing line operated each day, showing the date, type of test, item tested and the test results.

(d) If a tax credit under 26 U.S.C. 5041(c) may be claimed, the record will

be maintained in sufficient detail to insure that such a tax credit is properly claimed.

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–307, 55 FR 52738, Dec. 21, 1990; T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.309 Transfer in bond record.

A proprietor who transfers wine in bond shall prepare a transfer record. The transfer record will show:

(a) The name, address and registry number of the proprietor;

(b) The name, address and registry number of the consignee;

(c) The shipping date;

(d) The kind of wine (class and type);

(e) The alcohol content or the tax class;

(f) The number containers larger than four liters and cases;

(g) The serial numbers of cases (if any) or containers larger than four liters;

(h) Any bulk container identification marks;

(i) The volume shipped in gallons or liters; (if a tax credit under 26 U.S.C. 5041(c) may be claimed, the record will be maintained in sufficient detail to insure that such a tax credit is properly claimed);

(j) The serial number of any seal used;

(k) For unlabeled bottled or packed wine, the registry number of the bottler or packer;

(l) Information necessary for compliance with § 24.315, e.g., the varietal, vintage, appellation of origin designation of the wine or any other information that may be stated on the label; and

(m) Information as to any added substance or cellar treatment for which a label declaration is required for the finished product, or any other cellar treatment for which limitations are prescribed in this part, e.g., amount of decolorizing material used and kind and quantity of acid used. (Sec 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–307, 55 FR 52738, Dec. 21, 1990; T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.310 Taxpaid removals from bond record.

A proprietor removing wine from bond for consumption or sale on determination of tax shall maintain a record of wine removed at the time of removal either to taxpaid wine premises, taxpaid wine bottling house premises, or for direct shipment. The record will show the date of removal, the name and address of the person to whom shipped, and the volume, kind (class and type), and alcohol content of the wine. However, on any individual sale of less than 80 liters, the name and address of the purchaser need not be recorded. The proprietor who removes taxpaid bulk wine to another wine premises shall prepare the shipping record and follow the procedures prescribed by § 24.281. The volume of wine removed taxpaid will be summarized daily by tax class in wine gallons to the nearest tenth gallon. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.311 Taxpaid wine record.

A proprietor who has taxpaid United States or foreign wine on taxpaid wine premises or on taxpaid wine bottling house premises shall maintain records as follows:

(a) *Record of receipts.* (1) The name and address of the person or wine premises from whom received;

(2) The registry number (if any) of the wine premises from which received;

(3) The date of receipt;

(4) The kind of wine (class, type and, in the case of foreign wine, country of origin);

(5) Alcohol content or tax class of the wine; and,

(6) The volume of wine received in liters and gallons.

(b) *Record of removals.* (1) The name and address of the person to whom removed; however, on any individual sale of less than 80 liters, the name and address of the purchaser need not be recorded;

(2) The date of removal;

(3) The kind of wine (class, type and, in the case of foreign wine or a blend of United States and foreign wine, country of origin); and

(4) The volume of wine shipped in liters or gallons.

(c) *Record of cases or containers filled.* (1) The date the cases or containers were filled;

(2) The kind (class, type, and in the case of foreign wine or a blend of United States and foreign wine, country of origin) of wine bottled or packed;

(3) The number of the tank used to fill the bottles or other containers;

(4) The size of bottles or other containers and the number of cases or containers filled;

(5) The serial number or date of fill marked on the cases or containers filled; and

(6) The total volume of wine bottled or packed in liters or wine gallons. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367)).

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.312 Unmerchantable wine returned to bond record.

A proprietor shall maintain a record of any unmerchantable taxpaid wine returned to bond as follows:

(a) The kind, volume, and tax class of the wine;

(b) With regard to each tax class, the amount of tax previously paid or determined;

(c) The location of the wine premises at which the wine was bottled or packed and, if known, the identity of the bonded wine premises from which removed on determination of tax;

(d) The date the wine was returned to bond;

(e) The serial numbers or other identifying marks on the cases or containers in which the wine was received; and

(f) The final disposition of the wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.313 Inventory record.

A proprietor who files monthly reports shall prepare a record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period. Such proprietors may use an annual inventory period different from the period beginning July 1 and ending June 30 by submitting a notice to the appropriate ATF officer. Proprietors who file reports on a calendar year basis under the provisions of § 24.300(g) of this part shall take the physical inventory at the close of the calendar year. The inventory record will be retained on file with the proprietor's ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period when the inventory was taken. If a proprietor who files monthly reports takes a complete inventory at other times during the year, losses disclosed will be reported on the ATF F 5120.17 and the inventory record will be maintained on file with the report for each month when an inventory was taken. The proprietor's inventory record will include:

(a) *Description of wine.* (1) State the generic name (e.g., port, claret) or designate as a white, rose or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage date, varietal name, or geographical designation will be appropriately identified, e.g., 1977 Napa Valley Pinot Noir; and

(3) If the wine is other than grape wine, state the type, e.g., orange, honey.

(b) *Bulk containers.* Tanks containing wine will be listed by tank number. Bulk containers which are barrels or

puncheons containing the same kind of wine may be summarized, e.g., 10 barrels—red table wine 500 gals.;

(c) *Cases, bottles and other similar containers.* The total volume of one kind of wine in cases, bottles and similar containers may be entered as one item and appropriately identified;

(d) *Inventory summary.* The volume of bulk and bottled or packed wine will be totaled separately in wine gallons or in liters, by tax class, and reported on the ATF F 5120.17. Spirits will also be totaled and reported on the ATF F 5120.17; and

(e) *Inventory record.* All inventory pages will be numbered consecutively and the last inventory page will be dated and signed after the statement, ''Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wine and spirits required to be inventoried.'' (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5369))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19065, Apr. 12, 1993; T.D. ATF–409, 64 FR 13683, Mar. 22, 1999]

§ 24.314 Label information record.

A proprietor who removes bottled or packed wine with information stated on the label (e.g., varietal, vintage, appellation of origin, analytical data, date of harvest) shall have complete records so that the information appearing on the label may be verified by an ATF audit. A wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material to removal of the wine for consumption or sale. All records necessary to verify wine label information are subject to the record retention requirements of § 24.300(d). (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.315 Materials received and used record.

(a) *General.* A proprietor who produces wine shall maintain a record showing the receipt and use or other disposition of basic winemaking materials received on wine premises. The record will show the date of receipt, the quantity received, the name and address from whom received, and the date of use or other disposition of the materials. For any material stored off wine premises, invoices or other commercial papers covering the purchase will also be kept available for inspection. Where grapes (or other fruit) received on wine premises are used in producing juice to be stored for future use or for removal, the record will show the quantity used and juice produced.

(b) *Concentrated fruit juice.* When concentrated fruit juice or must is produced or received, the record will show the degrees Brix of the juice before and after concentration, the volume of juice before and after reconstitution, the volume of reconstitution water used for each dilution of the concentrate, and, if volatile fruit flavor was added, the kind and volume. Where fruit or juice is used to produce concentrated juice, the record will also show the quantity of fruit or volume of juice used. If the concentrated fruit juice is removed for use by another proprietor, a copy of the certificate required by § 24.180 will be retained. The record of concentrated fruit juice will contain the information necessary to determine compliance with the limitations prescribed in § 24.180. Incomplete or inaccurate records of concentrated fruit juice may result in the wine produced from the concentrated fruit juice to be designated substandard.

(c) *Volatile fruit-flavor concentrate.* If volatile fruit-flavor concentrate is received, the record will show the volume received, the fold, the percent of alcohol by volume, any loss in transit, and the use or other disposition of the volatile fruit-flavor concentrate. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.316 Spirits record.

A proprietor who receives, stores, or uses spirits shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises and to whom. The proof gallons of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each reporting period and reported on the ATF F 5120.17. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373))

(Approved by the Office of Management and Budget under control numbers 1512–0216 and 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991; T.D. ATF–338, 58 FR 19065, Apr. 12, 1993]

§ 24.317 Sugar record.

A proprietor who receives, stores, or uses sugar shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and quantity. Invoices covering purchases will be retained. When sugar is used for chaptalization (Brix adjustment), amelioration or sweetening, the record will show the date, kind, and quantity used. The sugar record will also show sugar used in the production of allied products and any sugar removed from the wine premises. At the close of each reporting period, the account will be balanced and the quantity of each kind of sugar remaining on hand will be shown. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–338, 58 FR 19065, Apr. 12, 1993]

§ 24.318 Acid record.

A proprietor who adds acid to correct a natural deficiency in juice or wine or to stabilize wine shall maintain a record showing date of use, the kind and quantity of acid used, the kinds and volume of juice or wine in which used, and, when used to correct natural deficiency, the fixed acid level of juice or of wine before and after the addition of acid. The record will account for all acids received and be supported by purchase invoices. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.319 Carbon dioxide record.

A proprietor who uses carbon dioxide in still wine shall maintain a record of the laboratory tests conducted to establish compliance with the limitations prescribed in § 24.245. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.320 Chemical record.

A proprietor who uses chemicals, preservatives, or other such materials shall maintain a record of the purchase, receipt and disposition of these materials. The record will show the kinds and quantities received, the date of receipt, and the names and addresses from whom purchased. A record of use in juice or wine of any of these materials, except for filtering aids, inert fining agents, sulfur dioxide, carbon dioxide (except as provided in § 24.319), nitrogen and oxygen, will be maintained, showing the kind, quantity, and date of use, and kind and volume of juice or wine in which used. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

[T.D. ATF–299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 24.321 Decolorizing material record.

A proprietor who treats juice or wine to remove excess color with activated carbon or any other decolorizing material shall maintain a record to show:

(a) The date the decolorizing material is added to the juice or wine;

(b) The type (e.g. grape variety or kind of wine) and volume of juice or

wine treated with decolorizing material; and

(c) The kind and quantity of decolorizing material used to treat the juice or wine. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.322 Allied products record.

A proprietor who uses fruit, fruit juice or concentrated fruit juice in the production of allied products shall maintain a record of these materials in accordance with § 24.315. The record will also show the production and disposition of other allied products. If sugar, acids, or chemicals are used in allied products, the receipt and use will also be recorded. (Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1512–0298)

§ 24.323 Excise Tax Return form.

A proprietor who removes wine subject to tax shall prepare an ATF F 5000.24, Excise Tax Return, unless exempted under the provisions of § 24.273. Any increase or decrease in tax due to previous return errors or for authorized credits will be shown on the return. The ATF F 5000.24 will be prepared and filed by the proprietor in accordance with the instructions printed on the form. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended, 917, as amended (26 U.S.C. 5061, 7805))

(Approved by the Office of Management and Budget under control numbers 1512–0467 and 1512–0492)

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AUTHORITY: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

SOURCE: T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 25 appear by T.D. ATF–437, 66 FR 5478, 5479, Jan. 19, 2001.

Subpart A—Scope of Regulations

§ 25.1 Production and removal of beer.

The regulations in this part relate to beer and cereal beverages and cover the location, construction, equipment, operations and qualifications of breweries and pilot brewing plants.

§ 25.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 25.3 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including bonds, applications, notices, 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. The

form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986, as amended by T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–437, 66 FR 5478, Jan. 19, 2001]

§ 25.4 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 7—Labeling and Advertising of Malt Beverages.
27 CFR Part 29—Stills and Miscellaneous Regulations.
27 CFR Part 252—Exportation of Liquors.
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.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–462, 66 FR 42737, Aug. 15, 2001]

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose*. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 27 CFR Part 25 under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display, OMB control number 1512–0045*. OMB control number 1512–0045 is assigned to the following sections in 27 CFR Part 25: §§ 25.23, 25.25, 25.52, 25.61, 25.62, 25.64, 25.66, 25.67, 25.68, 25.71, 25.72, 25.73, 25.74, 25.75, 25.76, 25.77, 25.78, 25.81, 25.85, 25.103, 25.114, 25.141, 25.142, 25.144, 25.158, 25.167, 25.184, 25.213, 25.222, 25.225, 25.272, 25.273, 25.277, 25.282, 25.299.

(c) *Display, OMB control number 1512–0052*. OMB control number 1512–0052 is assigned to the following sections in 27 CFR Part 25: §§ 25.296(b), 25.297.

(d) *Display, OMB control number 1512–0079*. OMB control number 1512–0079 is assigned to the following section in 27 CFR Part 25: § 25.65.

(e) *Display, OMB control number 1512–0141*. OMB control number 1512–0141 is assigned to the following sections in 27 CFR Part 25: §§ 25.281, 25.282, 25.286.

(f) *Display, OMB control number 1512–0333*. OMB control number 1512–0333 is assigned to the following sections in 27 CFR Part 25: §§ 25.42, 25.142, 25.186, 25.192, 25.195, 25.196, 25.211, 25.252, 25.264, 25.276, 25.284, 25.291, 25.292, 25.293, 25.294, 25.295, 25.296(a), 25.300, 25.301.

(g) *Display, OMB control number 1512–0457*. OMB control number 1512–0457 is assigned to the following section in 27 CFR Part 25: § 25.165.

(h) *Display, OMB control number 1512–0467*. OMB control number 1512–0467 is assigned to the following sections in 27 CFR Part 25: §§ 25.122, 25.160, 25.163, 25.164, 25.165, 25.166, 25.167, 25.168, 25.175, 25.224, 25.284, 25.285, 25.298.

(i) *Display, OMB control number 1512–0472*. OMB control number 1512–0472 is assigned to the following sections in 27 CFR Part 25: §§ 25.111, 25.112, 25.113, 25.114, 25.117, 25.118, 25.119, 25.121, 25.126, 25.127, 25.131, 25.132, 25.133, 25.134.

(j) *Display, OMB control number 1512–0478*. OMB control number 1512–0478 is assigned to the following sections in 27 CFR Part 25: §§ 25.24, 25.35, 25.141, 25.142, 25.143, 25.145, 25.192, 25.196, 25.231, 25.242, 25.251, 25.263.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986; T.D. ATF–268, 53 FR 8628, Mar 16, 1988]

§ 25.6 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 25 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.10, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 25, Beer. ATF delegation orders, such as ATF Order 1130.10, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–437, 66 FR 5478, Jan. 19, 2001]

Subpart B—Definitions

§ 25.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meanings given in this section.

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 1130.10, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 25, Beer.

Balling. The percent by weight of dissolved solids at 60 °F. present in wort and beer, usually determined by a balling saccharometer.

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.

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in §25.156, or other size authorized by the appropriate ATF officer.

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

Bottle. A bottle, can or similar container.

Bottling. The filling of bottles, cans, and similar containers.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Brewery. The land and buildings described in the Brewer's Notice, Form 5130.10, where beer is to be produced and packaged.

Brewing. The production of beer for sale.

Business day. The 24-hour cycle of operations in effect at the brewery and described on the Brewer's Notice, Form 5130.10.

Calendar quarter. A 3-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Cereal beverage. A beverage, produced either wholly or in part from malt (or a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

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.

Concentrate. Concentrate produced from beer by the removal of water under the provisions of subpart R of this part. The processes of concentration of beer and reconstitution of beer are considered authorized processes in the production of beer.

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

Director of the service center. A Director of an Internal Revenue Service Center.

District Director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds made by a brewer'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.

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, when 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 men 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. The liquid measure containing 231 cubic inches.

Losses. Known quantities of beer lost due to breakage, casualty, or other unusual cause.

Package. A bottle, can, keg, barrel, or other original consumer container.

Packaging. The filling of any package.

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

Racking. The filling of kegs or barrels.

Removed for consumption or sale. Except when used with respect to beer removed without payment of tax as authorized by law, (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery.

Secretary. The Secretary of the Treasury or his or her delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Shortage. An unaccounted for discrepancy (missing quantity) of beer disclosed by physical inventory.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

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.

Wort. The product of brewing before fermentation which results in beer.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993; T.D. ATF–437, 66 FR 5478, Jan. 19, 2001]

Subpart C—Location and Use of Brewery

§ 25.21 Restrictions on location.

A brewery may not be established or operated in any dwelling house or on board any vessel or boat, or in any building or on any premises where the revenue will be jeopardized or the effective administration of this part will be hindered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.22 Continuity of brewery.

Brewery premises will be unbroken except that they may be separated by public passageways, streets, highways, waterways, carrier rights-of-way, or partitions. If the brewery premises are separated, the parts will abut on the dividing medium and be adjacent to each other. if the brewer has facilities for loading, or for case packing or storage which are located within reasonable proximity to the brewery, the appropriate ATF officer may approve these facilities as part of the brewery if the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

§ 25.23 Restrictions on use.

(a) *Use of brewery in production of beer or cereal beverage*. A brewery may be used only for the following purposes involving the production of beer or cereal beverages:

(1) For producing, packaging and storing beer, cereal beverages, vitamins, ice, malt, malt syrup, and other by-products of the brewing process, or soft drinks and other nonalcoholic beverages;

(2) For processing spent grain, carbon dioxide, and yeast; and

(3) For storing packages and supplies necessary or connected to brewery operations.

(b) *Other authorized uses*. A brewer may use a brewery for other purposes, not involving the production of beer or cereal beverage, upon approval from the appropriate ATF officer, if the purposes:

(1) Require the use of by-products or waste from the production of beer;

(2) Utilize buildings, rooms, areas, or equipment not fully employed in the production or packaging of beer;

(3) Are reasonably necessary to realize the maximum benefit from the premises and equipment and reduce the overhead of the brewery;

(4) Are in the public interest because of emergency conditions;

(5) Involve experiments or research projects related to equipment, materials, processes, products, by-products, or waste of the brewery; or

(6) Involve operation of a tavern on brewery premises in accordance with § 25.25.

(c) *Application*. Except as provided in § 25.25 for operation of a tavern on brewery premises, a brewer desiring to use a brewery for other purposes shall submit to the appropriate ATF officer through the appropriate regional director (compliance), an application listing the purposes. The appropriate ATF officer will approve the application if the use for other purposes will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–268, 53 FR 8628, Mar 16, 1988]

§ 25.24 Storage of beer.

(a) *Taxpaid beer*. Beer of a brewer's own production on which the tax has been paid or determined may not be stored in the brewery, except as provided in § 25.25 or § 25.213. Beer produced by other brewers may be stored at the brewery under the following conditions:

(1) Taxpaid beer will be segregated in such a manner as to preclude mixing with nontaxpaid beer;

(2) If required by Part 1 of this chapter, the brewer shall have a wholesalers or importers basic permit under the Federal Alcohol Administration Act, and keep records of the taxpaid beer as a wholesaler or importer under Part 194 of this chapter.

(3) Taxpaid beer may be stored in packages;

(4) Taxpaid beer may not be relabeled;

(5) Taxpaid beer may not be shown on required brewery records;

(6) The brewer shall purchase a special tax stamp as a wholesaler, if required by Part 194 of this chapter; and

(7) The appropriate ATF officer may require physical segregation of taxpaid beer, or marking to show the status of taxpaid beer, if necessary to protect the revenue.

(b) *Untaxpaid beer*. Packaged beer on which tax has not been paid or determined may be stored in any suitable location in the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–268, 53 FR 8628, Mar 16, 1988]

§ 25.25 Operation of a tavern on brewery premises.

(a) *General*. A brewer desiring to operate a tavern as an alternate use of brewery premises, shall submit a Brewer's Notice, ATF F 5130.10 containing the information required by paragraph (b) of this section. If the appropriate ATF officer finds that the operation of the tavern on brewery premises will not jeopardize the revenue or impede the effective administration of this part and is not contrary to specific provisions of law, the approval of the Brewer's Notice, ATF F 5130.10 shall constitute approval of the alternate use of brewery premises, in lieu of the application required by § 25.23. As used in this section, ''tavern'' means a portion of brewery premises where beer is sold to consumers. Food, and/or taxpaid wine, and/or taxpaid distilled spirits may also be sold at a tavern operated on brewery premises. Taxpaid beer produced by other brewers may be received, stored and sold on brewery premises in accordance with § 25.24.

(b) *Brewer's Notice*. In preparing the Brewer's Notice, AFT F 5130.10, the applicant shall show the following information, in addition to the information required by the form:

(1) The applicant shall identify the portion of the brewery which will be operated as a tavern by providing a diagram or narrative description of the boundaries of the tavern. The diagram or description shall identify areas of the brewery which are accessible to the public and areas which are not. The applicant shall describe security measures to be used to segregate public areas from non-public areas.

(2) The applicant shall describe in detail the method to be used for measuring beer for the purposes of tax determination.

(3) The applicant shall identify the tanks which will periodically contain tax-determined beer, and any other areas where tax-determined beer will be stored.

(c) *Procedures.* The following procedures shall apply to operation of a tavern on brewery premises:

(1) The brewery shall have a suitable method for measurement of the beer, such as a meter or gauge glass. Tax determination shall consist of the measurement of the beer and the preparation of the brewer's record of tax determination, required by § 25.292(a)(8). The taxes shall be determined prior to the time that the beer is dispensed into a container for consumption.

(2) If the brewer uses one or more tanks for tax determination, the following procedures shall apply:

(i) Each such tank shall be durably marked with the words ''tax-determination tank'';

(ii) The taxes shall be determined each time beer is added to a tax-determination tank; and

(iii) The brewer may never simultaneously pump into and out of a tax-determination tank.

(3) A brewer qualified under this section may store, on brewery premises, tax-determined beer which is intended for sale at a tavern operated on brewery premises, in accordance with this section. The prohibition of § 25.24 shall not apply to such tax-determined beer.

(4) Beer consumed by employees and visitors in the brewery's tavern shall be beer on which the tax has been paid or determined.

[T.D. ATF–268, 53 FR 8628, Mar 16, 1988]

Subpart D—Construction and Equipment

CONSTRUCTION

§ 25.31 Brewery buildings.

Brewery buildings shall be arranged and constructed to afford adequate protection to the revenue and to facilitate inspection by appropriate ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5402))

EQUIPMENT

§ 25.35 Tanks.

Each stationary tank, vat, cask or other container used, or intended for use, as a receptacle for wort, beer or concentrate produced from beer shall:

(a) Be durably marked with a serial number and capacity; and

(b) Be equipped with a suitable measuring device. The brewer may provide meters or other suitable portable devices for measuring contents of tanks or containers in lieu of providing each tank or container with a measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 25.36 Empty container storage.

Empty barrels, kegs, bottles, other containers, or other supplies stored in the brewery will be segregated from filled containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart E—Measurement of Beer

§ 25.41 Measuring system required.

The brewer shall accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking. The brewer may use a measuring device, such as a meter or gauge glass, or any other suitable method.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 25.42 Testing of measuring devices.

(a) *General requirements.* If a measuring device such as a meter or gauge glass is used to measure beer, the brewer shall periodically test the measuring device and adjust or repair it, if necessary. The brewer shall keep records of tests available for inspection by appropriate ATF officers. Records of tests will include:

(1) Date of test;

(2) Identity of meter or measuring device;

(3) Result of test; and

(4) Corrective action taken, if necessary.

(b) *Requirements for beer meters.* The allowable variation for beer meters as

established by testing may not exceed ±0.5 percent. If a meter test discloses an error in excess of the allowable variation, the brewer shall immediately adjust or repair the meter. Adjustments will reduce the error to as near zero as practicable.

(c) *Authority to require tests.* If the appropriate ATF officer has reason to believe that the accuracy or reliability of a measuring device is not being properly maintained, he or she may require the brewer to test the measuring device and, if necessary, adjust or repair the measuring device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Subpart F—Miscellaneous Provisions

§ 25.51 Right of Entry and Examination.

An appropriate ATF officer may enter, during normal business hours, a brewery or other place where beer is stored and may, when the premises are open at other times, enter those premises in the performance of official duties. Appropriate ATF officers may make inspections as the appropriate ATF officer deems necessary to determine that operations are conducted in compliance with the law and this part. The owner of any building or place where beer is produced, made, or kept, or person having charge over such premises, who refuses to admit an appropriate ATF officer acting under 26 U.S.C. 7606, or who refuses to permit an appropriate ATF officer to examine beer must, for each refusal, forfeit $500.

[T.D. ATF–437, 66 FR 5478, Jan. 19, 2001]

§ 25.52 Variations from requirements.

(a) *Exceptions to construction, equipment and methods of operations* (1) *General.* The appropriate ATF officer may approve details of construction, equipment or methods of operations, in lieu of those specified in this part. The brewer shall show that it is impracticable to conform to the prescribed specification, and that the proposed variance:

(i) Will afford the protection to the revenue intended by the specifications in this part;

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

(iii) Is not contrary to any provision of law.

(2) *Application.* A brewer who proposes to employ methods of operations or construction or equipment other than as provided in this part shall submit an application to the appropriate ATF officer. The application will describe the proposed variation and state the need for it. The brewer shall submit drawings or photographs if necessary to describe the proposed variation.

(3) *Approval by appropriate ATF officer.* The appropriate ATF officer may approve the use of an alternate method or procedure if:

(i) The brewer 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.

(4) *Exceptions.* The appropriate ATF officer may not authorize an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(5) *Conditions of approval.* A brewer may not employ an alternate method or procedure until the appropriate ATF officer has approved its use. The brewer 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, a brewer may apply to the appropriate ATF officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The brewer shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval.* The appropriate ATF officer 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.* A brewer may not employ an emergency variation from the requirements until the appropriate ATF officer has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(c) *Automatic termination of approval.* If the brewer 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 brewer is required to comply with prescribed requirements of regulations.

(d) *Withdrawal of approval.* The appropriate ATF officer may withdraw approval of an alternate method or procedure, approved under paragraph (a) or (b) of this section, if the appropriate ATF officer finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended, 1396, as amended (26 U.S.C. 5552, 5556))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

Subpart G—Qualification of a Brewery

ORIGINAL QUALIFICATION

§ 25.61 General requirements for notice.

(a) *Establishment.* Operations as a brewer may be conducted only by a person who has given notice as a brewer under this subpart. A person may not commence the business of a brewer until the appropriate ATF officer approves the brewery and the brewer's notice, including all documents made part of that notice.

(b) *Brewer's Notice, Form 5130.10.* Each person must, before commencing business as a brewer, give notice on Form 5130.10. Each person continuing business as a brewer as provided in § 25.71 must give notice on Form 5130.10. Each notice will be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the notice will be made part of the notice.

(c) *Additional information.* The appropriate ATF officer may at any time require the brewer to furnish, as part of the notice, additional information which is necessary to protect and insure collection of the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.62 Data for notice.

(a) *Required information.* The brewer shall prepare the notice on Form 5130.10 and shall include the following information:

(1) Serial number.

(2) Purpose for which filed.

(3) Name and principal business address of the brewer and the location of the brewery if different from the business address.

(4) Statement of the type of business organization and of the persons interested in the business, supported by the information listed in § 25.66.

(5) Description of brewery, as specified in § 25.68.

(6) A list of trade names which the brewer intends to use in doing business or in packaging beer.

(7) A statement of process for fermented beverages if required by § 25.67.

(8) The name and address of the owner of the land or buildings comprising the brewery, and of any mortgagee or other encumbrancer of the land or buildings comprising the brewery.

(9) The 24-hour cycle of operations at the brewery which is to be the brewer's business day.

(10) The process by which the brewer intends to render beer unfit for beverage use when beer is to be removed for use in manufacturing under §§ 25.191–25.192.

(11) Statement showing ownership or controlling interests in other breweries which will establish eligibility for the transfer of beer without payment of

tax between breweries of the same ownership, as authorized in § 25.181.

(12) The date of the notice and the name and signature of the brewer or person authorized to sign on behalf of the brewer.

(b) *Incorporation by reference.* If any of the information required by paragraph (a)(4) of this section is on file with an ATF office in connection with the qualification of any other premises operated by the brewer, that information, if accurate and complete, may be incorporated into the brewer's notice by reference.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.63 Notice of registration.

The Brewer's Notice, Form 5130.10, when approved by the appropriate ATF officer, will constitute the notice of registration of the brewery. The appropriate ATF officer will not approve the notice until the notice and all incorporated documents are complete, accurate, and in compliance with the requirements of this part. A person may not operate a brewery until the notice required by this subpart has been approved by the appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.64 Maintenance of notice file.

The brewer shall maintain the approved Brewer's Notice, Form 5130.10, and all incorporated documents at the brewery premises, in complete and current condition, readily available for inspection by an appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.65 Power of attorney.

The brewer shall execute and file a Form 1534 (5000.8) for each person authorized to sign or act on behalf of the brewer. The Form 1534 (5000.8) is not required for persons whose authority is furnished in the Brewer's Notice, Form 5130.10.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.66 Organizational documents.

The supporting information required by paragraph (a)(4) of § 25.62 includes, as applicable, the following:

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation;

(2) List of directors and officers, showing their names and addresses;

(3) Extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation; and

(4) Statement showing the number of shares of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* Copy of the articles of partnership or association, if any, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of all persons having 10 percent or more stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another person. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the appropriate ATF officer; or

(2) In the case of an individual owner or partnership, the name and address of each person holding an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section, and additional documents such as the articles of incorporation, bylaws, and State certificates authorizing the brewer to operate in the State where located (if other than the State in which the brewery is incorporated) shall be made available to any appropriate ATF officer upon request. In the case of multiplant brewers, these documents may be made available at the

brewer's home brewery. Each brewer's notice filed by multiplant brewers will state the location where these corporate documents may be inspected.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.67 Statement of process.

(a) The Brewer's Notice, Form 5130.10 will contain a statement of process for any fermented beverage which the brewer intends to produce and market under a name other than ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.''

(b) The statement of process will give the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

(c) A statement of process for any fermented beverage (other than sake or cereal beverage) will not be approved unless the base product has the characteristics of beer as defined in § 25.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

§ 25.68 Description of brewery.

(a) The Brewer's Notice, Form 5130.10, will include a description of (1) each tract of land comprising the brewery, and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used.

(b) The description of the land will be in sufficient detail to enable appropriate ATF officers to determine the boundaries of the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

CHANGES AFTER ORIGINAL QUALIFICATION

§ 25.71 Amended or superseding notices.

(a) *Requirement for amended notice.* (1) When there is a change with respect to the information shown in the Brewer's Notice, Form 5130.10, the brewer shall within 30 days of the change (except as otherwise provided in this subpart) submit an amended notice setting forth the new information. Changed notices will be submitted in skeleton form, with unchanged items marked ''No change since Form 5130.10, Serial No. _____.''

(2) The appropriate ATF officer may require immediate filing of an amended Form 5130.10 if the accuracy of existing documents has been affected by any change.

(b) *Requirement for superseding notice.* (1) The appropriate ATF officer may require a brewer to file a new and complete notice, superseding those previously filed, in conjunction with the filing of a new bond. This superseding notice will become effective on the date of the brewer's bond or on the date of the brewer's bond continuation certificate.

(2) If the information required by § 25.62(a) (4), (5), (6), (7), (9), and (10) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.72 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the outgoing brewer shall comply with the requirements of § 25.85. The successor brewer shall, before beginning operations, qualify in the same manner as the proprietor of a new brewery. The successor brewer shall file a new notice and bond in his or her own name. Beer on hand may be transferred without payment of tax to the successor brewer and will be accounted for by that brewer.

(b) *Fiduciary.* (1) If the successor to the brewer is an administrator, executor, receiver, trustee, assignee or other fiduciary, the fiduciary may in lieu of filing a new notice and bond, file an amended notice and furnish a consent of surety extending the terms of the predecessor's bond or continuation certificate.

(2) The fiduciary shall furnish the appropriate ATF officer a certified copy of the court order or other document showing qualification as fiduciary. The effective date of the qualifying documents filed by a fiduciary will be the

same as the date of the order, or the date therein specified for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date of the appointment will be the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.73 Change in partnership.

(a) *New notice required.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, constitutes a change in proprietorship. Unless exempted by paragraph (b) of this section, the death, bankruptcy or adjudicated insolvency of one or more partners results in a dissolution of the partnership and a change in proprietorship. The successor shall qualify the brewery in the same manner as the proprietor of a new brewery.

(b) *Continuing partnership.* A surviving partner or partners may continue to operate the brewery for purposes of liquidation and settlement under the following conditions:

(1) Under the laws of the State where the partnership was formed, the partnership is not terminated on death or insolvency of a partner(s); and

(2) Under the laws of the State where the partnership was formed, the surviving partner(s) has the exclusive right to control and possession of the partnership assets for the purpose of liquidation and settlement; and

(3) A consent of surety is filed in which the surety and the surviving partner(s) agree to remain liable on the bond.

(c) *Settlement of partnership.* If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) shall qualify in his or her own name from the date of acquisition and give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 10540, Mar. 27, 1986]

§ 25.74 Change in stockholders.

Changes in the list of stockholders furnished under the provisions of § 25.66(c)(1) shall be submitted annually by the brewer on July 1 or on any other date approved by the appropriate ATF officer. When the sale or transfer of capital stock results in a change in the control or management of the business, notification of the change will be made within 30 days in accordance with § 25.71.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 25.66(a)(4), the brewer shall submit, within 30 days of the change, an amended notice on Form 5130.10. If the brewer has shown to the satisfaction of the appropriate ATF officer that certain corporate officers listed on the original notice have no responsibilities in connection with the operations covered by the notice, the appropriate ATF officer may waive the requirements for submitting applications for amended notice to cover changes of those corporate officers. In the case of multiplant brewers, new brewers notices need not be filed for those breweries in which the lists of officers and directors are incorporated by reference in their brewer's notices under § 25.62(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.62(a)(7) for any fermented beverage produced and marketed under a name other than ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor,'' the brewer shall submit an amended notice and obtain approval of the notice prior to using the changed statement of process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.77 Change in location.

When there is a change in the location of the brewery, the brewer shall

file an amended Form 5130.10, and a new bond, Form 5130.22, or a consent of surety, Form 1533 (5000.18), in accordance with § 25.91, extending the terms of the bond or continuation certificate to cover operations at the new location. The brewer may not begin operations at the new location until the appropriate ATF officer approves the required documents.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.78 Change in premises.

Except as authorized in § 25.81, when the brewery is to be extended or curtailed, the brewer shall file an amended Form 5130.10. The additional facilities covered by the extension may not be used for the proposed purposes, and the portion to be curtailed may not be used for other than the previously approved purposes, prior to approval of Form 5130.10

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

ALTERNATION OF OPERATIONS

§ 25.81 Alternation of brewery and bonded or taxpaid wine premises.

(a) *General*. A brewer operating a contiguous bonded winery or taxpaid wine bottling house may, as provided in this section, alternate the use of each premises by extension or curtailment.

(b) *Qualifying documents*. The brewer shall file and receive approval of the following qualifying documents:

(1) ATF F 5120.25 and Form 5130.10 to cover the curtailment and extension of the premises to be alternated.

(2) Special diagrams, in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist both during extension and curtailment. The diagrams will clearly depict all areas, buildings, floors, rooms, equipment and pipelines which are to be subject to alternation in their relative operating sequence.

(3) Evidence of existing bond, consent of surety, continuation certificate, or a new bond to cover the proposed alternation of premises.

(c) *Brewer's responsibility*. After approval of qualifying documents, the brewer may alternate the designated premises pursuant to a letterhead notice submitted to the appropriate ATF officer. The notice will contain the information required by paragraph (d) of this section. Prior to the effective date and hour of the alternation, the brewer shall

(1) Remove all beer on brewery premises to be alternated to bonded or taxpaid wine premises, or

(2) Remove all wine from bonded to taxpaid wine premises to be alternated to brewery premises.

(d) *Information for notice*. The notice required by paragraph (c) of this section will contain the following information:

(1) Plant name and address;

(2) Serial number;

(3) Effective date and hour of proposed change;

(4) Whether premises are to be curtailed or extended;

(5) Purpose of curtailment or extension;

(6) Identification of the special diagram depicting the premises as they exist when curtailed or extended; and

(7) Date of execution and signature of brewer.

(e) *Separation of premises*. The appropriate ATF officer may require that the portion of brewery or bonded or taxpaid wine premises extended or curtailed under this section be separated, in a manner satisfactory to the appropriate ATF officer, from the remaining portion of the brewery or bonded or taxpaid premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended, 1389, as amended, 1390, as amended (26 U.S.C. 5401, 5411, 5415))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; as amended by T.D. ATF–299, 55 FR 24989, June 19, 1990]

DISCONTINUANCE OF BUSINESS

§ 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business permanently, he or she must file a notice on Form 5130.10. The brewer must state the purpose of the notice as ''Discontinuance of business'' and give the date of the discontinuance. When all beer has been lawfully disposed of, appropriate ATF officer will approve the Form 5130.10 and return a copy to the brewer. The brewer shall

file a report on Form 5130.9 showing no beer or cereal beverage on hand and marked ''Final Report.''

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

Subpart H—Bonds and Consents of Surety

§ 25.91 Requirement for bond.

(a) *General*. Every person intending to commence the business of a brewer shall file a bond, Form 5130.22, as prescribed in this subpart, covering operations at the brewery, at the time of filing the original Brewer's Notice, Form 5130.10. Every brewer intending to continue the business of a brewer shall, once every 4 years, or as provided in § 25.95, execute and file a new bond, or continuation certificate as provided in § 25.97.

(b) *Conditions of the bond*. The Brewer's Bond, Form 5130.22, will be conditioned upon the brewer faithfully complying with all provisions of law and regulations relating to the activities covered by the bond, and upon paying all taxes imposed by 26 U.S.C. Chapter 51 and all interest and penalties incurred or fines imposed for violations of those provisions.

(c) *Additional information*. The appropriate ATF officer shall require, in connection with any brewer's bond, a statement executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 25.101(a)(1), or has been convicted of any offense set forth in § 25.101(a)(2). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding the conviction or compromise.

(d) *Bond required before beginning business*. A person may not begin business or continue business as a brewer until first receiving notice that the appropriate ATF officer has approved the bond, continuation certificate, or consent of surety, as required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401); sec. 4(a), Pub. L. 91–673, 84 Stat. 2057 (26 U.S.C. 5417))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.92 Consent of surety.

A brewer may change the terms of any bond filed under this part by filing a consent of surety. Consents of surety will be executed on Form 1533 (5000.18) by the brewer and the surety on the bond, with the same formality and proof of authorization as required for the execution of a bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.93 Penal sum of bond.

(a) *Calculation*. The penal sum of the brewer's bond will be equal to 10 percent of the maximum amount of tax, calculated at the rates prescribed by law, which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(1) Removed for transfer to the brewery from other breweries owned by the same brewer;

(2) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(3) Removed without payment of tax for use in research, development, or testing; and

(4) Removed for consumption or sale.

(b) *Concentrate*. A brewer who concentrates beer under subpart R of this part shall calculate the penal sum of the bond by computing 10 percent of the amount of tax at the rates prescribed by law, on the maximum quantity of beer used in the production of concentrate during a calendar year. The brewer shall add this amount to the penal sum calculated under paragraph (a) of this section to determine the total penal sum of the brewer's bond.

(c) *Maximum and minimum penal sums*. The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed $150,000 when the tax on beer is to be prepaid, or $500,000 when the tax

is to be deferred as provided in § 25.164. The minimum penal sum of a bond is $1,000.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.94 Strengthening bonds.

(a) *Requirement*. When the penal sum of the brewer's bond (calculated as provided in § 25.93) in effect is not sufficient, the principal may prepay the tax on beer as provided in subpart K of this part, or give a strengthening bond in sufficient penal sum if the surety is the same as on the bond in effect. If the surety is not the same, a new bond covering the entire liability is required.

(b) *Restrictions*. A strengthening bond may not in any way release a former bond or limit a bond to less than the full penal sum.

(c) *Date of execution*. Strengthening bonds will show the current date of execution and their effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.95 New bond.

The appropriate ATF officer may at any time, at his or her discretion, require a new bond. A new bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity shall execute a new bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a new bond. When a bond is found to be not acceptable by the appropriate ATF officer, the principal will be required immediately to obtain a new and satisfactory bond or discontinue business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.96 Superseding bond.

When the principal submits a new bond to supersede a bond or bonds in effect, the appropriate ATF officer, after approving the superseding bond, will issue a notice of termination for the superseded bond under the provisions of this subpart. Superseding bonds will show the current date of execution and their effective date.

§ 25.97 Continuation certificate.

If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force for a succeeding period of not less than 4 years from the expiration date of the bond or continuation certificate, the brewer may submit, in lieu of a new bond, a Brewer's Bond Continuation Certificate on Form 5130.23, executed under the penalties of perjury, by the brewer and the surety attesting to continuation of the bond. Each continuation certificate will constitute a bond and all provisions of law and regulations applicable to bonds on Form 5130.22 given under this part, including the disapproval of bonds, are applicable to continuation certificates.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.98 Surety or security.

(a) *Bond coverage*. Bonds required by this part will be given with corporate surety or collateral security.

(b) *Corporate surety*. Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations set forth in the current revision of Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies.

(c) *Revisions of Circular No. 570*. 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, DC 20226.

(d) *More than one corporate surety*. A bond may be executed by two or more corporate sureties. Each corporate surety may limit its liability in terms on the face of the bond in a specified amount. This amount may not exceed the limitations set forth for corporate security by the Secretary which are set forth in the current revision of Treasury Department Circular No. 570. The

sum of the liabilities for the sureties will equal the required penal sum of the bond.

(e) *Deposit of collateral securities 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 principals as collateral security in lieu of corporate surety in accordance with 31 CFR Part 225.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308); sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.99 Filing powers of attorney.

Each bond, continuation certificate, and each consent of surety will be accompanied by a power of attorney authorizing the agent or officer to execute the document. The power of attorney will 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 will be accompanied by a certificate of its validity.

(96 Stat. 1068, 1085 (31 U.S.C. 9304–9308))

DISAPPROVAL OR TERMINATION OF BONDS OR CONSENTS OF SURETY

§ 25.101 Disapproval of bonds or consents of surety.

(a) *Reasons for disapproval*. The appropriate ATF officer may disapprove a bond or consent of surety if the individual, firm, partnership, corporation, or association giving the bond or consent of surety, or if any of the above entities owning, controlling or actively participating in the management of a business giving a bond as a brewer, has been previously convicted in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of law of the United States if it related to internal revenue or customs taxation of distilled spirits, wines or beer, or if the offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise; or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wines, beer, or other intoxicating liquor.

(b) *Appeal of disapproval*. If the bond or consent of surety is disapproved, the person giving the bond or consent of surety may appeal the disapproval to the appropriate ATF officer, who will grant a hearing in the matter if requested by the applicant or brewer, and whose decision will be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after: (a) the effective date of a superseding bond; (b) the date of approval of the discontinuance of business of the brewer; or (c) following the giving of notice by the surety as provided in § 25.103.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.103 Notice by surety for relief from liability under bond.

A surety may, at any time, in writing, notify the principal and the appropriate ATF officer that the surety desires after a specified date (not less than 60 days after the date of service on the principal) to be relieved of any liability under the bond which is incurred by the principal after the date named in the notice. The surety shall include proof of service of the notice on the principal with the notice filed with the appropriate ATF officer. The notice will become effective on the date named, unless the surety withdraws the notice, in writing. The surety on the bond remains liable under the bond with respect to any liability incurred by the principal while the bond is in effect.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.104 Termination of bonds.

Brewer's bonds may be terminated as to liability for future removals or receipts (a) pursuant to application of the surety as provided in § 25.103, (b) on approval of a superseding bond, or (c) on notification by the principal that the business has been discontinued. On termination of the surety's liability under a bond, the appropriate ATF officer will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 Release of collateral security.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part will be released in accordance with 31 CFR Part 225. When the appropriate ATF officer determines there is no outstanding liability against the bond and that it is no longer necessary to hold the security, he or she shall fix the date or dates on which a part or all of the security will be released. At any time prior to the release of the security, the appropriate ATF officer may, for proper cause, extend the date of release of the security for an additional length of time as may be appropriate.

(31 U.S.C. 9301, 9303)

Subpart I—Special Taxes

LIABILITY FOR SPECIAL TAX

§ 25.111 Brewer's special tax.

(a) *General.* Every brewer shall pay a special (occupational) tax at the rate specified by § 25.111a or § 25.111b, whichever is applicable. The tax shall be paid on or before the date of commencing business as a brewer, 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.* A brewer who was engaged in business on January 1, 1988, and paid a special (occupational) tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased special tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(26 U.S.C. 5091, 5142)

[T.D. ATF–271, 53 FR 17547, May 17, 1988]

§ 25.111a Special tax rates.

(a) *Prior rates.* The special (occupational) tax imposed on brewers prior to January 1, 1988, was $110 a year, except that the special tax for any brewer of less than 500 barrels a year was $55 a year.

(b) *Rate effective January 1, 1988.* The special tax rate imposed on brewers (other than small brewers as defined in § 25.111b) is $1000 a year.

(26 U.S.C. 5091)

[T.D. ATF–271, 53 FR 17547, May 17, 1988]

§ 25.111b Reduced rate of tax for small brewers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by § 25.111 relates) are less than $500,000. The rate of tax for such a brewer is $500 a year. 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 (b) of this section shall apply.

(b) *Controlled group.* In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for

purposes of paragraph (a) 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.

(c) *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).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

[T.D. ATF–271, 53 FR 17547, May 17, 1988]

§ 25.112 Wholesaler's special tax.

A brewer shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in Part 194 of this chapter.

(26 U.S.C. 5111, 5142)

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

§ 25.113 Each place of business taxable.

(a) *General.* A brewer 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.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a tax-paid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax for each brewery. The brewer may designate, in writing to the appropriate ATF officer, that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax will not again be required to pay special tax as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

EXECUTION OF SPECIAL TAX RETURNS

§ 25.117 Special tax returns.

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.

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

§ 25.118 Preparation of ATF Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

(a) The true name of the taxpayer.

(b) The trade name(s) (if any) of the business(es) subject to special tax.

(c) The employer identification number (see § 25.121).

(d) 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).

(e) The class(es) of special tax to which the taxpayer is subject.

(f) 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 the Brewer's Notice, and if the information previously provided is still current.

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

§ 25.119 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—

(a) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(b) 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 § 25.300(c).

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

§ 25.120 Signing of ATF Forms 5630.5.

(a) *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.

(b) *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.

(c) *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.

(d) *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)

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

EMPLOYER IDENTIFICATION NUMBERS

§ 25.121 Employer identification number.

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.

(26 U.S.C. 6109, 6676)

[T.D. ATF–271, 53 FR 17548, May 17, 1988, as amended by T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

§ 25.122 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.

(26 U.S.C. 6109)

[T.D. ATF–271, 53 FR 17548, May 17, 1988]

§ 25.123 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 17549, May 17, 1988]

SPECIAL TAX STAMPS

§ 25.125 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 § 25.119, 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).

(26 U.S.C. 6806)

[T.D. ATF–271, 53 FR 17549, May 17, 1988]

§ 25.126 Distribution of 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 Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–251, 52 FR 19313, May 22, 1987]

§ 25.127 Examination of special tax stamps.

All stamps denoting payment of special tax will be kept available for inspection by appropriate ATF officers, at the location for which designated, during business hours.

(Act of August 16, 1954 68A Stat. 831, as amended (26 U.S.C. 6806); sec. 201, Pub. L. 85–859, 72 Stat. 1348, as amended (26 U.S.C. 5146))

CHANGES IN SPECIAL TAX STAMPS

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the brewer 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 brewer shall attach the special tax stamp for endorsement of the change in name.

(26 U.S.C. 7011)

[T.D. ATF–271, 53 FR 17549, May 17, 1988]

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall obtain the required special tax stamps.

(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on

the business for the remainder of the period for which the special tax was paid, if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on Form 5630.5, 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.

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–251, 52 FR 19313, May 22, 1987]

§ 25.133 Persons having right of succession.

Under the conditions indicated in § 25.132, the right of succession will pass to certain persons in the following cases:

(a) *Death*. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(b) *Succession of spouse*. A husband or wife succeeding to the business of his or her spouse (living);

(c) *Insolvency*. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(d) *Withdrawal from firm*. The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (25 U.S.C. 5143))

§ 25.134 Change in location.

If there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The brewer 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 brewer does not file the amended return within 30 days, the brewer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

[T.D. ATF–271, 53 FR 17549, May 17, 1988]

Subpart J—Marks, Brands, and Labels

§ 25.141 Barrels and kegs.

(a) *General requirements*. The brewer's name or trade name and the place of production (city and, if necessary for identification, State) shall be permanently marked on each barrel or keg. If the place of production is clearly shown on the bung or on the tap cover, or on a label securely affixed to each barrel or keg, the place of production need not be permanently marked on each barrel or keg. No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership*. (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the bung, or on the tap cover, or on a separate label attached to the keg;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the keg, bung, tap cover, or on a separate label attached to the keg (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the keg, bung, tap cover, or on a separate label attached to the keg. The coding system employed will permit an appropriate ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer must notify the appropriate ATF officer prior to employing a coding system.

(c) *Label approval required*. Labels or tap covers used by brewers shall be

covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(Approved by the Office of Management and Budget under control number 1512–0474)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–225, 51 FR 8492, Mar. 12, 1986; T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.142 Bottles.

(a) *Label requirements.* Each bottle of beer shall show by label or otherwise the name or trade name of the brewer, the net contents of the bottle, the nature of the product such as beer, ale, porter, stout, etc., and the place of production (city and, when necessary for identification, State). No statement as to payment of internal revenue taxes may be shown.

(b) *Breweries of same ownership.* (1) If two or more breweries are owned or operated by the same person, firm, or corporation (as defined in § 25.181), the place of production:

(i) May be shown as the only location on the label;

(ii) May be included in a listing of the locations of breweries qualified under this part if the place of production is not given less emphasis than any of the other locations; or

(iii) Need not be shown if the brewer's principal place of business is shown in lieu of any other location. The brewer's principal place of business will be the location of a brewery operated by the brewer and qualified under this part.

(2) If the location of two or more breweries is shown on the label (paragraph (b)(1)(ii)), or if the brewer's principal place of business is shown on the label in lieu of the actual place of production (paragraph (b)(1)(iii)), the brewer shall indicate the actual place of production by printing, coding or other markings on the label, bottle, crown or lid. The coding system employed will permit an appropriate ATF officer to determine the place of production (including street address if two or more breweries are located in the same city) of the beer. The brewer must notify the appropriate ATF offcer prior to employing a coding system.

(c) *Distinctive names.* If the brewer's name, trade name or brand name includes the name of a city which is not the place where the beer was produced, the appropriate ATF officer may require the brewer to state the actual place of production on the label.

(d) *Tolerances.* The statement of net contents shall indicate exactly the volume of beer within the bottle except for variations in measuring as may occur in filling conducted in compliance with good commercial practice. The barrel equivalent of bottles filled during a consecutive three month period, calculated on the basis of the brewer's fill test records, may not vary more than 0.5 percent from the barrel equivalent of bottles filled during the same period, calculated on the basis of the stated net contents of the bottles. The brewer is liable for the tax on the entire amount of beer removed, without benefit of tolerance, when the fill of bottles and cans exceeds the tolerance for the three month period, or when filling is not conducted in compliance with good commercial practice.

(e) *Label approval required.* Labels used by brewers shall be covered by certificates of label approval, Form 5100.31, when required by Part 7 of this chapter.

(f) *Short-fill bottles.* A brewer may dispose of taxpaid short-fill bottles of beer to employees for their use but not for resale. These bottles need not be labeled, but if labeled they need not show an accurate statement of net contents.

(Approved by the Office of Management and Budget under control number 1512–0474)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–225, 51 FR 8492, Mar. 12, 1986; T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.143 Cases.

(a) *Brewer's name.* The brewer's name or trade name will be shown on each case or other shipping container of bottled beer. A brewer may use unmarked cases to hold:

(1) Cartons of beer, if the visible portion of the cartons shows the required name; or

(2) Bottles or cans with plastic carriers, if the visible portion of the bottles or cans shows the required name.

(b) *Other information*. The brewer may show on a case or shipping container the place of production (city and, when necessary for identification, State), and the addresses of other breweries owned by the same person, firm, or corporation (as defined in § 25.181). If only one address is shown, it will be that of the producing brewery, or of the brewer's principal place of business.

(Approved by the Office of Management and Budget under control number 1512–0474)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–225, 51 FR 8492, Mar. 12, 1986]

§ 25.144 Rebranding barrels and kegs.

(a) A brewer may not use a barrel or keg which bears the name of more than one brewer, and except as provided in § 25.231, may not use a barrel or keg bearing the name of a brewer other than the producing brewer.

(b) A brewer who purchases or otherwise obtains barrels or kegs from another brewer shall permanently remove or durably cover the original marks and brands after notifying the appropriate ATF officer of the proposed action. A brewer may use the barrels or kegs obtained without removing or covering the original marks and brands if the brewer:

(1) Adopts a trade name substantially identical to the name appearing on the barrels or kegs; or

(2) Succeeds to a brewer who has discontinued business, in which case the brewer may add marks or brands, in accordance with § 25.141, which indicate ownership.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5412))

§ 25.145 Tanks, vehicles, and vessels.

(a) Each brewer who transfers beer to another brewery of the same ownership (as defined in § 25.181), or who exports beer without payment of tax, as provided in § 25.203, shall plainly and durably mark each tank, tank car, tank truck, tank ship, barge, or deep tank of a vessel in accordance with paragraph (b) of this section. These marks may be placed on a label securely affixed to the route board of the container.

(b) The brewer shall mark each container with—

(1) The designation ''Beer'';

(2) The brewer's name;

(3) The address of the brewery from which removed;

(4) The address of the brewery to which transferred or the marks required for exportation in Part 252 of this chapter, as applicable;

(5) The date of shipment; and

(6) The quantity, expressed in barrels.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5053, 5414))

Subpart K—Tax on Beer

LIABILITY FOR TAX

§ 25.151 Rate of tax.

All beer, brewed or produced, and removed for consumption or sale, is subject to the tax prescribed by 26 U.S.C. 5051, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel as authorized in §25.156.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051, 5052))

§ 25.152 Reduced rate of tax for certain brewers.

(a) *General*. Section 5051(a)(2) of Title 26 U.S.C. provides for a reduced rate of tax on the first 60,000 barrels of beer removed for consumption or sale by a brewer during a calendar year. To be eligible to pay the reduced rate of tax, a brewer:

(1) Shall brew or produce the beer at a qualified brewery in the United States;

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a ''controlled group'' of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

The appropriate ATF officer shall deny use of the reduced rate of tax provided

by 26 U.S.C. 5051(a)(2) where it is determined that the allowance of such a reduced rate would benefit a person who would otherwise fail to qualify for use of such rate.

(b) *Definitions*. For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group*. A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563–1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563–3, may be acquired through:

(A) An option to purchase stock;

(B) Attribution from partnerships;

(C) Attribution from estate or trusts;

(D) Attribution from corporations; or

(E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer*. The production of beer as recorded in the brewer's daily records and reported in the Brewer's Report of Operations, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery*. Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers*. Members of a controlled group of brewers shall include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer's notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

[T.D. ATD–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–307, 55 FR 52738, Dec. 21, 1990; T.D. ATF–345, 58 FR 40357, July 28, 1993]

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

DETERMINATION OF TAX

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the apapropriate ATF officer determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the appropriate ATF officer determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156 will be treated as such for purposes of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended, 1390, as amended (26 U.S.C. 5412, 5416))

§ 25.156 Determination of tax on keg beer.

(a) In determining the tax on beer removed in kegs, a barrel is regarded as

a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eighths, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

Size of keg	Barrel equivalent
5 gallons	0.16129
30 liter	0.25565
50 liter	0.42608

(b) If any barrel or authorized size keg contains a quantity of beer more than 2 percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

[T.D. ATF–345, 58 FR 40357, July 28, 1993]

§ 25.157 Determination of tax on bottled beer.

The quantities of bottled beer removed subject to tax shall be computed to 5 decimal places in accordance with the table and instructions in § 25.158. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

§ 25.158 Tax computation for bottled beer.

Barrel equivalents for various case sizes are as follows:

(a) *For U.S. measure bottles.*

Bottle size (net contents in fluid ounces)	Number of bottles per case	Barrel equivalent
6	12	0.01815
6	24	0.03629
7	12	0.02117
7	24	0.04234
7	32	0.05645
7	35	0.06174
7	36	0.06351
7	40	0.07056
7	48	0.08468
8	12	0.02419
8	24	0.04839
8	36	0.07258
8	48	0.09677
10	12	0.03024
10	24	0.06048
10	48	0.12097
11	12	0.03327
11	24	0.06653
11.5	24	0.06956
12	12	0.03629
12	15	0.04536
12	20	0.06048
12	24	0.07258
12	30	0.09073
12	48	0.14516
12	50	0.15121
14	12	0.04234
14	24	0.08468
16 (1 pint)	12	0.04839
16 (1 pint)	24	0.09677
22	12	0.06653
22	24	0.13306
24	12	0.07258
24	24	0.14516
30	12	0.09073
32 (1 quart)	12	0.09677
40	12	0.12097
64	1	0.01613
64	4	0.06452
64	6	0.09677
128 (1 gallon)	1	0.03226
288	1	0.07258

(b) *For metric measure bottles.*

Bottle size (metric net contents)	Number of bottles per case	Barrel equivalent
500 milliliters	24	0.10226
750 milliliters	12	0.07670
1 liter	12	0.10226
2 liters	6	0.10226
5 liters	1	0.04261

(c) *For other case sizes.* If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the appropriate ATF officer in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

[T.D. ATF–345, 58 FR 40357, July 28, 1993]

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part.

(b) *Offsets*. During any business day, the quantity of beer returned to the same brewery from which removed is to be taken as an offset against or deducted from the total quantity of beer removed for consumption or sale from that brewery on the day that the beer is returned.

(c) *Offsets not allowed*. An offset or deduction for returned beer will not be allowed if:

(1) The brewer was indemnified by insurance or otherwise in respect of the tax; or

(2) The brewer does not issue credit to the customer for the tax on the returned beer within 30 days of the return of the beer. If the tax is not timely credited after the offset or deduction is taken, the brewer shall make an increasing adjustment on the next tax return.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5054, 5056, 5061))

§ 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000.000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for comsumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

PREPARATION AND REMITTANCE OF TAX RETURNS

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.164a, 25.173 and 25.175. The brewer shall pay the tax by remittance at the time the tax return is rendered, and the remittance will be by check or money order payable to the ''Bureau of Alcohol, Tobacco and Firearms'' and mailed with the return, or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF–365, 60 FR 33669, June 28, 1995]

§ 25.164 Semimonthly return.

(a) *Requirement for filing*. Each brewer shall pay the tax on beer (unless prepaid) by semimonthly return on Form 5000.24. The brewer shall file Form 5000.24 as a semimonthly return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax*. The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods*. Except as provided in § 25.164a, return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, 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 § 25.164a(c).

(e) *Timely filing.* (1) When the brewer sends the semimonthly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly 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 be treated as the date of delivery of the semimonthly return and of the remittance, if enclosed with the return.

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

(Aug. 16, 1954, ch. 736, 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–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–246, 52 FR 668, Jan. 8, 1987; T.D. ATF–251, 52 FR 19314, May 22, 1987, T.D. ATF–365, 60 FR 33669, June 28, 1995]

§ 25.164a 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 brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer 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 § 25.165, 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 brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer 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 ⅔rds (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 brewer 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 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(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 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

[T.D. ATF–365, 60 FR 33669, June 28, 1995]

§ 25.165 Payment of tax by electronic fund transfer.

(a) *Eligible brewers.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, shall use a commerical bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 25.163, 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 removals, determined in accordance with § 25.159, and importations (including beer 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 brewery from which beer is removed 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 beer taxes combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, during the previous calendar year, shall notify, in writing the appropriate ATF officer. 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 §§ 25.164 or 25.175. 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 beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and parts 26 and 251 of this chapter, 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 § 25.164. 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 appropriate ATF officer 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 will 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 by EFT and shall file the return with 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 will 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 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. 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. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–245, 52 FR 532, Jan. 7, 1987; T.D. ATF–251, 52 FR 19314, May 22, 1987; T.D. ATF–262, 52 FR 47560, Dec. 15, 1987; T.D. ATF–437, 66 FR 5479, Jan. 19, 2001; T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 25.166 Payment of reduced rate of tax.

(a) *By return, Form 5000.24.* A brewer who is eligible to pay the reduced rate of tax on beer may, upon filing the notice required by § 25.167, pay the reduced rate of tax on beer by semimonthly return as provided in § 25.164 or by prepayment return as provided in § 25.175. Payment of reduced rate of tax on beer by return, Form 5000.24, may commence with any tax return filed during a calendar year and will continue until the brewer has taxpaid 60,000 barrels of beer at the lower rate of tax, or taxpaid the number of barrels of beer apportioned under § 25.167(b)(3) for that calendar year.

(b) *By claim for refund of tax.* A brewer, eligible to pay the reduced rate of tax on beer during a calendar year, but who has not paid the reduced rate of tax by return during that year, may file a claim, Form 2635, (5620.8) for refund of tax excessively paid on beer during that year. Claims for refund of tax will be filed as provided in § 25.285.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF–251, 52 FR 19313, May 22, 1987

§ 25.167 Notice of brewer to pay reduced rate of tax.

(a) *Requirement to file notice.* Every brewer who desires to pay the reduced rate of tax on beer authorized by 26 U.S.C. 5051(a)(2) by tax return, Form 5000.24, shall prepare a notice containing the information required by

paragraph (b) of this section. The brewer shall file this notice with the appropriate ATF officer for the first return period (or prepayment return) during which the brewer pays tax on beer at the reduced rate. The brewer shall file the notice each year in which payment of the reduced rate of tax on beer is made by return.

(b) *Information to be furnished.* Each notice described in paragraph (a) of this section will contain the following information:

(1) A statement that the brewer will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) *Perjury statement.* Each notice described in this section will be executed by the brewer under penalties of perjury as defined in § 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in § 70.113 of this chapter. A brewer shall apply for an employer identification number on IRS Form SS–4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

PREPAYMENT OF TAX

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentment of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the appropriate ATF officer finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will 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 law of any State, Territory, or possession of the United States, or in the form of a money order as provided in § 70.61 of this chapter (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF–251, 52 FR 19313, May 22, 1987; T.D. ATF–301, 55 FR 47605, Nov. 14, 1990]

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

§ 25.175 Prepayment of tax.

(a) *General*. When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment*. (1) Prepayment will be made by forwarding a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by forwarding it, in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term *forwarding* means depositing in the U.S. mail, properly addressed in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF–251, 52 FR 19313, May 22, 1987]

FAILURE TO PAY TAX

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85–859, 72 Stat. 1408, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

TRANSFER TO ANOTHER BREWERY OF SAME OWNERSHIP

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be reconsigned to another brewery of the same ownership or be returned to the shipping brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the appropriate ATF officer. The brewer shall mark, brand or label containers as provided by subpart J of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination

of the quantities of beer to be shipped and received in bulk conveyances.

(Sec 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.184 Losses in transit.

(a) *Liability for losses*. The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer reconsigns beer while in transit or returns beer to the shipping brewery, the brewer is liable under the bond of the brewery to which the beer is reconsigned or returned for the tax on beer lost in transit.

(b) *Losses allowable without claim*. If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.

(c) *Losses requiring claim*. If loss of beer during transit exceeds two percent of the quantity shipped, the brewer shall submit a claim under penalties of perjury for remission of the tax on the entire loss. The brewer shall prepare and submit the claim as provided in § 25.286.

(d) *Losses requiring immediate report*. The brewer shall report to the appropriate ATF officer a loss by fire, theft, casualty or any other unusual loss as soon as it becomes known.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended 1389 (26 U.S.C. 5056, 5414))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.185 Mingling.

Beer transferred without payment of tax from one brewery to another brewery belonging to the same brewer may be mingled with beer of the receiving brewery. The brewer may handle the beer transferred in accordance with the requirements of this part relating to beer produced in the receiving brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.186 Record of beer transferred.

(a) *Preparation of invoice*. When beer is transferred between breweries without payment of tax, the shipping brewer shall prepare a serially numbered invoice or commercial record, in duplicate, covering the transfer. The invoice will be marked ''transfer without payment of tax'' and will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) For cases, the number and size of cases and the total barrels;

(5) For kegs, the number and size of kegs and the total barrels;

(6) For shipments in bulk containers, the type of container, identity of the container and the total barrels.

(b) *Reconsignment of beer*. When beer is reconsigned in transit to another brewery of the same ownership, the shipping brewer shall (1) prepare a new invoice showing reconsignment to another brewery and shall void all copies of the original invoice, or (2) shall mark all copies of the original invoice with the words ''Reconsigned to _____,'' followed by the name and address of the brewery to which the beer is reconsigned.

(c) *Disposition of invoice*. On shipment of the beer, the shipping brewer shall send the original copy of the invoice to the receiving brewer, and shall retain the other copy for the brewery records. On receipt of the beer, the receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall note on the invoice any discrepancies in the beer received, and retain the invoice in the brewery records.

(d) *Preparation of records and report*. The shipping brewer shall use the invoice showing beer removed to another brewery without payment of tax in preparing daily records under § 25.292 and in preparing the Brewer's Report of Operations, Form 5130.9. The receiving brewer (including a brewer to whom beer was returned or reconsigned in transit) shall use the invoice showing beer received from another brewery without payment of tax in preparing

daily records under § 25.292 and in preparing the Brewer's Report of Operations, Form 5130.9.

(Sec. 201. Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993]

REMOVAL OF BEER UNFIT FOR BEVERAGE USE

§ 25.191 General.

A brewer may remove sour or damaged beer, or beer which the brewer has deliberately rendered unfit for beverage use, from the brewery without payment of tax for use in manufacturing. Unfit beer may be removed under this section for use as distilling material at alcohol fuel plants qualified under subpart Y of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.192 Removal of sour or damaged beer.

(a) *Containers*. The brewer shall remove sour or damaged beer (1) in casks or other packages, containing not less than one barrel each and unlike those ordinarily used for packaging beer, or (2) in tanks, tank cars, tank trucks, tank ships, barges, or deep tanks of a vessel. The brewer shall mark the nature of the contents on each container.

(b) *Beer meter*. The brewer shall remove sour or damaged beer without passing it through the meter (if any) or racking machine.

(c) *Records and reports*. The brewer shall record the removal of sour or damaged beer in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5033))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993]

REMOVALS FOR ANALYSIS, RESEARCH, DEVELOPMENT OR TESTING

§ 25.195 Removals for analysis.

A brewer may remove beer, without payment of tax, to a laboratory for analysis to determine the character or quality of the product. Beer may be removed for analysis in packages or in bulk containers. The brewer shall record beer removed for analysis in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993]

§ 25.196 Removals for research, development or testing.

(a) A brewer may remove beer, without payment of tax, for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations. Beer may be removed for research, development or testing in packages or in bulk containers.

(b) The brewer shall mark each barrel, keg, case, or shipping container with the name and address of the brewer and of the consignee, the identity of the product, and the quantity of the product. If necessary to protect the revenue, the appropriate ATF officer may require a brewer to mark each container with the words ''Not for Consumption or Sale.'' If beer is removed in a bulk conveyance, the brewer shall place the marks on the route board of the conveyance.

(c) The brewer shall record beer removed for research, development, or testing in daily records under § 25.292 and on the Brewer's Report of Operations, Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993]

REMOVAL OF BEER TO A CONTIGUOUS DISTILLED SPIRITS PLANT

§ 25.201 Removal by pipeline.

A brewer may remove beer from the brewery, without payment of tax, by pipeline to the bonded premises of a

distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1389, as amended (26 U.S.C. 5222, 5412))

EXPORTATION

§ 25.203 Exportation without payment of tax.

A brewer may remove beer without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with Part 252 of this chapter. Beer may be removed from a brewery in bottles, kegs, or in bulk containers.

(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))

BEER FOR PERSONAL OR FAMILY USE

§ 25.205 Production.

(a) Any adult may produce beer, without payment of tax, for personal or family use and not for sale. An adult is any individual who is 18 years of age or older. If the locality in which the household is located requires a greater minimum age for the sale of beer to individuals, the adult shall be that age before commencing the production of beer. This exemption does not authorize the production of beer for use contrary to State or local law.

(b) The production of beer per household, without payment of tax, for personal or family use may not exceed:

(1) 200 gallons per calendar year if there are two or more adults residing in the household, or

(2) 100 gallons per calendar year if there is only one adult residing in the household.

(c) Partnerships except as provided in § 25.207, corporations or associations may not produce beer, without payment of tax, for personal or family use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.206 Removal of beer.

Beer made under § 25.205 may be removed from the premises where made for personal or family use including use at organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Beer removed under this section may not be sold or offered for sale.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 25.207 Removal from brewery for personal or family use.

Any adult, as defined in § 25.205, who operates a brewery under this part as an individual owner or in partnership with others, may remove beer from the brewery without payment of tax for personal or family use. The amount of beer removed for each household, without payment of tax, per calendar year may not exceed 100 gallons if there is one adult residing in the household or 200 gallons if there are two or more adults residing in the household. Beer removed in excess of the above limitations will be reported as a taxable removal.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Subpart M—Beer Returned to Brewery

§ 25.211 Beer returned to brewery.

(a) *General.* Beer, produced in the United States, on which the brewer has paid or determined the tax may be returned to any brewery of the brewer. Upon return of the beer to the brewery, the brewer shall determine the actual quantity of beer received, expressed in barrels. For cases or bottles, the label may be used to determine the quantity. When kegs or cases containing less than the original contents are received, the brewer shall determine the actual quantity of beer by weight or by other accurate means. The brewer shall determine the balling and alcohol content of returned keg beer unless the keg is equipped with tamper-proof fittings. The quantity of beer returned may be established by weighing individual packages and subtracting package weight, or by weighing accumulated beer and subtracting tare weight

of dumpsters, pallets, packages and the like.

(b) *Disposition of returned beer.* The brewer may dispose of beer returned under this subpart in any manner prescribed for beer which has never left the brewery. If returned beer is again removed for consumption or sale, tax will be determined and paid without respect to the tax which was determined or paid at the time of prior removal of the beer.

(c) *Records.* For beer returned to the brewery under this subpart, the brewer's daily records under § 25.292 will show:

(1) Date;

(2) Quantity of beer returned;

(3) If the title to the beer has passed, the name and address of the person returning the beer; and

(4) Name and address of the brewery from which the beer was removed, if different from the brewery to which returned.

(d) *Supporting records.* The records of returned beer will be supported by invoices, credit memoranda or other commercial papers, and will differentiate beween beer returned to the brewery from which removed and beer returned to a brewery different from the one from which removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended, 1390, as amended (26 U.S.C. 5054, 5056, 5415))

§ 25.212 Beer returned to brewery from which removed.

If beer on which the tax has been determined or paid is returned to the brewery from which removed, the brewer shall take the quantity of beer as an offset or deduction against the quantity of beer removed for consumption or sale from the brewery on that business day, as provided in § 25.159

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended (26 U.S.C. 5056, 5415))

§ 25.213 Beer returned to brewery other than that from which removed.

(a) *Refund or adjustment of tax.* If beer on which the tax has been determined or paid is returned to a brewery of the brewer other than the one from which removed, the brewer may make a claim for refund or relief of tax or may make an adjustment to the beer tax return, for the tax on the beer returned to the brewery. The brewer may not take an offset for beer returned to the brewery other than the one from which removed. Procedures for filing claims for refund or relief of tax or for making adjustments to the beer tax return are contained in Subpart T of this part.

(b) *Notice.* A brewer need not file notice of intention to return beer to a brewery other than the one from which removed unless required by the appropriate ATF officer. When a notice is required, the brewer shall serially number each notice and execute it under penalties of perjury as defined in § 25.11. The brewer must file it with the appropriate ATF officer. The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases and the actual quantity of beer, in barrels;

(2) The name and address of the brewery from which the beer was removed;

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined; and

(4) If the title to the beer has passed, the name and address of the person returning the beer.

(c) *Return of beer.* If the brewer is required to file a notice of intention to return beer to the brewery, the brewer may bring the beer onto the brewery premises prior to filing the notice. The brewer shall segregate the returned beer from all other beer at the brewery and clearly identify it as returned beer. The returned beer will be retained intact for inspection by an appropriate ATF officer until the notice has been filed and disposition authorized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

Subpart N—Voluntary Destruction

§ 25.221 Voluntary destruction of beer.

(a) *On brewery premises.* (1) A brewer may destroy, at the brewery, beer on which the tax has not been determined or paid.

(2) A brewer operating a tavern on brewery premises under § 25.25 may destroy taxpaid or tax-determined been stored on brewery premises, in accordance with the requirements of § 25.225.

(b) *Destruction without return to brewery.* A brewer may destroy beer on which the tax has been paid or determined at a location other than any of the breweries operated by the brewer, upon compliance with this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; T.D. ATF–268, 53 FR 8629, Mar 16, 1988, as amended by T.D. 372, 61 FR 20724, May 8, 1996]

§ 25.222 Notice of brewer.

(a) *Beer to be destroyed.* When a brewer possesses beer which has been taxpaid or tax determined and which the brewer wishes to destroy at a location other than at any of the brewer's breweries, the brewer shall give written notice of intention to destroy the beer. The brewer must submit this notice to the appropriate ATF officer.

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 25.11. The brewer shall specify the date on which the beer is to be destroyed; this date may not be less than 12 days from the date the notice is mailed or delivered to the appropriate ATF officer.

(c) *Information to be furnished.* The notice will contain the following information:

(1) The number and sizes of kegs and the actual quantity of beer, in barrels; or the number of cases and the number and sizes of bottles within the cases, and the actual quantity of beer in barrels. When kegs containing less than the actual contents are to be destroyed, the brewer shall determine the actual content of beer by weight or by other accurate means.

(2) The date on which the beer was received for destruction.

(3) A statement that the tax on the beer has been fully paid or determined and the rate at which the tax on the beer was paid or determined.

(4) If the title of the beer has passed, the name and address of the person returning the beer.

(5) The location at which the brewer desires to destroy the beer and the reason for not returning the beer to the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.223 Destruction of beer off brewery premises.

(a) *Destruction without supervision.* A brewer may destroy beer without supervision if the appropriate ATF officer does not advise the brewer before the date specified in the notice that destruction of the beer is to be supervised.

(b) *Destruction with supervision.* The appropriate ATF officer may require that an approriate ATF officer verify the information in the notice of destruction or witness the destruction of the beer. The appropriate ATF officer may also require a delay in the destruction of the beer or, if the place of destruction is not readily accessible to an appropriate ATF officer, may require that the beer be moved to a more convenient location. In this case, the brewer may not destroy the beer except under the conditions imposed by the appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5479, Jan. 19, 2001]

§ 25.224 Refund or adjustment of tax.

(a) *Claim for refund or relief of tax.* The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims

for refund or relief of tax will be filed as provided in subpart T of this part.

(b) *Adjustments to the excise tax return.* A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.225 Destruction of taxpaid beer which was never removed from brewery premises.

(a) *General.* A brewer operating a taven on brewery premises under § 25.25 may destroy taxpaid or tax-determined beer which was never removed from brewery premises, in accordance with the recordkeeping requirements of paragraph (b) of this section, and with the benefit of the tax refund provisions of paragraph (c) of this section.

(b) *Recordkeeping.* (1) When taxpaid or tax-determined beer which was never removed from brewery premises is destroyed, the brewer shall prepare a record of the quantity of beer destroyed, and the reason for, date of, and method of, destruction. The brewer may prepare this record on Form 2635 (5620.8) for submission as a claim under § 25.283.

(2) When required by the appropriate ATF officer, the brewer shall notify the appropriate ATF officer prior to the intended destruction, in accordance with procedures established by the appropriate ATF officer.

(c) *Refund of tax.* After destruction is completed, the brewer may file a claim for refund or credit of tax, in accordance with § 25.283(c).

[T.D. ATF–268, 53 FR 8629, Mar 16, 1988]

Subpart O—Beer Purchased From Another Brewer

§ 25.231 Finished beer.

(a) A brewer may obtain beer in barrels and kegs, finished and ready for sale from another brewer. The purchasing brewer may furnish the producing brewer barrels and kegs marked with the purchasing brewer's name and location. The producing brewer shall pay the tax as provided in subpart K of this part.

(b) A brewer may not purchase taxpaid or tax determined beer from another brewer in bottles or cans which bear the name and address of the purchasing brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5413))

§ 25.232 Basic permit.

A brewer who engages in the business of purchasing beer for resale is required to possess a wholesaler's or importer's basis permit under the provisions of section 3(c) of the Federal Alcohol Administration Act and Part 1 of this chapter.

Subpart P—Cereal Beverage

§ 25.241 Production.

Brewers may produce cereal beverage and remove it without payment of tax from the brewery. The method of production shall insure that the alcohol content of the cereal beverage will not increase while in the original container after removal from the brewery. The brewer shall keep cereal beverage separate from beer, and shall measure the quantity of cereal beverage transferred for packaging in accordance with § 25.41.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.242 Markings.

(a) *Designation.* When bottled or packaged, cereal beverage may be designated ''Cereal Beverage,'' ''Malt Beverage,'' ''Near Beer,'' or other distinctive name. If designated ''Near Beer,'' those words will be printed identically in the same size or style of type, in the same color of ink, and on the same background.

(b) *Barrels and kegs.* A brewer may remove cereal beverage in barrels and kegs if the sides are durably painted at each end with a white stripe not less than 4 inches in width and the heads are painted in a solid color, with conspicuous lettering in a contrasting color reading ''Nontaxable under section 5051 I.R.C.'' The brewer shall also legibly mark the brewer's name or

trade name and the address on the container.

(c) *Bottles*. Bottle labels shall show the name or trade name and address of the brewer, the distinctive name of the beverage, if any, and the legend ''Nontaxable under section 5051 I.R.C.'' Other information which is not inconsistent with the requirements of this section may be shown on bottle lablels.

(d) *Cases*. The brewer shall mark cases or shipping containers to show the nature of the product and the name or trade name and address of the brewer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

Subpart Q—Removal of Brewer's Yeast and Other Articles

§ 25.251 Authorized removals.

(a) *Brewer's yeast*. A brewer may remove brewer's yeast, in liquid or solid form containing not less than 10 percent solids (as determined by the methods of analysis of the American Society of Brewing Chemists), from the brewery in barrels, tank trucks, in other suitable containers, or by pipeline.

(b) *Containers*. Containers will bear a label giving the name and location of the brewery and including the words ''Brewer's Yeast.''

(c) *Pipeline*. If brewer's yeast is removed by pipeline, the pipeline will be described in the Brewer's Notice, Form 5130.10. The premises where the brewer's yeast is received is subject to inspection by an appropriate ATF officer during ordinary business hours.

(d) *Other articles*. A brewer may remove malt, malt syrup, wort, and other articles from the brewery.

(e) *Methods of Analysis of the American Society of Brewing Chemists, Seventh Edition (1976)*. In reference to paragraph (a) of this section, this incorporation by reference was approved by the Director of the Federal Register on March 23, 1981, and is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This publication is available from the American Society of Brewing Chemists, 40 Pilot Knob Road, St. Paul, Minnesota 55121.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389, as amended (26 U.S.C. 5411))

§ 25.252 Records.

(a) *Production*. The brewer shall keep records of the production of malt syrup, wort, and other articles which are removed from the brewery. The record shall include the quantities and kinds of materials used, and in the case of wort and concentrated wort, the balling.

(b) *Removals*. The brewer shall keep records of removals of brewer's yeast, malt and other articles from the brewery. The record shall include the quantity and date of removal of each lot, and the name and address of the consignee. These records may consist of invoices or shipping documents.

(c) *Inspection*. All records under this section shall be available for inspection at the brewery by an appropriate ATF officer during normal business hours.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

Subpart R—Beer Concentrate

§ 25.261 General.

(a) *Authorized processes*. A brewer may, in accordance with this subpart—

(1) Produce concentrate from beer,

(2) Reconstitute beer from concentrate,

(3) Transfer concentrate from one brewery to another brewery of the same ownership, and

(4) Remove concentrate without payment of tax for exportation, or for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation in accordance with Part 252 of this chapter.

(b) *Brewery treatment of concentrate*. Beer reconstituted from concentrate in accordance with this subpart shall (except with respect to the additional labeling of reconstituted beer under § 25.263) be treated the same as beer which has not been concentrated and reconstituted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

§ 25.262 Restrictions and conditions on processes of concentration and reconstitution.

(a) *Conditions on concentration.* A brewer may not employ any process of concentration which separates alcohol spirits from any fermented substance.

(b) *Conditions on reconstitution*—(1) The process of reconstitution of beer will consist of the addition to the concentrate of carbon dioxide and water only.

(2) A brewer may not employ any process of concentration or reconstitution unless the beer upon reconstitution will, without the addition of any substance other than carbon dioxide and water, possess the taste, aroma, color, and other characteristics of beer which has not been concentrated.

(3) The process of reconstitution shall provide for the addition of sufficient water to restore the concentrate to a volume not less than, and an alcohol content not greater than, that of the beer used to produce the concentrate.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1315, as amended, 1388, as amended (26 U.S.C. 5002, 5401))

§ 25.263 Production of concentrate and reconstitution of beer.

(a) *Operations at brewery.* A brewer may concentrate beer or reconstitute beer only at a brewery.

(b) *Marking of containers.* Containers of concentrate transferred to other breweries of the same ownership, and containers of concentrate removed for export shall be marked, branded and labeled in the same manner as prescribed for containers of beer in subpart J of this part. All containers shall be identified as containers of beer concentrate.

(c) *Mingling with beer.* A brewer may not mingle concentrate with unconcentrated beer. A brewer may mingle reconstituted beer with other beer at the brewery.

(d) *Additional labeling.* Barrels, kegs, and bottles containing beer produced from concentrate will show by label or otherwise the statement ''PRODUCED FROM . . . CONCENTRATE,'' the blank to be filled in with the appropriate class designation of the beer (beer, lager, ale, stout, etc.) from which the concentrate was made. The statement will be conspicuous and readily legible and, in the case of bottled beer, will appear in direct conjunction with, and as a part of, the class designation. All parts of the class designation will appear in lettering of substantially the same size and kind.

(e) *Records and reports.* Brewers producing concentrate and brewers reconstituting beer from concentrate shall keep the records and reports required by subpart U of this part.

§ 25.264 Transfer between breweries.

(a) *Authorized transfers.* A brewer may remove from the brewery, without payment of tax, concentrate produced from beer for transfer to any other brewery of the same ownership (within the limits of ownership described in § 25.181).

(b) *Record of concentrate transferred.* When transferring concentrate between breweries, the shipping brewer shall prepare for each conveyance a serially numbered invoice or commercial record covering the transfer. The invoice will be clearly marked to indicate that concentrate produced from beer is being transferred. The invoice will contain the following information:

(1) Name and address of shipping brewer;

(2) Date of shipment;

(3) Name and address of receiving brewer;

(4) The number of containers transferred, the balling, percentage of alcohol by volume, and the total barrels of concentrate; and

(5) A description of the beer from which the concentrate was produced including the number of barrels, balling, and percentage of alcohol by volume.

(c) *Disposition of invoice.* On shipment of the concentrate, the shipping brewer shall send the original copy of the invoice to the receiving brewer and shall retain a copy for the brewery records. On receipt of the concentrate, the receiving brewer shall note on the invoice any discrepancies in the concentrate received and retain the invoice in the brewery records.

Subpart S—Pilot Brewing Plants

§ 25.271 General.

(a) *Establishment.* A person may establish and operate a pilot brewing plant off the brewery premises for research, analytical, experimental, or developmental purposes relating to beer or brewery operations. Pilot brewing plants will be established as provided in this subpart.

(b) *Authorized removals.* Beer may be removed from a pilot brewing plant only for analysis or organoleptic examination.

(c) *Transfers between brewery and pilot brewing plant.* Subject to subpart L of this part, beer may be transferred to a pilot brewing plant from a brewery of the same ownership, and beer may be transferred without payment of tax from a pilot brewing plant to a brewery of the same ownership.

(d) *Other regulations applicable.* The provisions of subparts A, B, F, I, K, and of §§ 25.63, 25.64, and 25.21 are applicable to pilot brewing plants established under this subpart. Also, the provisions of §§ 25.72–25.75, 25.77, 25.92 and 25.94–25.105 relating to bonds, and consents of surety, and of §§ 25.131–25.134 are applicable to bonds and consents of surety given, and to changes in the proprietorship, location, and premises of pilot brewing plants established under this subpart.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.272 Application.

(a) *Form of application.* Any person desiring to establish a pilot brewing plant under the subpart shall file an application with the appropriate ATF officer. The application will be in writing and will include the following:

(1) Name and address of the applicant;

(2) Description of the premises and equipment to be used in the operations;

(3) Nature, purpose, and extent of the operations; and

(4) A statement that the applicant agrees to comply with all provisions of this part applicable to the operations to be conducted.

(b) *Additional information.* The appropriate ATF officer may at any time before or after approval of an application, require the submission of additional information necessary for administration of this part or for protection of the revenue.

(c) *Authorization of operations.* The appropriate ATF officer may authorize the operation of a pilot brewing plant if it is determined that the plant will be operated solely for one or more of the purposes specified in § 25.271, and that operations will not jeopardize the revenue.

(d) *Withdrawal of authorization.* The appropriate ATF officer may withdraw authorization to operate a pilot brewing plant if in his or her judgment, the revenue would be jeopardized by the operations of the plant.

(e) *Commencement of operations.* A person may not begin operation of a pilot brewing plant until the appropriate ATF officer has approved the application required by this section.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.273 Action on application.

If the appropriate ATF officer approves the application for a pilot brewing plant, he or she will note approval on the application and forward a copy to the applicant. The applicant must file the copy of the approved application at the premises, available for inspection by an appropriate ATF officer.

[T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.274 Bond.

(a) *Requirement.* Any person requesting authorization to establish a pilot brewing plant under this subpart shall execute and file a brewer's bond, Form 5130.22. A person may not begin operation of a pilot brewing plant until receiving notice from the appropriate ATF officer of the approval of the bond. Operations may continue only as long as an approved bond is in effect.

(b) *Penal sum.* The penal sum of a bond covering the premises of a pilot brewing plant will be an amount equal to the potential tax liability of the maximum quantity of beer on hand, in transit to the plant, and unaccounted for at any one time, computed by multiplying the quantity of beer in barrels by the rate of tax in 26 U.S.C. 5051. The

penal sum of the bond (or total penal sum if original and strengthening bonds are filed) may not exceed $50,000 or be less than $500.

(c) *Conditions of bonds.* The bond will be conditioned that the operator of the pilot brewing plant shall pay, or cause to be paid, to the United States according to the laws of the United States and the provisions of this part, the taxes, including penalties and interest for which the operator shall become liable, on all beer brewed, produced, or received on the premises.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

§ 25.275 Special tax.

The special tax imposed on a brewer by 26 U.S.C. 5091 shall be paid in accordance with subpart I of this part.

§ 25.276 Operations and records.

(a) *Commencement of operations.* A person may commence operation of a pilot brewing plant upon receipt of the approved application and bond.

(b) *Reports.* The operator of a pilot brewing plant is not required to file the Brewer's Report of Operations, Form 5130.9.

(c) *Records.* The operator of a pilot brewing plant must maintain records which, in the opinion of the appropriate ATF officer, are appropriate to the type of operation being conducted. These records will include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials. These records will be available for inspection by an appropriate ATF officer.

(Sec. 4, Pub. L. 91–673, 84 Stat. 2057, as amended (26 U.S.C. 5417))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40357, July 28, 1993; T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.277 Discontinuance of operations.

When operations of a pilot brewing plant are to be discontinued, the operator shall notify the appropriate ATF officer stating the purpose of the notice and giving the date of discontinuance. When operations have been completed and all beer at the premises has been disposed of and accounted for, the appropriate ATF officer will note approval on the notice and return a copy to the operator.

Subpart T—Refund or Adjustment of Tax or Relief From Liability

§ 25.281 General.

(a) *Reasons for refund or adjustment of tax or relief from liability.* The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in § 25.282.

(b) *Refund of beer tax excessively paid.* A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in § 25.285.

(c) *Rate of tax.* Brewers who have filed the notice required by § 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the appropriate ATF officer that the tax was paid or determined at the higher rate of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

§ 25.282 Beer lost by fire, theft, casualty, or act of God.

(a) *General.* The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is

lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in § 25.286.

(b) *Unmerchantable beer*. When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the appropriate ATF officer that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) *Beer lost or destroyed*. When beer is lost or destroyed, whether by theft or otherwise, the appropriate ATF officer may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) *Beer lost by theft*. When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the appropriate ATF officer that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Notification of appropriate ATF officer*. (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, must, on learning of the loss of beer, immediately notify in writing the appropriate ATF officer of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents must be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability must notify in writing the appropriate ATF officer, of the circumstances by which the beer became unmerchantable, and must state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) *Additional information*. The appropriate ATF officer may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.283 Claims for refund of tax.

(a) *Beer returned to brewery or voluntarily destroyed at a location other than a brewery*. Claims for refund of tax on beer returned to a brewery under the provisions of § 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;

(9) A statement that the tax has been fully paid or determined; and

(10) A reference to the notice (if required) filed under §§ 25.213 or 25.222.

(b) *Beer lost, destroyed, or rendered unmerchantable*. Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a)(1), (2), (3), (5), and (6) of this section;

(2) A statement of the circumstances surrounding the loss;

(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;

(4) Date of the loss, and if lost in transit, the name of the carrier;

(5) A reference incorporating the notice required by § 25.282; and

(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under § 25.282.

(c) *Voluntary destruction of taxpaid beer which was never removed from brewery premises.* Claims for refund or credit of tax on beer voluntarily destroyed under the provisions of § 25.225, shall include:

(1) Information required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(9) of this section; and

(2) The information contained in the record required by § 25.225(b).

(d) *Additional evidence.* The appropriate ATF officer may require the submission of additional evidence in support of any claim filed under this section.

(e) *Filing of claim.* Claim for refund of tax shall be filed on Form 2635 (5620.8). Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF–251, 52 FR 19314, May 22, 1987; T.D. ATF–268, 53 FR 8629, Mar 16, 1988; T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.284 Adjustment of tax.

(a) *Adjustment of tax in lieu of refund.* In lieu of filing a claim for refund of tax as provided in § 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) *Beer returned to brewery other than from which removed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer returned to the brewery under § 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under § 25.213, the adjustment may not be made until the appropriate ATF officer authorizes disposition of the beer.

(c) *Beer voluntarily destroyed.* An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) *Beer lost, destroyed or rendered unmerchantable.* An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under § 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification required under § 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing to the satisfaction of the appropriate ATF officer that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) *Condition of adjustments.* (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) *Records.* When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records;

(1) For beer returned to the brewery or voluntarily destroyed, the records

required by §§ 25.283(a)(1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by § 25.283 (a)(1), (2), (5), (b) (2), (3), (4), (5), and (6).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–437, 66 FR 5480, Jan. 19, 2001; T.D. ATF–437a, 66 FR 17809, Apr. 4, 2001]

§ 25.285 Refund of beer tax excessively paid.

(a) *Eligibility*. A brewer who, under the provisions of § 25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on Form 2635 (5620.8) within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see §§ 70.82 and 70.83.

(b) *Calculation of refund*. The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of 60,000 barrels of beer per calendar year or the limitation as determined in § 25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) *Information to be furnished*. Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in § 25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF–251, 52 FR 19314, May 22, 1987; T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim*. Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with the Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in which the loss is discovered. When, for valid reason, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed within 6 months of the date of the loss.

(b) *Information to be shown*. The claim will show the following information:

(1) The date of the shipment;

(2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;

(3) The percent of loss;

(4) The specific cause of the loss;

(5) The nature of the loss (leakage, breakage, casualty, etc.);

(6) Information as to whether the claimant has been indemnified by insurance or otherwise in respect to the

tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the carrier or other persons having personal knowledge of the loss, if available.

(27 U.S.C. 5056, 5414)

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; T.D. ATF–345, 58 FR 40357, July 28, 1993]

Subpart U—Records and Reports

§ 25.291 Records.

(a) *General.* (1) The records to be maintained by brewers include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the brewer's commercial documents, rather than records prepared expressly to meet the requirements of this part, if those documents contain all the details required by this part, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Entries.* (1) Each entry required by this part to be made in daily records will be made not later than the close of the business day next succeeding the day on which the transaction occurs.

(2) When the brewer prepares transaction or business records concurrenty with the individual operation or transaction and these records contain all the required information with respect to the operation or transaction, entries in daily records may be made not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(c) *Content.* (1) All entries in the daily records required by this subpart will show the date of the operation or transaction.

(2) Daily records will accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable—

(i) Brewers to prepare summaries, reports, and returns required by this part, and

(ii) Appropriate ATF officers to verify removals of beer and cereal beverages, to verify claims, and to ascertain if there has been compliance with law and regulations.

(d) *Format.* (1) The brewer's copies of prescribed forms which bear all required details will be utilized as daily records.

(2) When a form is not prescribed, the records required by this subpart will be those commercial records used by the brewer in the accounting system and will bear all required details.

(3) The brewer shall maintain daily records required by this part so they clearly and accurately reflect all mandatory information. When the format or arrangement of the daily records is such that the information is not clearly or accurately shown, the appropriate ATF officer may require a format or arrangement which will clearly and accurately show the information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.292 Daily records of operations.

(a) *Daily records.* A brewer shall maintain daily records of operations which show by quantity the following:

(1) Each kind of material received and used in the production of beer and cereal beverage (including the balling and the quantity of each type of material used in the production of wort or concentrated wort).

(2) Beer and cereal beverage produced (including water added after production is determined).

(3) Beer and cereal beverage transferred for and returned from bottling.

(4) Beer and cereal beverage transferred for and returned from racking.

(5) Beer and cereal beverage bottled.

(6) Beer and cereal beverage racked.

(7) Cereal beverage removed from the brewery.

(8) Beer removed for consumption or sale. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered

(not required for sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottels.

(9) Beer removed without payment of tax. For each removal, the record will show the date of removal, the person to whom the beer was shipped or delivered, and the quantities of beer removed in kegs, bottles, tanks, tank cars, tank trucks, tank ships, barges or deep tanks of vessels.

(10) Packaged beer used for laboratory samples at the brewery.

(11) Beer consumed at the brewery.

(12) Beer returned to the brewery from which removed.

(13) Beer returned to the brewery after removal from another brewery owned by the brewer.

(14) Beer reconditioned, used as material, or destroyed.

(15) Beer received from other breweries or received from pilot brewing plants.

(16) Beer and cereal beverage lost due to breakage, theft, casualty, or other unusual cause.

(17) Brewing materials sold or transferred to pilot brewing plants (including the name and address of the person to whom shipped or delivered) and brewing materials used in the manufacture of wort, wort concentrate, malt syrup, and malt extract for sale or removal.

(18) Record of tests of measuring devices.

(19) Beer purchased from other brewers in the purchasing brewer's barrels and kegs and such beer sold to other brewers.

(b) *Daily summary records*. A brewer shall maintain daily summaries of the following transactions:

(1) Beer and cereal beverage bottled;

(2) Beer and cereal beverage racked;

(3) Beer removed for consumption or sale;

(4) Beer returned to the brewery from which removed;

(5) Beer returned to the brewery after removal from another brewery owned by the brewer; and

(6) Brewing materials, beer and cereal beverage in process, and finished beer and cereal beverage on hand.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986]

§ 25.293 Record of ballings and alcohol content.

The brewer shall maintain a record of the ballings of the wort produced, and of the ballings and the alcohol content of beer and cereal beverage transferred for bottling and racking, between breweries in bulk conveyances, and to pilot brewing plants. Records showing ballings and alcohol content need not be consolidated and averaged daily unless the brewer so desires.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.294 Inventories.

(a) The brewer shall take a physical inventory of beer and cereal beverage at least once each calender month. The brewer may take this inventory within 7 days of the close of the calendar month for which made.

(b) The brewer shall make a record of inventories of beer or cereal beverage which will show the following:

(1) Date taken;

(2) Quantity of beer and cereal beverage on hand;

(3) Losses, gains, and shortages; and

(4) Signature, under penalties of perjury of the brewer or person taking this inventory.

(c) The brewer shall retain inventory records and make them available for inspection by an appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.295 Record of unsalable beer.

A brewer having unsalable beer in packages or tanks in the brewery may destroy, recondition, or use the beer as material. The brewer shall report the quantity of the beer destroyed, reconditioned, or used as materials, in daily records and on Form 5130.9. If the

unsalable beer consists of rejects from the packaging operations, the beer may be destroyed without being included in the packaging production records, and, when so destroyed, will be so reported in the brewer's daily records and on Form 5130.9. When reject bottled beer is to be consumed at the brewery or sold to brewery employees, or is cased or otherwise accumulated pending other disposition, the quantity will be included in the packaging production and be so reported in the brewer's daily records and on Form 5130.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1389 as amended, 1390, as amended, 1395 as amended (26 U.S.C. 5411, 5415, 5555))

§ 25.296 Record of beer concentrate.

(a) *Daily records.* A brewer who produces concentrate or reconstitutes beer shall maintain daily records which accurately reflect the balling, quantity, and alcohol content of—

(1) Beer entered into the concentration process;

(2) Concentrate produced;

(3) Concentrate transferred to other breweries;

(4) Concentrate exported;

(5) Concentrate received;

(6) Concentrate used in reconstituting beer; and

(7) Beer reconstituted.

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the reporting period;

(2) Concentrate on hand end of the reporting period;

(3) Concentrate produced;

(4) Concentrate received; and

(5) Specific disposition of concentrate such as ''used in reconstitution,'' ''removed for export,'' ''removed to foreign-trade zone,'' or ''transferred to other breweries.''

(26 U.S.C. 5415)

[T.D. ATF–224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40358, July 28, 1993]

§ 25.297 Brewer's Report of Operations, Form 5130.9.

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9.

(b) *Quarterly report of operations.* (1) For calendar quarters commencing on or after October 1, 1993, a brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by adding up the quantities of beer produced, water/liquids added in cellars, and beer received from other breweries and from pilot brewing plants for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the ''Remarks'' section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the ''Remarks'' section of its initial monthly Form 5130.9 that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The appropriate ATF officer may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

(c) *Retention*. The brewer shall retain a copy of the Form 5130.9 as part of the brewery records.

(26 U.S.C. 5415, 5555)

[T.D. ATF–345, 58 FR 40358, July 28, 1993, as amended by T.D. ATF–437, 66 FR 5480, Jan. 19, 2001]

§ 25.298 Excise tax return, Form 5000.24.

All entries on the excise tax return, Form 5000.24, will be fully supported by accurate and complete records. The brewer shall file a copy of Form 5000.24 as a part of the records at the brewery.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5061, 5415, 5555))

§ 25.299 Execution under penalties of perjury.

When a return, form, or other document is required by this part or in the instruction on or with the return, form, or other document to be executed under the penalties of perjury, as defined in § 25.11, it will be so executed and will be signed by the brewer or other duly authorized person.

(Act of August 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065))

§ 25.300 Retention and preservation of records.

(a) *Place of maintenance*. Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any appropriate ATF officer during business hours.

(b) *Reproduction of original records*. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under § 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) *Retention of records*. Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The appropriate ATF officer may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) *Data Processing*. (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the brewery if the original transaction (source) records required by §§ 25.292–25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

§ 25.301 Photographic copies of records.

(a) *General*. Brewers may record, copy, or reproduce records required by this part. Brewers may use any process which accurately reproduces the original record and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records*. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as through it were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, ''original record'' means the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

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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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

EDITORIAL NOTE: Nomenclature changes to part 26 appear at 66 FR 21668, 21669, May 1, 2001.

Subpart A—Scope of Regulations

§ 26.1 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.2 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

(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; T.D. ATF–451, 66 FR 21668, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.3 Delegations of the Director.

All of the regulatory authorities of the Director contained in this part 26 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.29, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 26, Liquors and Articles from Puerto Rico and the Virgin Islands. ATF delegation orders, such as ATF Order 1130.29, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–451, 66 FR 21668, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart B—Definitions

§ 26.11 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.

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 1130.29, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 26, Liquors and Articles from Puerto Rico and the Virgin Islands.

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.

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.)

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 appropriate ATF officer 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).

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.

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 § 26.201a.

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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 26.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart C [Reserved]

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

§ 26.30 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 § 26.31. 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.31 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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

§ 26.35 Taxable status.

(a) Liquors coming into the United States from Puerto Rico, except as provided in § 26.36, 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 § 26.36, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.36 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§§ 26.36a–26.36b [Reserved]

§ 26.36c 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.37 United States Bureau of Alcohol, Tobacco and Firearms officers.

Appropriate ATF officers are authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States.

[T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.38 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.39 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.40 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.41 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.43 Samples.

The appropriate ATF officer 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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

SPECIAL (OCCUPATIONAL) TAXES

§ 26.44 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.45 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 § 26.44.

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

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.46 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.47 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 § 26.36 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart D—Formulas for Products From Puerto Rico

SOURCE: 44 FR 71709, Dec. 11, 1979, unless otherwise noted. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.50 Formulas for liquors.

(a) *Distilled spirits products.* Except for products which are exempt from tax, as specified in § 26.36, 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 § 26.54.

(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 § 26.54.

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

[T.D. ATF–198, 50 FR 8549, Mar. 1, 1985. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.50a 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 using ATF Form 5154.1 or a letterhead request that lists 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, as amended by T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.51 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 § 26.54. 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.52 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 appropriate ATF officer. 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 appropriate ATF officer, 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.53 Changes of formulas.

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

§ 26.54 Filing and disposition of formulas.

Formulas required by this subpart must be submitted, and disposed of, in accordance with the instructions on the prescribed ATF form. The applicant shall maintain copies of approved

formulas available for examination by revenue agents.

[T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.55 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 § 26.52 shall not apply.

[44 FR 71709, Dec. 11, 1979. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

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

§ 26.61 General.

Every person filing a bond under this subpart, or consent of surety on such bond, must file it in accordance with the instructions on the form.

[T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.62 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.62a 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.62b 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.63 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.64 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.

§ 26.65 Authority to approve bonds and consents of surety.

The appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.66 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.67 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.68 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.68a 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 §§ 26.66(a), 26.67, or § 26.68, or if the penal sum allocated to his premises under § 26.66(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.69 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.

§ 26.70 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 appropriate ATF officer, 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 § 26.72, 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. Further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.70a Notice of approval of bonds.

Upon approval of an original, a strengthening, or a superseding bond, the appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

TERMINATION OF BONDS

§ 26.71 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 § 26.72;

(b) On approval of a superseding bond;

(c) On notification by the principal to the appropriate ATF officer that he has discontinued transactions under the bond; or

(d) On notification by the principal to the appropriate ATF officer 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.72 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 appropriate ATF officer 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 appropriate ATF officer. The surety shall also file with the appropriate ATF officer 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 § 26.73.

(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.73 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 § 26.72, 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.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975 and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.74 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 26.63, shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the appropriate ATF officer until the liability under the bond for which they were pledged has been terminated. When the appropriate ATF officer 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 appropriate ATF officer 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.75 Form 1490, Notice of Termination of Bond.

When the appropriate ATF officer 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

PERMITS REQUIRED

§ 26.76 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 § 26.76, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

DISTILLED SPIRITS

§ 26.77 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 § 26.79a. 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.78 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.79 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 § 26.164a 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.79a 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

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

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

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

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

[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).

(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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.80 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 §26.164a 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.81 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 § 26.164a and the remittance in full for the tax, to the appropriate ATF officer.

(b) *Action by appropriate ATF officer.* On receipt of ATF Forms 5110.51, 5000.25 and any package gauge record, with remittance covering prepayment of tax, the appropriate ATF officer 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 appropriate ATF officer 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 appropriate ATF officer 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.82 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 §§ 26.114 through 26.116.

[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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

PACKAGES OF DISTILLED SPIRITS

§ 26.86 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.87 Evidence of taxpayment.

Where, under the provisions of § 26.86, 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 § 26.81 or deferred as provided in § 26.80, or he shall submit application, ATF Form 5110.51, for permit to pay such taxes, as provided in § 26.78. 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 §§ 26.114 through 26.116.

[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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

WINE

§ 26.92 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.93 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.94 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.95 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 § 26.80(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.96 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 appropriate ATF officer.

(b) *Action by appropriate ATF officer*. On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the appropriate ATF officer 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 appropriate ATF officer 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.96a [Reserved]

§ 26.96b Permit to ship.

Wine released from bonded storage under § 26.95 or § 26.96 may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 26.114 through 26.116.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.97 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

§ 26.101 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.102 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.103 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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.104 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 § 26.80(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.105 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 appropriate ATF officer.

(b) *Action by appropriate ATF officer.* On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the appropriate ATF officer 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 appropriate ATF officer 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.105a Permit to ship.

Beer released from bonded storage under § 26.104 or § 26.105 may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 26.114 through 26.116.

[T.D. 6695, 28 FR 12935, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.106 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

§ 26.107 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 § 26.36 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.108 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 § 26.78.

(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 §§ 26.93 and/or 26.102. 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 §§ 26.78, 26.93, and/or § 26.102, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.109 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 § 26.79 and paid in accordance with the applicable provisions of §§ 26.80, 26.81, and 26.111 through 26.113.

(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 § 26.94 and paid in accordance with the applicable provisions of §§ 26.95, 26.96, and 26.111 through 26.113.

(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 § 26.103 and paid in accordance with the applicable provisions of §§ 26.104, 26.105, and 26.111 through 26.113.

[T.D. ATF–62, 44 FR 71712, Dec. 11, 1979. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.110 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 appropriate ATF officer 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 § 26.164a, 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 §§ 26.114 through 26.116 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

PAYMENT OF TAX BY RETURN

§ 26.111 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.112 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 §§ 26.80, 26.95 or 26.104 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 appropriate ATF officer 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 § 26.112a.

(3) The remittance may be in any form that is authorized to be accepted under the provisions of § 70.61 of this chapter.

(4) When the return and remittance are delivered by U.S. mail to the office of the appropriate ATF officer, 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 § 26.112a, 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 appropriate ATF officer 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 §26.113. 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 appropriate ATF officer 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 appropriate ATF officer 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; T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§26.112a 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 §26.112, 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 appropriate ATF officer. 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 § 26.112 or § 26.113. 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 § 26.112. 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 appropriate ATF officer 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 appropriate ATF officer.

(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.113 Returns for prepayment of taxes.

(a) *General*. If a proprietor does not have 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 § 26.81.

(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 § 26.96.

(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 § 26.105.

(f) *Applicable procedures*. The procedures of § 26.112(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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 26.113, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PERMIT TO SHIP LIQUORS AND ARTICLES

§ 26.114 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 §§ 26.115 and 26.116.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.115 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 § 26.116.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.116 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 appropriate 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 § 26.116, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PROCEDURE AT PORT OF ARRIVAL

§ 26.117 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.

§ 26.118 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 district director of customs 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. T.D. ATF–451, 66 FR 21669, May 1, 2001, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.119 Disposition of forms by district director of customs.

Two copies of the Form 487B will be forwarded to the appropriate ATF officer, and one copy of the form will be retained by the district director of customs and be available for inspection by appropriate ATF officers.

[T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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

§ 26.125 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.

§ 26.126 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 appropriate ATF officer, 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.128 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 an appropriate ATF officer, 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 an appropriate ATF officer, the director of customs will notify the appropriate ATF officer 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, as amended by T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart G—Closures for Distilled Spirits From Puerto Rico

§ 26.135 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.136 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart H—Records and Reports of Liquors From Puerto Rico

§ 26.163 General requirements.

Except as provided in § 26.164, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.164 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.164a 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.165 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 § 26.79a 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 § 26.50a).

(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.170 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.

§ 26.171 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.172 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.

(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 a bond on ATF Form 5154.3 has been approved.

[T.D. ATF–379, 61 FR 31427, June 20, 1996, as amended by T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.173 Claims for drawback.

(a) *General*. Persons bringing eligible articles into the United States from Puerto Rico must file claim for drawback on ATF Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate ATF officer must 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 § 26.51.

(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 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; T.D. ATF–451, 66 FR 21669, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.174 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 appropriate 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 appropriate ATF officers.

(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–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.191 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.192 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.

§ 26.193 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 §§ 26.107 through 26.110.

(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 § 26.113. The chemist will also notify the appropriate ATF officer.

[T.D. ATF–199, 50 FR 9198, Mar. 1, 1985, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.194 Detention of articles.

(a) Upon receiving a notification in accordance with § 26.193(b), appropriate ATF officer 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 § 26.113, the appropriate ATF officer will release the article to the consignee.

[T.D. ATF–199, 50 FR 9198, Mar. 1, 1985. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.196 General.

Under the provisions of this subpart and § 26.86, 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.

[T.D. ATF–62, 44 FR 71714, Dec. 11, 1979. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.197 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 appropriate ATF officer, 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, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.198 [Reserved]

§ 26.199 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.

§ 26.199a 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 § 26.164a, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.199b 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 § 26.164a, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38551, July 25, 2001]

§ 26.199c 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.

§ 26.199d 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.199e [Reserved]

§ 26.199f 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 keep and send copies according the instructions on the form.

(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, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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

§ 26.200 Taxable status.

(a) Liquors coming into the United States from the Virgin Islands, except as provided in § 26.201, 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

§ 26.201, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.201 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.201a 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.201b [Reserved]

§ 26.201c 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.202 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 § 26.202, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 26.203 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.203a 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.204 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 § 26.205.

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

[T.D. ATF–198, 50 FR 8552, Mar. 1 1985. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.204a 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.205 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 § 26.262a 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 § 26.204a); 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 §§ 26.260 and 26.302.

(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.206 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.207 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.209 Samples.

The appropriate ATF officer 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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

SPECIAL (OCCUPATIONAL) TAXES

§ 26.210 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.211 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 § 26.210.

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

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

Subpart K—Formulas for Products From the Virgin Islands

SOURCE: T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, unless otherwise noted. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.220 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 § 26.224.

(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 § 26.224.

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, as amended by T.D. ATF–198, 50 FR 8552, Mar. 1, 1985. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.221 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 § 26.224. 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.222 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 appropriate ATF officer. 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 appropriate ATF officer, 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.223 Changes of formulas.

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

§ 26.224 Filing and disposition of formulas.

Formulas required by this subpart must be submitted, and disposed of, in accordance with the instructions on the prescribed ATF form. The applicant shall maintain copies of approved formulas available for examination by insular agents.

[T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.225 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 § 26.222 shall not apply.

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

Subpart L—Closures for Distilled Spirits From the Virgin Islands

GENERAL

§ 26.230 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.231 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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

§ 26.260 Certificate.

Persons (except tourists) bringing liquors or articles from the Virgin Islands into the United States shall file the certificate provided for in § 26.205 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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.261 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 § 26.205 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 §§ 26.262 through 26.265.

[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 § 26.261, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

26.262 Determination of tax on distilled spirits.

(a) If the certificate required by § 26.205 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 § 26.262a. 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. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.262a 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.

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

$$\frac{\$30,362.85+\$2,423.55+\$1,601.40+\$224.10}{2,350.0+634.2+387.6}=\frac{\$34,611.90}{3,371.8}=\$10.27,\text{ the effective tax rate.}$$

[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).

(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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.263 Determination of tax on beer.

If the certificate prescribed in § 26.205 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)

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.264 Determination of tax on wine.

If the certificate prescribed in § 26.205 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)

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.265 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 § 26.205.

(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. Redesignated and amended by T.D. ATF–459, 66 FR 38550, 38552, July 25, 2001]

§ 26.266 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.267 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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

RECORD AND REPORT OF LIQUORS BROUGHT INTO THE UNITED STATES

§26.272 General requirements.

Except as provided in §26.273, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§26.273 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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§26.273a Transfer record.

The transfer record for Virgin Islands spirits prescribed in §26.301 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. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.273b 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

FILING AND RETENTION OF RECORDS AND REPORTS

§ 26.275 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 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 appropriate 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, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.276 Retention.

All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part shall be retained for not less than three years, and during this period shall be available, during business hours, for inspection and copying by appropriate ATF or customs officers. 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 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, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.277 [Reserved]

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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.291 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 § 26.292 through 26.294 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 §§ 26.292 through 26.294 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 §§ 26.295 through 26.296 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 §§ 26.295 through 26.296 and regulations issued by the Governor of the Virgin Islands. These products are also subject to the requirements of § 26.221 of this part.

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

SHIPMENT OF INDUSTRIAL SPIRITS AND SPECIALLY DENATURED SPIRITS

§ 26.292 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.

§ 26.293 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.

§ 26.294 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

§ 26.295 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.

§ 26.296 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

§ 26.297 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.300 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.

§ 26.301 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 § 26.273a, 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. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.302 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 § 26.204 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 § 26.205 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 § 26.205 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 § 26.301 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. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§26.303 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 § 26.302, 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 appropriate ATF officer, and give the original of the transfer record with any attachments to the consignee.

[T.D. ATF–198, 50 FR 8555, Mar. 1, 1985. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.304 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.

§ 26.305 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.306 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.

§ 26.307 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.308 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.

(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 a bond on ATF Form 5154.3 has been approved.

[T.D. ATF–379, 61 FR 31427, June 20, 1996, as amended by T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands must file claim for drawback on ATF Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate ATF officer must 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 § 26.221.

(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 § 26.266.

(d) *Date of filing claim*. Quarterly claims for drawback shall be filed 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; T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.310 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 appropriate 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 appropriate ATF officers.

(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–451, 66 FR 21669, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001.

§ 26.311 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.312 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.314 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 for approval prior to bringing such bottles into the United States. For empty bottles, the bottler shall obtain approval 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 appropriate ATF officer 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 appropriate ATF officer'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; T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.315 [Reserved]

§ 26.316 Bottles not constituting approved containers.

The appropriate ATF officer 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 appropriate ATF officer 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 26.317 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.

§ 26.318 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 appropriate ATF officer may, in nonrecurring cases, authorize the release from customs custody of distilled spirits in bottles, except those coming under the provisions of § 26.316, which, through unintentional error, do not conform to the provisions of this subpart, if such officer finds that such release will not afford jeopardy to the revenue.

[T.D. ATF–451, 66 FR 21670, May 1, 2001. Redesignated and amended by T.D. ATF–459, 66 FR 38552, July 25, 2001]

§ 26.319 Used liquor bottles.

The appropriate ATF officer 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, and further redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

Subpart Q—Miscellaneous Provisions

§ 26.331 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 appropriate ATF officer.. 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 appropriate ATF officer shall determine whether the approval thereof would unduly hinder the effective administration of this part or would result in jeopardy to the revenue. The appropriate ATF officer, 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 appropriate ATF officer. Authorization for the alternate method or procedure may be withdrawn whenever in the judgment of the appropriate ATF officer, 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. Redesignated by T.D. ATF–459, 66 FR 38550, July 25, 2001]

PART 29—STILLS AND MISCELLANEOUS REGULATIONS

Subparts A–B [Reserved]

Subpart C—Stills

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29.59 Records.

Subparts D–Y [Reserved]

EDITORIAL NOTE: Nomenclature changes to part 29 appear by T.D. ATF–462, 66 FR 42737, Aug. 15, 2001.

Subparts A–B [Reserved]

Subpart C—Stills

AUTHORITY: 26 U.S.C. 5002, 5101, 5102, 5179, 5291, 5601, 5615, 5687, 7805.

SOURCE: T.D. ATF–207, 50 FR 23682, June 5, 1985, unless otherwise noted. Redesignated by T.D. ATF–462, 66 FR 42737, Aug. 15, 2001.

§ 29.41 Scope of subpart.

The regulations in this subpart relate to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

§ 29.42 Delegations of the Director.

All of the regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.25, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 29—Stills and Miscellaneous Regulations. ATF delegation orders, such as ATF Order 1130.20, are available to any interested person

by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–439, 66 FR 8769, Feb. 2, 2001]

§ 29.43 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms, including all notices and records, required by this subpart. 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 subpart. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

(Pub. L. 89–554, 80 Stat. 383, as amended (5 U.S.C. 552))

[T.D. ATF–207, 50 FR 23682, June 5, 1985; 50 FR 28572, July 15, 1985; T.D. ATF–439, 66 FR 8769, Feb. 2, 2001]

§ 29.45 Meaning of terms.

When used in this subpart and in the forms prescribed under this subpart, 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 in the masculine shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated 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 1130.25, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 29, Stills and Miscellaneous Regulations.

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

Distilling 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).

Distilling. The conduct by any person of operations that constitute, as defined by 26 U.S.C. 5002, operations as a distiller. Such operations include: (a) The original manufacture of distilled spirits from mash, wort, or wash, or any materials suitable for the production of spirits; (b) the redistillation of spirits in the course of original manufacture; (c) the redistillation of spirits, or products containing spirits; (d) the distillation, redistillation, or recovery of spirits, denatured spirits, or articles containing spirits or denatured spirits; and (e) the redistillation or recovery of tax-free spirits.

Distilling apparatus. A still or condenser, as defined in this section, and any other apparatus to be used for the purpose of distilling.

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

Manufacturer of stills. Any person who manufactures any still or condenser, as defined in this section, or any other apparatus to be used for the purpose of distilling. The term includes a person furnishing separate parts of a complete still or condenser, of any kind, to a person who assembles same into a still or condenser for distilling and a person who procures materials or apparatus and converts same into a still or condenser for distilling.

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

Still. Any apparatus capable of being used for separating alcoholic or spirituous vapors, or spiritous solutions, or spirits, from spirituous solutions or mixtures, but shall not include stills used for laboratory purposes or stills used for distilling water or other nonalcoholic materials where the cubic distilling capacity is one gallon or less.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. The several states and the District of Columbia.

U.S.C. The United States Code.

[T.D. ATF–207, 50 FR 23682, June 5, 1985; 50 FR 28572, July 15, 1985, as amended by T.D. ATF–439, 66 FR 8770, Feb. 2, 2001]

§ 29.47 Notice requirement; manufacture of stills.

(a) *General*. When required by letter issued by the appropriate ATF officer and until notified to the contrary by the appropriate ATF officer, every person who manufactures any still, boiler (double or pot still), condenser, or other apparatus to be used for the purpose of distilling shall give written notice before the still or distilling apparatus is removed from the place of manufacture.

(b) *Preparation*. The notice will be prepared in letter form, executed under the penalties of perjury, and show the following information:

(1) The name and address of the manufacturer;

(2) The name and complete address of the person by whom the apparatus is to be used, and of any other person for, by, or through whom the apparatus is ordered or disposed of;

(3) The distilling purpose for which the apparatus is to be used (distillation of spirits, redistillation of spirits or recovery of spirits, including denatured spirits and articles containing spirits or denatured spirits);

(4) The manufacturer's serial number of the apparatus;

(5) The type and kind of apparatus;

(6) The distilling capacity of the apparatus; and

(7) The date the apparatus is to be removed from the place of manufacture.

(c) *Filing*. The notice will be filed in accordance with the instructions in the letter of the appropriate ATF officer. A copy of the notice will be retained at the place of manufacture as provided by § 29.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

[T.D. ATF–207, 50 FR 23682, June 5, 1985; 50 FR 28572, July 15, 1985; T.D. ATF–439, 66 FR 8769, Feb. 2, 2001]

§ 29.49 Notice requirement; setup of still.

(a) *General*. When required by letter issued by the appropriate ATF officer, no still, boiler (double or pot still), condenser, or other distilling apparatus may be set up without the manufacturer of the still or distilling apparatus first giving written notice of that purpose.

(b) *Preparation*. The notice will be prepared by the manufacturer in letter form, executed under the penalties of perjury, and will contain the information specified in the letter of the appropriate ATF officer.

(c) *Filing*. The notice will be filed in accordance with the instructions in the letter of the appropriate ATF officer. A copy of the notice will be retained at the manufacturer's place of business as provided by § 29.59.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 843, Pub. L. 98–369, 98 Stat. 818 (26 U.S.C. 5101))

[T.D. ATF–207, 50 FR 23682, June 5, 1985, as amended by T.D. ATF–439, 66 FR 8769, Feb. 2, 2001]

§ 29.51 Failure to give notice; penalty.

Failure to give notice of manufacture of still or notice of setup of still when required to do so is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both, and any still, boiler (double or pot still), condenser, or other distilling apparatus to be used for the purpose of distilling which is removed or set up without the required notice having been given is forfeitable to the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1405, as amended, 1412, as amended (26 U.S.C. 5615, 5687))

§ 29.53 Identification of distilling apparatus.

(a) *General.* Each still or condenser manufactured will be identified by the manufacturer as follows:

(1) Name of manufacturer.

(2) Address of manufacturer.

(3) Manufacturer's serial number for the apparatus.

(b) *Marking requirements.* The apparatus will be identified in a legible and durable manner. The required identification marks will be placed on the apparatus in a location where they will not be obscured or concealed.

§ 29.55 Registry of stills and distilling apparatus.

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or distilling apparatus, except that a still or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits is not required to be registered. Registration may be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. chapter 51 or, if qualification is not required under 26 U.S.C. chapter 51, on a letter application, and filing the application with the appropriate ATF officer. Approval of the application by the appropriate ATF officer will constitute registration of the still or distilling apparatus.

(b) *When still is set up.* A still will be regarded as set up and subject to registry when it is in position over a furnace, or connected with a boiler so that heat may be applied, irrespective of whether a condenser is in position. This rule is intended merely as an illustration and should not be construed as covering all types of stills or condensers requiring registration.

(c) *Change in location or ownership.* Where any distilling apparatus registered under this section is to be removed to another location, sold or otherwise disposed of, the registrant shall, prior to the removal or disposition, file a letter notice with the appropriate ATF officer. The letter notice will show the intended method of disposition (sale, destruction, or othewise), the name and complete address of the person to whom disposition will be made, and the purpose for which the apparatus will be used. After removal, sale, or other disposal, the person having possession, custody, or control of any distilling apparatus intended for use in distilling shall immediately register the still or distilling apparatus on its being set up or, if already set up, immediately on obtaining possession, custody, or control. The registrant shall also comply with the procedures prescribed in this chapter for amendment of the registration or permit application.

(Approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

[T.D. ATF–207, 50 FR 23682, June 5, 1985; 50 FR 28572, July 15, 1985; 50 FR 30821, July 30, 1985, as amended by T.D. ATF–439, 66 FR 8770, Feb. 2, 2001]

§ 29.57 Failure to register; penalty.

Any person having possession, custody, or control of any still or distilling apparatus set up who fails to register the still or distilling apparatus is subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both, and the still or distilling apparatus is forfeitable to the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1398, as amended, 1405, as amended (26 U.S.C. 5601, 5615))

§ 29.59 Records.

A copy of each notice of manufacture, or set up, of still required under the provisions of § 29.47, or 29.49, shall be maintained, in chronological order, by the manufacturer at the premises where the still or distilling apparatus is manufactured. In addition, each manufacturer or vendor of stills shall maintain at their premises a record showing all stills and distilling apparatus (including those to be used for purposes other than distilling) manufactured, received, removed, or otherwise disposed of. The record will also show the name and address of the purchaser and the purpose for which each

apparatus is to be used. Any commercial document on which all the required information has been recorded may be used for the record. The records will be kept available for a period of three years for inspection by appropriate ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0341)

[T.D. ATF–207, 50 FR 23682, June 5, 1985, as amended by T.D. ATF–439, 66 FR 8770, Feb. 2, 2001]

Subparts D–Y [Reserved]

PART 30—GAUGING MANUAL

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30.65 Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.
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30.67 Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit.

Subpart F—Optional Gauging Procedures

30.71 Optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.
30.72 Recording obscuration by proprietors using the optional method for determination of proof.

AUTHORITY: 26 U.S.C. 7805.

SOURCE: T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 30 appear by T.D. ATF–438, 66 FR 5481, Jan. 19, 2001.

Subpart A—Scope of Regulations

§ 30.1 Gauging of distilled spirits.

(a) *General.* This part relates to the gauging of distilled spirits. The term ''gauging'' means the determination of the proof and the quantity of distilled spirits. The procedures prescribed in or authorized under the provisions of this part, except as may be otherwise authorized in this chapter, shall be followed in making any determination of quantity or proof of distilled spirits required by or under the authority of regulations in this chapter. The tables referred to in subpart E of this part appear in the ''Gauging Manual Embracing Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight'' as incorporated by reference in this part (see paragraph (c) of this section). These tables, together with their instructions, shall be used, wherever applicable, in making the necessary computations from gauge data.

(b) *Tables referred to in subpart E of this part.* Table 1 provides a method of correcting hydrometer indications at temperatures between 0 and 100 degrees Fahrenheit to true proof. If distilled spirits contain dissolved solids, temperature correction of the hydrometer reading by the use of this table would result in apparent proof rather than true proof. Tables 2 and 3 show the gallonage of spirituous liquor according to weight and proof. Table 4 shows the gallons per pound at each one-tenth proof from 1 to 200 proof. Table 5 shows the weight per wine gallon and proof gallon at each proof. Table 6 shows the volumes of alcohol and water and the specific gravity (air and vacuum) of spirituous liquor at each proof. Table 7 provides a means of ascertaining the volume (at 60 degree Fahrenheit) of spirits at various temperatures ranging from 18 degrees through 100 degrees Fahrenheit.

(c) *Incorporation by reference.* The ''Gauging Manual Embracing Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight'' (ATF Publication 5110.6; November 1978) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on March 23, 1981. This publication may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); 80 Stat. 383, as amended (5 U.S.C. 552(a)))

Subpart B—Definitions

§ 30.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings 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.

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 1130.17, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 30—Gauging Manual.

Bulk conveyance. Any tank car, tank truck, tank ship, tank barge, or other similar container approved by the appropriate ATF officer, authorized for the conveyance of spirits (including denatured spirits) in bulk.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring or conveying distilled spirits.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added pursuant to formulas prescribed in 27 CFR Part 21.

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

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

I.R.C. The Internal Revenue Code of 1954, as amended.

Package. Any cask, barrel, drum, or similar container approved under the provisions of this chapter.

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 United States gallon of proof spirits, or the alcoholic equivalent thereof.

Proof spirits. That liquid which contains one-half its volume of ethyl alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (0.7939) in vacuum at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

Spirits, spirituous liquor, or distilled 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 unless specifically stated. For the sole purpose of gauging wine and alcoholic flavoring materials on the bonded premises of a distilled spirits plant, such alcoholic ingredients shall have the same meaning described herein to spirits, spirituous liquor, or distilled spirits.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–438, 66 FR 5481, Jan. 19, 2001]

Subpart C—Gauging Instruments

§ 30.21 Requirements.

(a) *General*. The proof of distilled spirits shall be determined by the use of gauging instruments as prescribed in this part.

(b) *Proprietors*. Proprietors shall use only accurate hydrometers and thermometers that show subdivisions or graduations of proof and temperature which are at least as delimitated as the instruments described in § 30.22.

(c) *Appropriate ATF officers*. Appropriate ATF officers shall use only hydrometers and thermometers furnished by the Government. However, where this part requires the use of a specific gravity hydrometer, ATF officers shall use precision grade specific gravity hydrometers conforming to the provisions of § 30.24, furnished by the proprietor. However, the appropriate ATF officer may authorize the use of other instruments approved by the appropriate ATF officer as being equally satisfactory for determination of specific gravity and for gauging. From time to time appropriate ATF officers shall verify the accuracy of hydrometers and thermometers used by proprietors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–438, 66 FR 5481, Jan. 19, 2001]

§ 30.22 Hydrometers and thermometers.

The hydrometers used are graduated to read the proof of aqueous alcoholic solutions at 60 degrees Fahrenheit; thus, they read, 0 for water, 100 for proof spirits, and 200 for absolute alcohol. Because of temperature-density relationships and the selection of 60 degrees Fahrenheit for reporting proof, the hydrometer readings will be less than the true percent of proof at temperatures below 60 degrees Fahrenheit and greater than the true percent of proof at temperatures above 60 degrees Fahrenheit. Hence, corrections are necessary for hydrometer readings at temperatures other than 60 degrees Fahrenheit. Precision hydrometers shall be used for gauging spirits. Hydrometers and thermometers shall be used and the true percent of proof shall be determined in accordance with § 30.31. Hydrometers are designated by letter according to range of proof and are provided in ranges and subdivisions of stems as follows:

Precision	Range	Subdivision
F	0 to 20	0.2°
G	20 to 40	0.2°
H	40 to 60	0.2°
I	60 to 80	0.2°
K	75 to 95	0.2°
L	90 to 110	0.2°
M	105 to 125	0.2°
N	125 to 145	0.2°
P	145 to 165	0.2°
Q	165 to 185	0.2°
R	185 to 206	0.2°

Thermometers are designated by type according to range of degrees Fahrenheit and are provided in ranges and subdivisions of degrees as follows:

Type	Range	Subdivision
Pencil type	10° to 100°	1°
V-back	10° to 100°	1°
Glass shell (earlier model)	40° to 100°	½°
Glass shell (later model)	40° to 100°	¼°

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37003, July 16, 1996]

§ 30.23 Use of precision hydrometers and thermometers.

Care should be exercised to obtain accurate hydrometer and thermometer readings. In order to accomplish this result, the following precautions should be observed. Bulk spirits should be thoroughly agitated so that the test

samples will be representative of the entire quantity. The hydrometers should be kept clean and free of any oily substance. Immediately before readings are taken, the glass cylinder containing the thermometer should be rinsed several times with the spirits which are to be gauged so as to bring both the cylinder and the thermometer to the temperature of the spirits (if time permits, it is desirable to bring both the spirits and the instruments to room temperature). If the outer surface of the cylinder becomes wet, it should be wiped dry to avoid the cooling effect of rapid evaporation. During the readings the cylinder should be protected from drafts or other conditions which might affect its temperature or that of the spirits which it contains. The hands should not be placed on the cylinder in such a manner as to warm the liquid contained therein. The hydrometer should be inserted in the liquid and the hydrometer bulb raised and lowered from top to bottom 5 or 6 times to obtain an even temperature distribution over its surface, and, while the hydrometer bulb remains in the liquid, the stem should be dried and the hydrometer allowed to come to rest without wetting more than a few tenths degrees of the exposed stem. Special care should be taken to ascertain the exact point at which the level of the surface liquid intersects the scale of proof in the stem of the hydrometer. The hydrometer and thermometer should be immediately read, as nearly simultaneously as possible. In reading the hydrometer, a sighting should be made slightly below the plane of the surface of the liquid and the line of sight should then be raised slowly, being kept perpendicular to the hydrometer stem, until the appearance of the surface changes from an ellipse to a straight line. The point where this line intersects the hydrometer scale is the correct reading of the hydrometer. When the correct readings of the hydrometer and the thermometer have been determined, the true percent of proof shall be ascertained from Table 1. Another sample of the spirits should then be taken and be tested in the same manner so as to verify the proof originally ascertained. Hydrometer readings should be made to the nearest 0.05 degree and thermometer readings should be made to the nearest 0.1 degree, and instrument correction factors, if any, should be applied. It is necessary to interpolate in Table 1 for fractional hydrometer and thermometer readings.

Example. A hydrometer reads 192.85° at 72.10 °F. The correction factors for the hydrometer and the thermometer, respectively are minus 0.03° and plus 0.05°. The corrected reading, then, is 192.82° at 72.15 °F.

From Table 1:

193.0° at 72.0 °F.	=	190.2°
192.0° at 72.0 °F.	=	189.1°
Difference	=	1.1°
192.0° at 72.0 °F.	=	189.1°
192.0° at 73.0 °F.	=	188.9°
Difference	=	0.2°

The hydrometer difference (1.1°) multiplied by the fractional degree of the hydrometer reading (0.82°)=0.902.

The temperature difference (0.2°) multiplied by the fractional degree of the temperature reading (0.15°)=0.03°.

Proof at 60° F.=189.1+0.902–0.03=189.972°=190.0°.

As shown, the final proof is rounded to the nearest tenth of a degree of proof. In such cases, if the hundredths decimal is less than five, it will be dropped; if it is five or over, a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37004, July 16, 1996]

§ 30.24 Specific gravity hydrometers.

(a) The specific gravity hydrometers furnished by proprietors to appropriate ATF officers shall conform to the standard specifications of the American Society for Testing and Materials (ASTM) for such instruments. Such specific gravity hydrometers shall be of a precision grade, standardization temperature 60 °/60 °F., and provided in the following ranges and subdivisions:

Range	Subdivision
1.0000 to 1.0500	0.0005
1.0500 to 1.1000	0.0005
1.1000 to 1.1500	0.0005
1.1500 to 1.2000	0.0005
1.2000 to 1.2500	0.0005

No instrument shall be in error by more than 0.0005 specific gravity.

(b) A certificate of accuracy prepared by the instrument manufacturer for the instrument shall be furnished to the appropriate ATF officer.

(c) *Incorporation by reference.* The ''Standard Specification for ASTM Hydrometers,'' (E 100–72 (1978)), published in the ''1980 Annual Book of ASTM Standards'' (STP 25 1062 (1980)), is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on March 23, 1981. This publication may be inspected at the Office of Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(Sec. 201. Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); 80 Stat. 383, as amended (5 U.S.C. 552(a)))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37004, July 16, 1996]

§ 30.25 Use of precision specific gravity hydrometers.

The provisions of § 30.23 respecting the care, handling, and use of precision instruments shall be followed with respect to the care, handling, and use of precision grade specific gravity hydrometers. Specific gravity hydrometers shall be read to the nearest subdivision. Because of temperature density relationships and the selection of the standardization temperature of 60 °/60 °F., the specific gravity readings will be greater at temperatures below 60 degrees Fahrenheit and less at temperatures above 60 degress Fahrenheit. Hence, correction of the specific gravity readings will be made for temperature other than 60 degrees Fahrenheit. Such correction may be ascertained by dividing the specific gravity hydrometer reading by the applicable correction factor in Table 7.

Example: The specific gravity hydrometer reading is 1.1525, the thermometer reading is 68 degrees Fahrenheit, and the true proof of the spirits is 115 degrees. The correct specific gravity reading will be ascertained as follows:

(a) From Table 7, the correction factor for 115° proof at 68 °F. is 0.996.

(b) 1.1525 divided by 0.996=1.1571, the corrected specific gravity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart D—Gauging Procedures

§ 30.31 Determination of proof.

(a) *General.* The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons.

(b) *Solids content not more than 600 milligrams.* Except as otherwise authorized by the appropriate ATF officer, the proof of spirits containing not more than 600 milligrams of solids per 100 milliliters of spirits shall be determined by the use of a hydrometer and thermometer in accordance with the provisions of § 30.23 except that if such spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters at gauge proof, there shall be added to the proof so determined the obscuration determined as prescribed in § 30.32.

(c) *Solids content over 600 milligrams.* If such spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, the proof shall be determined on the basis of true proof determined as follows:

(1) By the use of a hydrometer and a thermometer after the spirits have been distilled in a small laboratory still and restored to the original volume and temperature by the addition of pure water to the distillate; or

(2) By a recognized laboratory method which is equal or superior in accuracy to the distillation method.

(d) *Initial proof.* Except when the proof of spirits is used in making the guage prescribed in 27 CFR 19.383 or in making a gauge for determination of tax, the initial determination of proof made on the bonded premises of a distilled spirits plant for such spirits may be used whenever a subsequent gauge is required to be made at that same plant provided that no material has been added to change the proof of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985]

§ 30.32 Determination of proof obscuration.

(a) *General.* Proof obscuration of spirits containing more than 400 but not more than 600 milligrams of solids per 100 milliliters shall be determined by one of the following methods. The evaporation method may be used only for spirits in the range of 80–100 degrees at gauge proof.

(b) *Evaporation method.* Evaporate the water and alcohol from a carefully measured 25 milliliter sample of spirits, dry the residue at 100 degrees centigrade for 30 minutes and then weigh the residue precisely. Multiply the weight of the residue by 4 to determine the weight of solids in 100 milliliters. The resulting weight per 100 milliliters multiplied by 4 will give the obscuration. Experience has shown that 0.1 gram (100 milligrams) of solids per 100 milliliters of spirits in the range of 80–100 degrees proof will obscure the true proof by 0.4 of one degree of proof. For example, if the weight of solids remaining after evaporation of 25 milliliters 0.125 gram, the amount of solids present in 100 milliliters of the spirits is 0.50 gram (4 times 0.125). The obscuration is 4 times 0.50, which is two degrees of proof. This value added to the temperature corrected hydrometer reading will give the true proof.

(c) *Distillation method.* Determine the apparent proof and temperature of the sample of spirits and then distill a carefully measured sample in a small laboratory still, and collect a quantity of the distillate, 1 or 2 milliliters less than the original sample. The distillate is adjusted to the original temperature and restored to the original volume by addition of distilled water. The proof of the restored distillate is then determined by use of a precision hydrometer and thermometer in accordance with the provisions of § 13.23 to the nearest 0.1 degree of proof. The difference between the proof so determined and the apparent proof of the undistilled sample is the obscuration; or

(d) *Pycnometer method.* Determine the specific gravity of the undistilled sample, distill and restore the samples as provided in paragraph (c) of this section and determine the specific gravity of the restored distillate by means of a pycnometer. The specific gravities so obtained will be converted to degrees of proof by interpolation of Table 6 to the nearest 0.1 degree of proof. The difference in proof so obtained is the obscuration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37004, July 16, 1996]

DETERMINATION OF QUANTITY

§ 30.36 General requirements.

The quantity determination of distilled spirits that are withdrawn from bond in bulk upon tax determination or payment shall be by weight. The quantity of other distilled spirits or denatured spirits may be determined by weight or by volume. When the quantity of distilled spirits or denatured distilled spirits is determined by volume, such determination may be by meter as provided in 27 CFR Part 19, or when approved by the appropriate ATF officer, another method or device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985]

DETERMINATION OF QUANTITY BY WEIGHT

§ 30.41 Bulk spirits.

When spirits (including denatured spirits) are to be gauged by weight in bulk quantities, the weight shall be determined by means of weighing tanks, mounted on accurate scales. Before each use, the scales shall be balanced at zero load; thereupon the spirits shall be run into the weighing tank and proofed as prescribed in § 30.31. However, if the spirits are to be reduced in proof, the spirits shall be so reduced before final determination of the proof. The scales shall then be brought to a balanced condition and the weight of the spirits determined by reading the beam to the nearest graduation mark. From the weight and the proof thus ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 4. However, in the case of spirits which contain solids in excess of 600 milligrams per 100 milliliters, the quantity in proof gallons

shall be determined by first ascertaining the wine gallons per pound of the spirits and multiplying the wine gallons per pound by the weight, in pounds, of the spirits being gauged and by the true proof (determined as prescribed in § 30.31) and dividing the result by 100. The wine gallons per pound of spirits containing solids in excess of 600 milligrams per 100 milliliters shall be ascertained by:

(a) Use of a precision hydrometer and thermometer, in accordance with the provisions of § 30.23, to determine the apparent proof of the spirits (if specific gravity at the temperature of the spirits is not more than 1.0) and reference to Table 4 for the wine gallons per pound, or

(b) Use of a specific gravity hydrometer, in accordance with the provisions of § 30.25, to determine the specific gravity of the spirits (if the specific gravity at the temperature of the spirits is more than 1.0) and dividing that specific gravity (corrected to 60 degrees Fahrenheit) into the factor 0.120074 (the wine gallons per pound for water at 60 degrees Fahrenheit). When withdrawing a portion of the contents of a weighing tank, the difference between the quantity (ascertained by proofing and weighing) in the tank immediately before the removal of the spirits and the quantity (ascertained by proofing and weighing) in the tank immediately after the removal of the spirits shall be the quantity considered to be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.42 Denatured spirits.

The quantity, in gallons, of any lot or package of specially denatured spirits may be determined by weighing it and then dividing its weight by the weight per gallon of the formula concerned, as given in the appropriate tables in subpart H of 27 CFR Part 21. In the case of completely denatured spirits, the gallonage of any lot or package may be ascertained by determining its weight and apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit) and then multiplying the weight of the wine gallons per pound factor shown in Table 4 for the (apparent) proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.43 Packaged spirits.

When the quantity of spirits (including denatured spirits when gauged by weight) in packages, such as barrels, drums, and similar portable containers, is to be determined by gauge of the individual packages, such quantity shall, except as provided in paragraph (b) of this section, be determined by weighing each package on an accurate weighing beam or platform scale having a beam or dial showing weight in pounds and half pounds, where packages having a capacity in excess of 10 wine gallons are to be gauged, or in pounds and ounces, or pounds and hundredths of a pound, where packages designed to hold 10 wine gallons or less are to be gauged. In either case the tare must be determined and subtracted from the gross weight to obtain the net weight. From the proof and weight ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 2, 3, or 4. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the proof gallons shall be determined as prescribed for such spirits in § 30.41. Notwithstanding the provisions of this section or of § 30.44, (a) gross weights and tares of packages being filled need not be taken in any case where the gauge of the spirits is not derived from such weights under the gauging procedure being utilized, and (b) meters, other devices, or other methods may be used for determining the quantity of spirits in individual packages, when such meter is used as provided in 27 CFR Part 19, or, when such other device or method has been approved by the appropriate ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37004, July 16, 1996]

§ 30.44 Weighing containers.

(a) *Weighing containers of more than 10 wine gallons.* The weight of containers

having a capacity in excess of 10 wine gallons shall be determined and recorded in pounds and half pounds.

(b) *Weighing containers of 10 wine gallons or less*. The weight for containers of a capacity of 10 wine gallons or less shall be determined in pounds and ounces, or pounds and hundredths of a pound, and shall be recorded in pounds and hundredths of a pound. The equivalent pounds and hundredths of pounds and the corresponding wine gallons and proof gallons shall be expressed as shown in the following table for the respective weights in pounds and ounces and proofs shown therein or, as applicable, computed in accordance with rules in this section.

WEIGHT OF CONTENTS

Size of container, wine gallons	Pounds	Ozs.	Weight in pounds and hundredths of a pound	Contents in wine gallons	Proof gallons
190 proof spirits:					
1	6	13	6.81	1	1.9
2	13	10	13.63	2	3.8
5	34	00	34.00	5	9.5
10	68	00	68.00	10	19.0
192 proof spirits:					
1	6	13	6.81	1	1.9
2	13	9	13.56	2	3.8
5	33	13	33.81	5	9.6
10	67	10	67.63	10	19.2
200 proof spirits:					
1	6	10	6.63	1	2.0
2	13	4	13.25	2	4.0
5	33	1	33.06	5	10.0
10	66	2	66.12	10	20.0

(c) *Containers of other proofs or sizes*. Where containers of proofs or sizes not shown above are to be filled, the following rule may be used for ascertaining the weight of the spirits to be placed in the container: Divide the number of gallons representing the quantity of spirits to be placed in the container by the fractional part of a gallon equivalent to 1 pound, to obtain the weight of the spirits in pounds and fractions of a pound to two decimal places. Reduce the decimal fraction of a pound to ounces by multiplying by 16, calling any fraction of an ounce a whole ounce. The pounds and ounces thus obtained will determine the point to which the spirits must be weighed to produce the results desired. If the weight must be marked on the container in pounds and decimal fractions of a pound, it will be necessary to convert the ounces to hundredths of a pound. The fraction of a gallon equivalent to 1 pound at any given proof shall be ascertained by reference to Table 4. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the fraction of a gallon equivalent to 1 pound shall be determined as prescribed for such spirits in § 30.41.

Example. It is desired to fill a 1-gallon can with precisely 1 wine gallon of 194 proof spirits:

1.00 divided by 0.14866=6.73 pounds.

0.73 multiplied by 16=11.68 ounces, rounded to 12 ounces.

Weight of spirits—6 pounds, 12 ounces.

Weight, if required, to be marked on can-6.75 pounds.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.45 Withdrawal gauge for packages.

When wooden packages are to be individually gauged for withdrawal, actual tare of the packages shall be determined. The actual tare of a package shall be determined by weighing it after its contents (including rinse water, if any) have been temporarily removed to a separate container or vessel. Where the contents of packages have been temporarily removed for determination of tare, the proof, if any rinse water is added to the spirits, shall be determined after a thorough mixing of the rinse water and the spirits and before return of the spirits to the rinsed packages, and the gross weight shall be determined after the spirits and any added rinse water have been returned to the packages. In the case of metal packages the tare established at the time of filling may be used unless it appears to be incorrect. From the proofs and the net weights of the packages, the wine gallons (if desired) and the proof gallons of spirits shall be determined by the use of Table 2. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the wine gallon and proof gallon contents shall be determined as prescribed for such spirits in § 30.41. If

either the weight or the proof is beyond the limitations of table 2, either table 3 or table 4 may be used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

DETERMINATION OF QUANTITY BY VOLUME

§ 30.51 Procedures for measurement of bulk spirits.

Where the quantity of spirits (including denatured spirits) in bulk is to be determined by volume as authorized by this chapter, the measurement shall be made in tanks, by meters as provided in 27 CFR part 19, or by other devices or methods authorized by the appropriate ATF official, or as otherwise provided in this chapter, or such measurement may be made in tank cars or tank trucks if calibration charts for such conveyances are provided and such charts have been accurately prepared, and certified as accurate, by engineers or other persons qualified to calibrate such conveyances. Volumetric measurements in tanks shall be made only in accurately calibrated tanks equipped with suitable measuring devices, whereby the actual contents can be correctly ascertained. If the temperature of spirits (including denatured spirits) is other than the standard of 60 degrees Fahrenheit, gallonage determined by volumetric measurements shall be corrected to the standard temperature by means of table 7. In the case of denatured spirits, the temperature-correction factor for the proof of the spirits used in denaturation will give sufficiently accurate results, except that the temperature-correction factor used for specially denatured spirits, Formula No. 18, should be that given in table 7 for 100 proof spirits. When the quantity of spirits, in wine gallons, has been determined by volumetric measurement, the number of proof gallons shall be obtained by multiplying the wine gallons by the proof of the spirits as determined under § 30.31.

Example

Gauge glass reading inches—88.
Wine gallons per inch—48.96.
Temperature °F—72.
Proof of spirits—86.8.
Temperature correction factor (Table 7)—0.995.
48.96 W.G.×88=4308.48 wine gallons.
4308.48 W.G.×0.995=4286.94 wine gallons.
4286.94 W.G.×0.868=3721.06392=3721.1 proof gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8535, Mar. 1, 1985, as amended by T.D. ATF–381, 61 FR 37004, July 16, 1996]

§ 30.52 Procedure for measurement of cased spirits.

Where the quantity of spirits in a case is to be determined by volume, such determination shall be made by ascertaining the contents of one bottle in the case and multiplying that figure by the number of bottles in the case. For cases containing bottles filled according to the metric system of measure, the quantity determined shall be converted to wine gallons, as provided in § 19.722 of this chapter. The wine gallons of spirits thus determined for one case may then be multiplied by the number of cases containing spirits at the same proof when determining the quantity of spirits for more than one case. The proof gallons of spirits in cases shall be determined by multiplying the wine gallons by the proof (divided by 100).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart E—Prescribed Tables

NOTE. The tables referred to in this subpart appear in their entirety in the ''Gauging Manual Embracing Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight'' which is incorporated by reference in this part (see § 30.1).

§ 30.61 Table 1, showing the true percent of proof spirit for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit.

This table shows the true percent of proof of distilled spirits for indications of the hydrometer likely to occur in practice at temperatures between zero and 100 degrees Fahrenheit and shall be used in determining the proof of spirits. The left-hand column contains the reading of the hydrometer and on the same horizontal line, in the body of the

table, in the ''Temperature'' column corresponding to the reading of the thermometer is the corrected reading or ''true percent of proof.'' The table is computed for tenths of a percent.

Example.

Temperature, °F	75
Hydrometer reading	193
True percent of proof	189.5

Where fractional readings are ascertained, the proper interpolations will be made (see § 30.23). If the distilled spirits contain dissolved solids, temperature-correction of the hydrometer reading by the use of this table would result in apparent proof rather than true proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.62 Table 2, showing wine gallons and proof gallons by weight.

The wine and proof gallon content by weight and proof of packages of distilled spirits usually found in actual practice will be ascertained from this table. The left-hand column contains the weights. The true percent of proof is shown on the heading of each page in a range from 90 degrees to 200 degrees. Under the true percent of proof and on the same horizontal line with the weight will be found the wine gallons (at 60 degrees Fahrenheit) and the proof gallons respectively. Where either the weight or the proof of a quantity of spirits is beyond the limitations of this table, the number of proof gallons may be ascertained by reference to Table 3. This table may also be used to ascertain the wine gallons (at 60 degrees Fahrenheit) and proof gallons of spirituous liquor containing dissolved solids where the weight, apparent proof (hydrometer indication corrected to 60 degrees Fahrenheit), and obscuration factor have been determined.

Example.

334 lbs. of distilled spirits.
Apparent proof—96.0°.
Obscuration—0.8°.
True Proof 96.0°+0.8°=96.8°.
334 lbs. at 96.0° apparent proof=42.8 wine gallons.
42.8 wine gallons x 96.8°=41.4 proof gallons.

In addition this table may be used to obtain the wine gallons, at the prevailing temperature, of most liquids within the range of the table, from the weight of the liquid and the uncorrected reading of the hydrometer stem. An application of this would be in determining the capacity of a package.

Example. It is desired to determine, or to check the rated capacity of a package having a net weight of 395 pounds when completely filled with spirits having an uncorrected hydrometer reading of 113.0°. The full capacity of the package, 51.5 wine gallons, would be found by referring to the table at 395 pounds and 113° proof (hydrometer reading).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.63 Table 3, for determining the number of proof gallons from the weight and proof of spirituous liquor.

When the weight or proof of a quantity of distilled spirits is not found in Table 2, the proof gallons may be ascertained from Table 3. The wine gallons (at 60 degrees Fahrenheit) may be ascertained by dividing the proof gallons by the proof.

Example. A tank car of spirits of 190 degrees of proof weighed 60,378 pounds net. We find—

	Proof gallons
60,000 pounds equal to	16,778.4
300 pounds equal to	83.9
70 pounds equal to	19.6
8 pounds equal to	2.2
Total	16,884.1

That is, the total weight of 60,378 pounds of spirits at 190 proof is equal to 16,884.1 proof gallons. The equivalent gallonage for 70 pounds is found from the column 700 pounds by moving the decimal point one place to the left; that for 8 pounds from the column 800 pounds by moving the decimal point two places to the left.

Example. A package of spirits at 86 proof weighed 321½ pounds net. We find—

	Proof gallons
300 pounds equal to	32.7
20 pounds equal to	2.2
1 pound equal to	.1
½ pound equal to	.1
Total	35.1

That is, 321½ pounds of spirits at 86 proof is equal to 35.1 proof gallons. The equivalent gallonage for 20 pounds is found from the column 200 pounds by moving the decimal point

one place to the left; that for 1 pound from the column 100 pounds by moving the decimal point two places to the left; that for the ½ pound from the column 500 pounds by moving the decimal point three places to the left.

Fractional gallons beyond the first decimal ascertained through use of this table will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more. The wine gallons (at 60 degrees Fahrenheit) may be determined by dividing the proof gallons by the proof. For example: 35.1 divided by 0.86 equals 40.8 wine gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C.5204))

§ 30.64 Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof of spirituous liquor.

This table provides a method for use in ascertaining the wine gallon (at 60 degrees Fahrenheit) and/or proof gallon contents of containers of spirits by multiplying the net weight of the spirits by the fractional part of a gallon per pound shown in the table for spirits of the same proof. Fractional gallons beyond the first decimal will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more.

Example. It is desired to ascertain the wine gallons and proof gallons of a tank of 190 proof spirits weighing 81,000 pounds.

81,000×0.14718=11,921.58=11,921.6 wine gallons.
81,000×0.27964=22,650.84=22,650.8 proof gallons.

This table may also be used for ascertaining the quantity of water required to reduce to a given proof. To do this, divide the proof gallons of spirits to be reduced by the fractional part of a proof gallon per pound of spirits at the proof to which the spirits are to be reduced, and subtract from the quotient the net weight of the spirits before reduction. The remainder will be the pounds of water needed to reduce the spirits to the desired proof.

Example. It is desired to ascertain the quantity of water needed to reduce 1,000 pounds of 200 proof spirits, 302.58 proof gallons, to 190 proof:

302.58 divided by 0.27964 equals 1,082.03 pounds, weight of spirits after reduction.
1.082.03 minus 1,000 equals 82.03 pounds, weight of water required to reduce to desired proof.

The slight variation between this table and Tables 2, 3, and 5 on some calculations is due to the dropping or adding of fractions beyond the first decimal in those tables. This table may also be used to determine the wine gallons (at 60 degrees Fahrenheit) of distilled spirits containing dissolved solids from the total weight of the liquid and its apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit). The proof gallons may then be found by multiplying the wine gallons by the true proof.

Example.
5,350 pounds of blended whisky containing added solids

Temperature °F	75.0°
Hydrometer reading	92.0°
Apparent proof	85.5°
Obscuration	0.5°
True proof	86.0°

5,350.0 lbs.×0.12676 (W.G. per pound factor for apparent proof of 85.5°)=678.2 wine gallons
678.2 W.G.×0.86=583.3 proof gallons

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.65 Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.

This table may be used to ascertain the weight of any given number of wine gallons (at 60 degrees Fahrenheit) or proof gallons of spirits by multiplying the pounds per gallon by the given number of gallons of the spirits. The table should be especially useful where it is desired to weigh a precise quantity of spirits.

Example. It is desired to ascertain the weight of 100 wine gallons of 190 proof spirits:

6.79434×100 equals 679.43 pounds, net weight of 100 wine gallons of 190 proofs spirits.

Example. It is desired to ascertain the weight of 100 proof gallons of 190 proof spirits.

3.57597×100 equals 357.60 pounds, net weight of 100 proof gallons of 190 proof spirits.

The slight variation between this table and Tables 2 and 3 on some calculations is due to dropping or adding of fractions beyond the first decimal on those tables. This table also shows the weight per wine gallon (at the prevailing temperature) corresponding to

each uncorrected reading of a proof hydrometer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.66 Table 6, showing respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor.

This table provides an alternate method for use in ascertaining the quantity of water needed to reduce the strength of distilled spirits by a definite amount. To do this, divide the alcohol in the given strength by the alcohol in the required strength, multiply the quotient by the water in the required strength, and subtract the water in the given strength from the product. The remainder is the number of gallons of water to be added to 100 gallons of spirits of the given strength to produce a spirit of a required strength.

Example. It is desired to reduce spirits of 191 proof to 188 proof. We find that 191 proof spirits contains 95.5 parts alcohol and 5.59 parts water, and 188 proof spirits contains 94.0 parts alcohol and 7.36 parts water.

95.5 (the strength of 100 wine gallons of spirits at 191 proof) divided by 94.0 (the strength of 100 wine gallons of spirits at 188 proof) equals 1.01.

7.36 (the water in 188 proof) multiplied by 1.01 equals 7.43.

7.43 less 5.59 (the water in 191 proof spirits) equal 1.84 gallons of water to be added to each 100 wine gallons of 191 proof spirits to be reduced.

This rule is applicable for reducing to any proof; but when it is desired to reduce to 100 proof, it is sufficient to point off two decimals in the given proof, multiply by 53.73, and deduct the water in the given strength. Thus, to reduce 112 proof spirits to 100 proof:

1.12×53.73–47.75 equals 12.42 gallons of water to be added to each 100 wine gallons of spirits to be reduced.

This table may also be used to obtain the proof gallonage of spirituous liquor according to weight and percent of proof.

Example. It is desired to determine the number of gallons in 400 pounds of spirits of 141 percent of proof. Multiply the weight of one gallon of water in air by the specific gravity in air of the spirits—8.32823 by 0.88862—the product (7.40063) divided into 400 gives 54.049 wine gallons, which rounded to the nearest hundredth is 54.05 and multiplied by 1.41 gives 76.2 proof gallons. In rounding off where the decimal is less than five, it will be dropped; if it is five or over a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.67 Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit.

This table is prescribed for use in correcting spirits to volume at 60 degrees Fahrenheit. To do this, multiply the wine gallons of spirits which it is desired to correct to volume at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The product will be the corrected gallonage at 60 degrees Fahrenheit. This table is also prescribed for use in ascertaining the true capacity of containers where the wine gallon contents at 60 degrees Fahrenheit have been determined by weight in accordance with Tables 2, 3, 4, or 5. This is accomplished by dividing the wine gallons at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The quotient will be the true capacity of the container.

Example. It is desired to ascertain the volume at 60 degrees Fahrenheit of 1,000 wine gallons of 190 proof spirits at 76 degrees Fahrenheit:

1,000×0.991 equals 991 wine gallons, the corrected gallonage at 60 degrees Fahrenheit.

Example. It is desired to ascertain the capacity of a container of 190 proof spirits at 76 degrees Fahrenheit, shown by Table 2 to contain 55.1 wine gallons at 60 degrees Fahrenheit:

55.1 divided by 0.991 equals 55.6 wine gallons, the true capacity of the container when filled with spirits of 60 degrees temperature.

It will be noted the table is prepared in multiples of 5 percent of proof and 2 degrees temperature. Where the spirits to be corrected are of an odd temperature, one-half of the difference, if any, between the factors for the next higher and lower temperature, should be added to the factor for the next higher temperature.

Example. It is desired to correct spirits of 180 proof at 51 degrees temperature:

1.006 (50°) − 1.005 (52°)=0.001 divided by 2=0.0005

0.0005+1.005=1.0055 correction factor at 51 °F.

Example. It is desired to correct spirits of 180 proof at 53 degrees temperature:

1.005 (52°) − 1.003 (54°)=0.002 divided by 2=0.001
0.001+1.003=1.004 correction factor at 53 °F.

Where the percent of proof is other than a multiple of five, the difference, if any, between the factors for the next higher and lower proofs should be divided by five and multiplied by the degrees of proof beyond the next lower proof, and the fractional product so obtained should be added to the factor for the next lower proof (if the temperature is above 60 degrees Fahrenheit, the fractional product so obtained must be subtracted from the factor for next lower proof), or if it is also necessary to correct the factor because of odd temperature, to the temperature corrected factor for the next lower proof.

Example. It is desired to ascertain the correction factor for spirits of 112 proof at 47 degrees temperature:

1.006 (46°) − 1.005 (48°)=0.001 divided by 2=0.0005
0.0005+1.005=1.0055 corrected factor at 47 °F.
1.007 (115 proof) − 1.006 (110 proof)=0.001
0.001 divided by 5=0.0002 (for each percent of proof)×2 (for 112 proof)=0.0001
0.0004=1.0055 (corrected factor at 47 °F.)=1.0059 correction factor to be used for 112 proof at 47 °F

Example. It is desired to ascertain the correction factor for spirits of 97 proof at 93 degrees temperature:

0.986 (92°) − 0.985 (94°)=0.001 divided by 2=0.0005
0.0005+0.985=0.9855 corrected factor at 93 °F.
0.986 (95 proof) − 0.985 (100 proof)=0.001
0.001 divided by 5=0.0002 (for each percent of proof)×2 (for 97 proof)=0.0004
0.9855 (corrected factor at 93 °F.)=0.0005=0.9851 correction factor to be used for 97 proof at 93 °F.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart F—Optional Gauging Procedures

§ 30.71 Optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.

The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons and all fractional parts thereof to the nearest tenth proof gallon. The proof of spirits containing solids of 400 milligrams or less per 100 milliliters shall be determined by the use of a hydrometer and a thermometer in accordance with the provisions of § 30.23. However, notwithstanding the provisions of § 30.31, the proprietor may, at his option, add to the proof so determined the obscuration determined as prescribed in § 30.32.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5211))

§ 30.72 Recording obscuration by proprietors using the optional method for determination of proof.

Any proprietor using the optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milligrams as provided in § 30.71 shall record the obscuration so determined on the record of gauge required by 27 CFR part 19.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5211))

SUBCHAPTER B—TOBACCO

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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; T.D. ATF–460, 66 FR 39093, July 27, 2001.

EDITORIAL NOTE: Nomenclature changes to part 40 appear by T.D. ATF–460, 66 FR 39094–39096, July 27, 2001 and by T.D. ATF–464, 66 FR 43479, Aug. 20, 2001.

Subpart A—Scope of Regulations

§40.1 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]

§40.2 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

§40.11 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 1130.30, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes.

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 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 manufactures cigarette paper, or makes up cigarette paper 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 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 §40.22 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; T.D. ATF, 457, 66 FR 32220, June 14, 2001; T.D. ATF–460, 66 FR 39094, July 27, 2001; T.D. ATF–467, 66 FR 49532, Sept. 28, 2001]

Subpart C—Taxes

§ 40.21 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 § 40.22 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]

§ 40.22 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]

§ 40.23 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]

§ 40.24 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)

§ 40.25 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

Product	Tax rate per pound* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
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]

§ 40.25a 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]

§ 40.26 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]

§ 40.27 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.

§ 40.31 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 § 40.32 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)

§ 40.32 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 § 40.31 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)

§ 40.33 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 § 40.34).

(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 § 40.185.

(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)

§ 40.34 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]

§ 40.35 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 § 40.33(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)

§ 40.36 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

§ 40.41 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]

§ 40.42 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]

§ 40.43 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)

§ 40.44 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 44 or part 45 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 44 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; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001]

§ 40.45 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.

§ 40.46 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.

§ 40.47 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]

§ 40.48 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)

§ 40.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 40. 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 1130.30, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes. 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, as amended by T.D. ATF–457, 66 FR 32220, June 14, 2001; T.D. ATF–460, 66 FR 39094, July 27, 2001]

Subpart E—Qualification Requirements for Manufacturers

§ 40.61 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]

§ 40.61a 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]

§ 40.62 Application for permit.

Every person, before commencing business as a manufacturer of tobacco products as defined in § 40.11, shall make application for, and obtain, the permit provided in § 40.75, 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)

§ 40.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 40.62, 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]

§ 40.64 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 § 40.62, 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)

§ 40.65 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 § 40.62, 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)

§ 40.66 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]

§ 40.67 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 § 40.134, 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)

§ 40.68 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 § 40.63. 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]

§ 40.69 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]

§ 40.70 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)

§ 40.71 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 § 40.70 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]

§ 40.72 Use of factory premises.

Unless otherwise authorized by the Director as provided in § 40.47, 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 § 40.47.

[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]

§ 40.73 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.

§ 40.74 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 71 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; T.D. ATF–463, 66 FR 42734, Aug. 15, 2001]

§ 40.75 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]

§ 40.76 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

§ 40.91 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)

§ 40.92 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 § 40.65.

(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]

§ 40.93 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

§ 40.101 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 § 40.201: *Provided,* That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 40.69, 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 § 40.137.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 40.102 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 § 40.69, 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 §§ 40.201 and 40.202, 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 §§ 40.201 and 40.202, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 40.103 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 § 40.63 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]

§ 40.104 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 §§ 40.201 and 40.202, 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

§ 40.111 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 § 40.137.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

§ 40.112 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)

§ 40.113 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 §§ 40.201 and 40.202, 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)

§ 40.114 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 § 40.69.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

Subpart G—Bonds and Extensions of Coverage of Bonds

§ 40.131 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]

§ 40.132 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)

§ 40.133 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]

§ 40.134 Amount of blanket bond.

In the case of a blanket bond filed under the provisions of § 40.67, where the total amount of individual bonds otherwise required for the factories under § 40.133 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)

§ 40.135 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 40.133 or § 40.134, 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 § 40.136. 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)

§ 40.136 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 § 40.133 or § 40.134 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)

§ 40.137 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)

§ 40.138 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)

§ 40.139 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]

§ 40.140 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 40.132 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.

§ 40.161 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]

§ 40.162 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 § 40.165 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]

§ 40.163 Semimonthly tax return periods.

Except as provided in section 40.164, 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]

§ 40.164 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 § 40.165a, 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 (§ 40.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 40.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 40.164(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 (§ 40.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 40.164(b)).

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

§ 40.165 Times for filing semimonthly return.

(a) *General.* Except as provided by § 40.164, 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 § 40.164(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.

(Approved by 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 19339, May 22, 1987; T.D. ATF–365, 60 FR 33675, June 28, 1995; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001; T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001]

§ 40.165a 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 § 40.168, 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 § 40.165 or § 40.167. 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 § 40.168. 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.

(Approved by 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–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; T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001]

§ 40.166 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 § 40.167. 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 § 40.165a.

(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]

§ 40.167 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 § 40.162.

(b) However, if a manufacturer is required by § 40.165a 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]

§ 40.168 Remittance with return.

Except when an electronic fund transfer has been made under § 40.165a 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 § 40.166. 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]

§ 40.169 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]

§ 40.170 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]

§ 40.171 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

§ 40.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 40.182 and 40.183. 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 §§ 40.184 and 40.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 40.184 and 40.186, 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]

§ 40.182 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]

§ 40.183 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 § 40.22, 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]

§ 40.184 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]

§ 40.185 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)

§ 40.186 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]

§ 40.187 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 § 40.22. 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

§ 40.201 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]

§ 40.202 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]

§ 40.203 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

§ 40.211 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]

§ 40.212 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 § 40.65 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]

§ 40.213 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]

§ 40.214 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]

§ 40.215 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)

§ 40.216 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]

§ 40.216a 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]

§ 40.216b 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]

§ 40.216c 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 §§ 40.212 and 40.216b(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 § 40.216b(a) until October 1, 2000.

[T.D. ATF–427, 65 FR 40051, June 29, 2000]

§ 40.217 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

§ 40.231 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]

§ 40.232 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]

§ 40.233 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 44 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]

§ 40.234 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 45 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; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001]

§ 40.235 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 44 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]

§ 40.236 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

§ 40.251 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 § 40.114, 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 §§ 40.183 and 40.202 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]

§ 40.252 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 §§ 40.311 and 40.313.

[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]

§ 40.253 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 §§ 40.311 and 40.313.

(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]

§ 40.254 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 § 40.217. 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 §§ 40.311 and 40.313.

[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]

§ 40.255 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 § 40.183. 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 § 40.286. 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 § 40.287. 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 § 40.286. 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 § 40.287. 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

§ 40.281 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]

§ 40.282 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 § 40.301. In the case of a claim relating to tobacco products withdrawn

from the market the schedule prescribed in § 40.311 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]

§ 40.283 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 § 40.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 40.311 and 40.313. 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]

§ 40.284 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]

§ 40.285 [Reserved]

§ 40.286 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 § 40.164. (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 46 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; T.D. ATF–457, 66 FR 32220, June 14, 2001]

§ 40.287 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 § 40.255, 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

§ 40.301 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 § 40.282 or § 40.283, 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

§ 40.311 Action by claimant.

(a) *General*. Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.282 or § 40.283, 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 § 40.185), 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]

§ 40.312 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]

§ 40.313 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 § 40.282. 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 § 40.283. 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 § 40.283.

(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

§ 40.331 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 § 40.201 and § 40.202, 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]

§ 40.332 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 71 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; T.D. ATF–463, 66 FR 42734, Aug. 15, 2001]

Subpart K—Manufacture of Cigarette Papers and Tubes

SOURCE: T.D. ATF–384, 61 FR 54085, Oct. 17, 1996, unless otherwise noted.

TAXES

§ 40.351 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]

§ 40.352 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]

§ 40.353 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)

§ 40.354 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)

§ 40.355 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 § 40.357, 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 § 40.357, 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)

§ 40.356 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)

§ 40.357 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 § 40.355, 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 § 40.355. 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 § 40.355. 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))

§ 40.358 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)

§ 40.359 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)

§ 40.360 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)

§ 40.361 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

§ 40.371 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 § 40.372 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)

§ 40.372 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 § 40.371 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)

§ 40.373 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 §§ 40.359–361).

(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 § 40.371.

(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.

§ 40.374 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 § 40.373(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)

§ 40.375 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

§ 40.382 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)

§ 40.383 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)

§ 40.384 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 45 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)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated at 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF–460, 66 FR 39093, July 27, 2001, as amended by T.D. ATF–469, 66 FR 56758, Nov. 13, 2001]

§ 40.385 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.

§ 40.386 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.

§ 40.387 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

§ 40.391 Persons required to qualify.

Every person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption, must first qualify as a manufacturer of cigarette papers and tubes in accordance with the provisions of this subpart.

[ATF–467, 66 FR 49532, Sept. 28, 2001]

§ 40.392 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)

§ 40.393 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)

§ 40.394 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

§ 40.395 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)

§ 40.396 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 § 40.407. The predecessor shall make a closing inventory and closing report in accordance with the provisions of §§ 40.434 and 40.426, respectively, and the successor shall make an opening inventory and opening report, in accordance with the provision of §§ 40.432 and 40.423, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

§ 40.397 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 § 40.407. 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 §§ 40.434 and 40.426, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

Bonds and Extensions of Coverage of Bonds

§ 40.401 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))

§ 40.402 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 § 40.401(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))

§ 40.403 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))

§ 40.404 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 § 40.452, 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)

§ 40.405 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 § 40.404. 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)

§ 40.406 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)

§ 40.407 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)

§ 40.408 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)

§ 40.409 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)

§ 40.410 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 40.403 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

§ 40.421 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 § 40.451; 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

§ 40.422 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]

§ 40.423 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)

§ 40.424 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)

§ 40.425 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)

§ 40.426 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

§ 40.431 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]

§ 40.432 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)

§ 40.433 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)

§ 40.434 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

§ 40.435 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

§ 40.441 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

§ 40.451 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 44 of this chapter.

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

§ 40.452 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)

§ 40.453 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 45 of this chapter.

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

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated at 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF–460, 66 FR 39093, July 27, 2001, as amended by T.D. ATF–469, 66 FR 56758, Nov. 13, 2001]

§ 40.454 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 44 of this chapter.

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

Permanent Discontinuance of Business

§ 40.461 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 §§ 40.434 and 40.426, respectively.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

CLAIMS BY MANUFACTURERS

General

§ 40.471 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)

§ 40.472 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 § 40.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in § 40.476 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)

§ 40.473 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 § 40.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 40.476, and 40.477. 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)

§ 40.474 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

§ 40.475 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 § 40.472 or § 40.473, 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.

§ 40.476 Action by claimant.

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.472 or § 40.473, 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]

§ 40.477 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)

§ 40.478 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 § 40.473. 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 § 40.473.

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

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

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SOURCE: Redesignated by T.D. ATF–464, 66 FR 43480, Aug. 20, 2001.

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.

EDITORIAL NOTE: Nomenclature changes to part 44 appear by T.D. ATF–464, 66 FR 43480, Aug. 20, 2001.

Subpart A—Scope of Regulations

§ 44.1 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]

§ 44.2 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

§ 44.11 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.

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 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.

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

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 manufactures cigarette paper, or makes up cigarette paper 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 §§ 40.22 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; T.D. ATF–460, 66 FR 39093, July 27, 2001; T.D. ATF–467, 66 FR 49532, Sept. 28, 2001]

Subpart Ba—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17563, May 17, 1988, unless otherwise noted.

§ 44.31 Liability for special tax.

(a) *Export warehouse proprietor*. Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 44.32. 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)

§ 44.32 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 § 44.31 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)

§ 44.33 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 § 44.34).

(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 § 44.142.

(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)

§ 44.34 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]

§ 44.35 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 § 44.33(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)

§ 44.36 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

§ 44.61 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]

§ 44.61a 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]

§ 44.62 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 §§ 44.207 and 44.263. 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]

§ 44.63 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 § 44.62, 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]

§ 44.64 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]

§ 44.65 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]

§ 44.66 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]

§ 44.67 Payment of tax.

(a) *General*. The taxes on tobacco products, and cigarette papers and tubes with respect to which the evidence described in § 44.66 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 § 40.21 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; T.D. ATF–460, 66 FR 39093, July 27, 2001]

§ 44.68 [Reserved]

§ 44.69 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]

§ 44.70 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]

§ 44.71 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

§ 44.72 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]

§ 44.73 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.

§ 44.81 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)

§ 44.82 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 § 44.93. 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)

§ 44.83 Corporate documents.

Every corporation, before commencing business as an export warehouse proprietor, shall furnish with its application for permit required by § 44.82, 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)

§ 44.84 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 § 44.82 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)

§ 44.85 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 § 44.82, 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]

§ 44.86 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 § 44.88 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)

§ 44.87 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 § 44.83, power of attorney conferring authority upon the person signing the documents shall be manifested on Form 1534 and furnished to the regional director (compliance).

§ 44.88 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 § 44.82, and bond required by § 44.86, 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)

§ 44.89 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)

§ 44.90 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]

§ 44.91 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.

§ 44.92 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 71 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; T.D. ATF–463, 66 FR 42734, Aug. 15, 2001]

§ 44.93 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 § 44.142, 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

§ 44.101 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]

§ 44.102 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 § 44.85.

(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]

§ 44.103 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

§ 44.104 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 § 44.144; *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 44.88, 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 § 44.126.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 44.105 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 § 44.88, 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 §§ 44.146 and 44.151, respectively, and surrender, with such inventory and report, his permit, and the successor shall make an opening inventory, in accordance with the provisions of § 44.144.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

§ 44.106 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)

§ 44.107 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 §§ 44.146 and 44.151, 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

§ 44.108 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 § 44.126.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

§ 44.109 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]

§ 44.110 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 §§ 44.146 and 44.151, 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)

§ 44.111 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 § 44.88.

(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]

§ 44.112 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 §§ 44.111 and 44.126, or the temporary separation of warehouse premises by means other than those specified in § 44.89, 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.

§ 44.121 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]

§ 44.122 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)

§ 44.123 Amount of bond.

The amount of the bond filed by the export warehouse proprietor, as required by § 44.86, 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 § 44.124 or § 44.125.

(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]

§ 44.124 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 § 44.123. 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)

§ 44.125 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)

§ 44.126 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)

§ 44.127 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)

§ 44.128 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)

§ 44.129 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.

§ 44.141 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.

§ 44.142 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

§ 44.143 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]

§ 44.144 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 § 44.93. 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)

§ 44.145 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)

§ 44.146 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

§ 44.147 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]

§ 44.148 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)

§ 44.149 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)

§ 44.150 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)

§ 44.151 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

§ 44.152 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]

§ 44.153 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]

§ 44.154 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 46 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; T.D. ATF–457, 66 FR 32220, June 14, 2001]

Subpart H—Suspension and Discontinuance of Operations

§ 44.161 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 §§ 44.146 and 44.151, 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]

§ 44.162 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 71 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; T.D. ATF–463, 66 FR 42734, Aug. 15, 2001]

Subpart I [Reserved]

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

PACKAGING REQUIREMENTS

§ 44.181 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]

§ 44.182 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]

§ 44.183 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]

§ 44.184 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 § 40.65 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; T.D. ATF–460, 66 FR 39093, July 27, 2001]

§ 44.185 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.

(26 U.S.C. 5704, 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; T.D. ATF–465, 66 FR 45618, Aug. 29, 2001]

§ 44.186 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]

§ 44.187 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

§ 44.188 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]

§ 44.189 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]

§ 44.190 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]

§ 44.191 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]

§ 44.192 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]

§ 44.193 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]

§ 44.194 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]

§ 44.195 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]

§ 44.196 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]

§ 44.196a 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]

§ 44.197 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

§ 44.198 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]

§ 44.199 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]

§ 44.200 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 § 44.147.

(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]

§ 44.201 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]

§ 44.202 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]

§ 44.203 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]

§ 44.204 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]

§ 44.205 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 § 44.72). 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]

§ 44.206 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]

§ 44.207 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]

§ 44.207a 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]

§ 44.208 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

§ 44.209 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]

§ 44.210 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]

§ 44.211 [Reserved]

§ 44.212 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]

§ 44.213 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

§ 44.221 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]

§ 44.222 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 § 44.224.

(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]

§ 44.223 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 §§ 44.121 and 44.122 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]

§ 44.224 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 § 44.222. 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]

§ 44.225 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 § 44.224. 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]

§ 44.226 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 § 44.224. 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]

§ 44.227 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]

§ 44.228 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]

§ 44.229 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]

§ 44.230 Proof of loss.

When the claimant is unable to procure a certificate of landing, in accordance with the provisions of § 44.228, 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]

§ 44.231 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]

§ 44.232 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.

§ 44.241 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.

§ 44.242 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

§ 44.243 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 §§ 44.121 and 44.122 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 § 40.199 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; T.D. ATF–460, 66 FR 39093, July 27, 2001]

§ 44.244 Amount of bond.

The amount of the bond filed by the customs warehouse proprietor, as required by § 44.243, 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 § 44.245 or § 44.246.

§ 44.245 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 § 44.244. 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.

§ 44.246 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.

§ 44.247 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

§ 44.248 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]

§ 44.249 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)

§ 44.250 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)

§ 44.251 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)

§ 44.252 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)

§ 44.253 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]

§ 44.254 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

§ 44.255 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

§ 44.256 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]

§ 44.257 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]

§ 44.258 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]

§ 44.259 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]

§ 44.260 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]

§ 44.261 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]

§ 44.262 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]

§ 44.263 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]

§ 44.264 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 § 44.200 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]

§ 44.264a 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]

§ 44.265 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

§ 44.266 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 § 44.201. 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]

§ 44.267 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 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

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45.46 Tax-exempt label.

Subpart F—Records

45.51 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).

SOURCE: Redesignated by T.D. ATF–469, 66 FR 56758, Nov. 13, 2001.

EDITORIAL NOTE: Nomenclature changes to part 45 appear at T.D. ATF–460, 66 FR 39093, July 27, 2001.

Subpart A—Scope of Regulations

§ 45.1 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

§45.11 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 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

Armed forces. The Army, Navy (including the Marine Corps), Air Force, and Coast Guard.

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 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 manufactures cigarette paper, or makes up cigarette paper 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.

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 §§40.22 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; T.D. ATF–467, 66 FR 49532, Sept. 28, 2001; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

Subpart C—Administrative Provisions

§ 45.21 Alternate methods or procedures.

A manufacturer, on specific approval by the appropriate ATF officer 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, the manufacturer must submit a written application to the appropriate ATF officer. 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 appropriate ATF officer. 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 appropriate ATF officer 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 appropriate ATF officer under this section for three years following the close of the calendar year in which the operation under such authorization is concluded.

[Redesignated by T.D. ATF–469, 66 FR 56758, Nov. 13, 2001, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.22 Emergency variations from requirements.

The appropriate ATF officer 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 appropriate ATF officer 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, the manufacturer must submit a written application to the appropriate ATF officer. 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 appropriate ATF officer 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, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.23 Authority of appropriate ATF officers to enter premises.

Any appropriate 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 appropriate 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 appropriate 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; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.24 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 appropriate 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, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.25 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]

§ 45.26 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46. ATF delegation orders, such as ATF O 1130.28, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.27 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

[T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

Subpart D—Removals

SOURCE: T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 45.31 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]

§ 45.32 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]

§ 45.33 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]

§ 45.34 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 appropriate ATF officer, furnish all pertinent details with respect to the loss or shortage, and either pay the tax due thereon in accordance with the provisions of § 45.36, or file claim for remission of the tax liability under the provisions of part 40 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; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.35 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]

§ 45.36 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 appropriate ATF officer, 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; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.37 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

§ 45.41 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]

§ 45.42 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 § 40.65 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 appropriate ATF officer. Before using the alternative, the manufacturer shall notify the appropriate ATF officer 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 appropriate ATF officer 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; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 45.43 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 1512–0502)

(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; T.D. ATF–469, 66 FR 56758, Nov. 13, 2001]

§ 45.44 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]

§ 45.45 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]

§ 45.45a 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]

§ 45.45b 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]

§ 45.45c 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 §§ 40.212 and 40.216b(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 § 40.216b(a) until October 1, 2000.

[T.D. ATF–427, 65 FR 40051, June 29, 2000]

§ 45.46 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

§ 45.51 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 40 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 appropriate 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, as amended by T.D. ATF–472, Feb. 27, 2002]

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

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AUTHORITY: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 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.

SOURCE: Redesignated by T.D. ATF–457, 66 FR 32220, June 14, 2001.

EDITORIAL NOTE: Nomenclature changes to part 46 appear by T.D. ATF–457, 66 FR 32220, June 14, 2001.

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 44.

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

§46.1 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]

§46.2 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.

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 § 46.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 46.3 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]

§ 46.4 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 § 46.10.

§ 46.5 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 appropriate ATF officer 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 46.6 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 § 46.7,

(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 ATF Form 5620.10, as provided by § 46.10.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

CLAIM PROCEDURE

§ 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. (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 aprise the appropriate ATF officer 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 § 46.8. 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; T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 46.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 46.7, 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 § 46.5.

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]

§ 46.9 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

§ 46.10 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 ATF Form 5620.10. 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 46.11 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 appropriate ATF officer 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, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 46.12 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.

§ 46.13 Authority to approve bonds.

An appropriate ATF officer may approve all bonds required by this subpart.

[T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

Assistant regional commissioners are authorized to approve all bonds required by this subpart.

§ 46.14 Termination of liability.

Bonds on ATF Form 5620.10 will be terminated by the appropriate ATF officer 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

§ 46.15 Release of pledged securities.

Securities of the United States, pledged and deposited as provided by § 46.12, shall be released only in accordance with the provisions of 31 CFR part 225. When the appropriate ATF officer 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 appropriate ATF officer may, for proper cause, extend the date of release for

such additional length of time as he deems necessary.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, 67 FR 8880, Feb. 27, 2002]

PENALTIES

§ 46.16 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—Administrative Provisions

SOURCE: T.D. ATF–472, 67 FR 8880, Feb. 27, 2002, unless otherwise noted.

§ 46.21 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46. ATF delegation orders, such as ATF O 1130.28, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5950, or by accessing the ATF web site *(http://www.atf.treas.gov/)*.

§ 46.22 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

Subpart C—Disaster Loss Claims

§ 46.71 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

§ 46.72 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 1130.28, Delegation of the Director's Authorities in 27 CFR parts 45 and 46.

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.

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 §§ 40.22 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 § 46.72, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PAYMENTS

§ 46.73 Circumstances under which payment may be made.

An appropriate ATF officer 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; T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

CLAIMS PROCEDURE

§ 46.74 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]

§ 46.75 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
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]

§ 46.76 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]

46.77 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]

§ 46.78 Action by appropriate ATF officer.

The appropriate ATF officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

[T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

DESTRUCTION OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

§ 46.79 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 must be destroyed by suitable means under the supervision of an appropriate ATF officer who will be assigned for that purpose by another appropriate ATF officer. However, if the destruction of such tobacco products, or cigarette papers or tubes has already occurred, and if the appropriate ATF officer who acts on the claim is satisfied with the supervision of such destruction, ATF supervision will not be required.

[T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

PENALTIES

§ 46.80 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

§ 46.81 [Reserved]

Subparts D–E [Reserved]

Subpart F—Distribution of Cigarettes

SOURCE: 45 FR 48612, July 21, 1980, unless otherwise noted.

GENERAL

§ 46.141 Scope of subpart.

The regulations in this subpart relate to the distribution of cigarettes in excess of 60,000 in a single transaction.

§ 46.142 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.

§ 46.143 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.

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 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

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.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

[45 FR 48612, July 21, 1980, as amended by T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

RECORDS

§ 46.146 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 § 46.147 in his commercial records of disposition.

§ 46.147 Required information.

(a) *Distributors who are exempted persons.* Each distributor who is an exempted person as defined in § 46.143 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 § 46.143 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]

§ 46.150 Retention of records.

(a) *General.* Each distributor of cigarettes shall retain the records required by §§ 46.146 and 46.147 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 appropriate ATF officer 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 appropriate ATF officer. A distributor may not employ a shorter retention period until approval is received from the appropriate ATF officer. Each application should indicate the duration of the proposed retention period and should include the information required by paragraph (b) of this section.

[45 FR 48612, July 21, 1980, as amended by T.D. ATF–472, 67 FR 8880, 8881, Feb. 27, 2002]

OTHER PROVISIONS RELATING TO THE DISTRIBUTION OF CIGARETTES

§ 46.153 Authority of appropriate ATF officers to enter business premises.

Any appropriate ATF officer may enter the business premises of any distributor of cigarettes to inspect the records required by §§ 46.146 through

46.147 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.

[45 FR 48612, July 21, 1980, as amended by T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

PENALTIES AND FORFEITURES

§ 46.154 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.

§ 46.155 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.

§ 46.161 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]

§ 46.162 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.

§ 46.163 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.

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 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

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 § 46.163, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 46.164 Authority of ATF officers to enter premises.

Any appropriate 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 appropriate 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 appropriate 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 appropriate 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; T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

§ 46.165 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 appropriate 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)

[T.D. 6573, 26 FR 8202, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–472, Feb. 27, 2002]

§ 46.166 Dealing in tobacco products.

(a) 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 or 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.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does

not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see § 275.83 of this chapter.

[T.D. ATF–465, 66 FR 45618, Aug. 29, 2001]

§ 46.167 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 40 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 40 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; T.D. ATF–460, 66 FR 390 93, July 27, 2001]

§ 46.168 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

§ 46.191 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.

§ 46.192 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 1130.28, Delegation of the Director's Authorities in parts 45 and 46.

(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.

[T.D. ATF–423, 64 FR 71958, Dec. 22, 1999, as amended by ATF–457, 66 FR 32220, June 14, 2001; T.D. ATF–472, 67 FR 8881, Feb. 27, 2002]

§ 46.193 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.

§ 46.194 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 §§ 46.207 and 46.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 46.209).

§ 46.195 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.

§ 46.196 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 §§ 46.205 and 46.206.

(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 § 46.222. Apply the tax credit as provided by § 46.223.

(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 § 46.241.

(Approved by the Office of Management and Budget under control number 1512–0554)

INVENTORIES

§ 46.201 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.

§ 46.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

§ 46.203 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.

§ 46.204 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.

§ 46.205 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 § 46.222 and whether the cigarettes have export markings as stated in § 46.203. 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 § 46.204. 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.

§ 46.206 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 § 46.205(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 § 46.205(e).

§ 46.207 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.

§ 46.208 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.

§ 46.209 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).

§ 46.210 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.

§ 46.211 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.

§ 46.212 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.

§ 46.213 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 §§ 46.205 and 46.206. 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

§ 46.221 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 § 46.222. Multiply the amount of each type of cigarette by the applicable tax rate.

§ 46.222 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)		

§ 46.223 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

§ 46.231 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.

§ 46.232 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.

§ 46.233 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]

§ 46.234 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.

§ 46.235 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.

§ 46.236 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.

§ 46.237 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 § 46.223 if it is apportioned to you as a member of the controlled group.

RECORDS

§ 46.241 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 46.263.

§ 46.242 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 § 46.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 46.243 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.

§ 46.244 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.

§ 46.245 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

§ 46.251 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.

§ 46.252 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.

§ 46.253 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)

§ 46.254 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.

§ 46.255 Additional reasons for filing a claim.

(a) *Manufacturer*. 27 CFR part 40, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) *Export warehouse proprietor*. 27 CFR part 44, 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 44.

(d) *Importer*. An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

[T.D. ATF–423, 64 FR 71958, Dec. 22, 1999, as amended by T.D. ATF–460, 66 FR 39093, July 27, 2001; T.D. ATF–464, 66 FR 43479, Aug. 20, 2001]

ALTERNATE METHODS OR PROCEDURES

§ 46.261 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.

§ 46.262 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)

§ 46.263 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.

§ 46.264 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

§ 46.270 [Reserved]

§ 46.271 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.

§ 46.272 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.

§ 46.273 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.

§ 46.274 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.

SUBCHAPTER C—FIREARMS

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

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AUTHORITY: 22 U.S.C. 2778.

SOURCE: T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, unless otherwise noted.

Subpart A—Scope

§ 47.1 General.

The regulations in this part relate to that portion of Section 38, Arms Export Control Act of 1976, as amended, which is concerned with the importation of arms, ammunition and implements of war. This part contains the U.S. Munitions Import List and includes procedural and administrative requirements and provisions relating to registration of importers, permits, articles in transit, import certification, delivery verification, import restrictions applicable to certain countries, exemptions, U.S. military firearms or ammunition, penalties, seizures, and forfeitures. All designations and changes in designation of articles subject to import control under Section 414 of the Mutual Security Act of 1954, as amended, have the concurrence of the Secretary of State and the Secretary of Defense.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42158, Oct. 18, 1985]

§ 47.2 Relation to other laws and regulations.

(a) All of those items on the U.S. Munitions Import List (see § 47.21) which

are ''firearms'' or ''ammunition'' as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of Title 18 U.S.C. and 27 CFR Part 178 and if they are ''firearms'' within the definition set out in 26 U.S.C. 5845(a) are also subject to the provisions of 27 CFR Part 179. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a license under the provisions of 27 CFR Part 178, and if he imports firearms which fall within the definition of 26 U.S.C. 5845(a) must also register and pay special tax pursuant to the provisions of 27 CFR Part 179. Such licensing, registration and special tax requirements are in addition to registration under subpart D of this part.

(b) The permit procedures of subpart E of this part are applicable to all importations of articles on the U.S. Munitions Import List not subject to controls under 27 CFR Part 178 or 179. U.S. Munitions Import List articles subject to controls under 27 CFR Part 178 or 27 CFR Part 179 are subject to the import permit procedures of those regulations if imported into the United States (within the meaning of 27 CFR Parts 178 and 179).

(c) Articles on the U.S. Munitions Import List imported for the United States or any State or political subdivision thereof are exempt from the import controls of 27 CFR Part 178 but are not exempt from control under Section 38, Arms Export Control Act of 1976, unless imported by the United States or any agency thereof. All such importations not imported by the United States or any agency thereof shall be subject to the import permit procedures of subpart E of this part.

(d) For provisions requiring the registration of persons engaged in the business of brokering activities with respect to the importation of any defense article or defense service, see Department of State regulations in 22 CFR part 129.

[T.D. ATF–215, 50 FR 42158, Oct. 18, 1985, as amended by T.D. ATF–426, 65 FR 38197, June 20, 2000]

Subpart B—Definitions

§47.11 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 meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words imparting the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

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.

Article. Any of the arms, ammunition, and implements of war enumerated in the U.S. Munitions Import List.

Bureau. Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury.

Carbine. A short-barrelled rifle whose barrel is generally not longer than 22 inches and is characterized by light weight.

CFR. The Code of Federal Regulations.

Chemical agent. A substance useful in war which, by its ordinary and direct chemical action, produces a powerful physiological effect.

Defense articles. Any item designated in §47.21 or §47.22. This term includes models, mockups, and other such items which reveal technical data directly relating to §47.21 or §47.22. For purposes of Category XXII, any item enumerated on the U.S. Munitions List (22 CFR Part 121).

Defense services. (a) The furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or

(b) The furnishing to foreign persons of any technical data, whether in the United States or abroad.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Executed under the penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the application, 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, certificate, application, or other document), including the documents submitted in support thereof, has been examined by me and, to best of my knowledge and belief, is true, correct, and complete.''

Firearms. A weapon, and all components and parts therefor, not over .50 caliber which will or is designed to or may be readily converted to expel a projectile by the action of an explosive, but shall not include BB and pellet guns, and muzzle loading (black powder) firearms (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) or firearms covered by Category I(a) established to have been manufactured in or before 1898.

Import or importation. Bringing into the United States from a foreign country any of the articles on the Import List, but shall not include intransit, temporary import or temporary export transactions subject to Department of State controls under Title 22, Code of Federal Regulations.

Import List. The list of articles contained in § 47.21 and identified therein as ''The U.S. Munitions Import List''.

Machinegun. A ''machinegun'', ''machine pistol'', ''submachinegun'', or ''automatic rifle'' is a firearm originally designed to fire, or capable of being fired fully automatically by a single pull of the trigger.

Permit. The same as ''license'' for purposes of 22 U.S.C. 1934(c).

Person. A partnership, company, association, or corporation, as well as a natural person.

Pistol. A hand-operated firearm having a chamber integral with, or permanently aligned with, the bore.

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

Revolver. A hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

Rifle. A shoulder firearm discharging bullets through a rifled barrel at least 16 inches in length, including combination and drilling guns.

Sporting type sight including optical. A telescopic sight suitable for daylight use on a rifle, shotgun, pistol, or revolver for hunting or target shooting.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. When used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

(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))

[T.D. ATF–48, 43 FR 13535, Mar. 31, 1978; 44 FR 55840, Sept. 28, 1979, as amended by T.D. ATF–202, 50 FR 14382, Apr. 12, 1985; T.D. ATF–215, 50 FR 42158, Oct. 18, 1985]

Subpart C—The U.S. Munitions Import List

§ 47.21 The U.S. Munitions Import List.

The U.S. Munitions List compiled by the Department of State, Office of Defense Trade Controls, and published at 22 CFR 121.1, with the deletions indicated, has been adopted as an enumeration of the defense articles subject to controls under this part. The expurgated list, set out below, shall, for the purposes of this part, be known as the U.S. Munitions Import List:

THE U.S. MUNITIONS IMPORT LIST

CATEGORY I—FIREARMS

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length, and all components and parts for such firearms.

(b) Automatic firearms and all components and parts for such firearms to caliber .50 inclusive.

(c) Insurgency-counterinsurgency type firearms of other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts for such firearms.

(d) Firearms silencers and suppressors, including flash suppressors.

(e) Riflescopes manufactured to military specifications and specifically designed or modified components therefor.

NOTE: Rifles, carbines, revolvers, and pistols, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length are included under Category I(a). Machineguns, submachineguns, machine pistols and fully automatic rifles to caliber .50 inclusive are included under Category I(b).

CATEGORY II—ARTILLERY PROJECTORS

(a) Guns over caliber .50, howitzers, mortars, and recoiless rifles.

(b) Military flamethrowers and projectors.

(c) Components, parts, accessories, and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

CATEGORY III—AMMUNITION

(a) Ammunition for the arms in Categories I and II of this section.

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition.

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

NOTE: Cartridge and shell casings are included under Category III unless, prior to their importation, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps.

(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. Articles in this category include, but are not limited to, the following: Fuses and components for the items in this category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

(g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed components or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

NOTE: Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

NOTE: Category V of ''Munitions List'' deleted as inapplicable to imports.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes.

(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic ones) and controls and components therefor.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support and maintenance. This includes any machinery, device, component, or equipment specifically developed or designed or modified for use in such plants or facilities.

NOTE: The term ''vessels of war'' includes, but is not limited to the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers (CV, CVN)

(ii) Battleships (BB)

(iii) Cruisers (CA, CG, CGN)

(iv) Destroyers (DD, DDG)

(v) Frigates (FF, FFG)

(vi) Submarines (SS, SSN, SSBN, SSG, SSAG).

(2) Other Combatant Classifications:

(i) Patrol Combatants (PC, PHM)

(ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)

(iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)

(iv) Amphibious Command Ships (LCC)

(v) Mine Warfare Ships (MSO).

(b) Auxiliaries:

(1) Mobile Logistics Support:

(i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)

(ii) Material Support (AD, AR, AS).

(2) Support Ships:

(i) Fleet Support Ships (ARS, ASR, ATA, ATF, ATS)

(ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT).

(c) Combatant Craft:

(1) Patrol Craft:

(i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)

(ii) River, Roadstead Craft (ATC, PBR).

(2) Amphibious Warfare Craft:

(i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)

(ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft:

(i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR).

(d) Support and Service Craft:

(1) Tugs (YTB, YTL, YTM)

(2) Tankers (YO, YOG, YW)

(3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)

(4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)

(5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBN, YRDH, YRDM, YRR, YRST, YSD).

(e) Coast Guard Patrol and Service Vessels and Craft:

(1) Coast Guard Cutters (CGC, WHEC, WMEC)

(2) Patrol Craft (WPB)

(3) Icebreakers (WAGB)

(4) Oceanography Vessels (WAGO)

(5) Special Vessels (WIX)

(6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)

(7) Tugs (WYTM, WYTL)

(8) Light Ships (WLV).

CATEGORY VII—TANKS AND MILITARY VEHICLES

(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

(b) Military tanks, combat engineer vehicles, bridge launching vehicles, halftracks and gun carriers.

(c) Self-propelled guns and howitzers.

NOTE: Category VII (d) and (e) of ''Munitions List'' deleted as inapplicable to imports.

(f) Amphibious vehicles.

(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

NOTE: An ''amphibious vehicle'' in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, which is equipped to meet special military requirements, and which has sealed electrical systems and adaptation features for deep water fording.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training.

NOTE: Category VIII (b) through (j) and Categories IX, X, XI, XII and XIII of ''Munitions List'' deleted as inapplicable to imports.

NOTE: In Category VIII, ''aircraft'' means aircraft designed, modified, or equipped for a

military purpose, including aircraft described as ''demilitarized.'' All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not so included so long as they have not been specifically equipped, reequipped, or modified for military operations:

(a) Cargo aircraft bearing ''C'' designations and numbered C–45 through C–118 inclusive, and C–121 through C–125 inclusive, and C–131, using reciprocating engines only.

(b) Trainer aircraft bearing ''T'' designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing ''U'' designations and using reciprocating engines only.

(d) All liaison aircraft bearing an ''L'' designation.

(e) All observation aircraft bearing ''O'' designations and using reciprocating engines.

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT AND RADIOLOGICAL EQUIPMENT

(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, and tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents.

(b) Biological agents.

(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

NOTE: A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term ''chemical agent'' includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:

(1) Diphenylcyanoarsine (DC).

(2) Fluorine (but not fluorene).

(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:

(1) B-Chlorovinyldichloroarsine (Lewisite, L).

(2) Bis(dichlorethyl) sulphide (Mustard Gas, HD or H).

(3) Ethyldichloroarsine (ED).

(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:

(1) A-Brombenzyl cyanide (BBC).

(2) Chloroacetophenone (CN).

(3) Dibromodimethyl ether.

(4) Dichlorodimethyl ether (ClCi).

(5) Ethyldibromoarsine.

(6) Phenylcarbylamine chloride.

(7) Tear gas solutions (CNB and CNS).

(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:

(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).

(3) Liquid pepper.

(e) Nerve agents, gases, and aerosols. These are toxic compounds which affect the nervous system, such as:

(1) Dimethylaminoethoxycyanophosphine oxide (GA).

(2) Methylisopropoxyfluorophosphine oxide (GB).

(3) Methylpinacolyloxyfluoriphosphine oxide (GD).

(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

CATEGORY XV [Reserved]

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT

(a) Any article, material, equipment, or device, which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

NOTE: Categories XVII, XVIII, and XIX of ''Munitions List'' deleted as inapplicable to imports.

CATEGORY XX—SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT

(a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet, or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Category VI and elsewhere in this part specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed for any of the articles in paragraphs (a) and (b) of this category.

CATEGORY XXI—MISCELLANEOUS ARTICLES

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Defense Trade Controls, Department of State, with the concurrence of the Department of Defense.

CATEGORY XXII—SOUTH AFRICA

(a) Defense articles enumerated on the U.S. Munitions List (22 CFR Part 121).

(b) Technical data relating to defense articles enumerated on the U.S. Munitions List.

NOTE: This category is applicable only to South Africa.

NOTE: ''Technical data'' means, for purposes of this category:

(1) Classified information relating to defense articles and defense services;

(2) Information covered by an invention secrecy order;

(3) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

[T.D. ATF–215, 50 FR 42158, Oct. 18, 1985; 50 FR 46647, Nov. 12, 1985, as amended by T.D. ATF–426, 65 FR 38197, June 20, 2000]

§ 47.22 Forgings, castings, and machined bodies.

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.

[T.D. ATF–215, 50 FR 42160, Oct. 18, 1985]

Subpart D—Registration

§ 47.31 Registration requirement.

Persons engaged in the business, in the United States, of importing articles enumerated on the U.S. Munitions Import List must register with the Director.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42161, Oct. 18, 1985]

§ 47.32 Application for registration and refund of fee.

(a) Application for registration shall be filed on Form 4587, in duplicate, with the Director, and shall be accompanied by the registration fee at the rate prescribed in this section. On approval of the application by the Director, he will return the original to the applicant.

(b) Registration may be effected for periods of from 1 to 5 years at the option of the registrant by identifying on Form 4587 the period of registration desired. The registration fees are as follows:

1 year	$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(c) Fees paid in advance for whole future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in importing articles on the U.S. Munitions Import List. A request for a refund must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Attention: Firearms and Explosives Imports Branch, prior to the beginning of any year for which a refund is claimed.

(Approved by the Office of Management and Budget under control number 1512–0021)

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42161, Oct. 18, 1985]

§47.33 Notification of changes in information furnished by registrants.

Registered persons shall notify the Director in writing, in duplicate, of significant changes in the information set forth in their registration

(Approved by the Office of Management and Budget under control number 1512–0021)

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42161, Oct. 18, 1985]

§47.34 Maintenance of records by persons required to register as importers of Import List articles.

(a) Registrants under this part engaged in the business of importing articles subject to controls under 27 CFR Parts 178 and 179 shall maintain records in accordance with the applicable provisions of those parts.

(b) Registrants under this part engaged in importing articles on the U.S. Munitions Import List subject to the permit procedures of subpart E of this part shall maintain for a period of 6 years, subject to inspection by any ATF officer, records bearing on such articles imported, including records concerning their acquisition and disposition, including Forms 6 and 6A. The Director may prescribe a longer or shorter period in individual cases as he deems necessary. See §178.129 of this chapter for articles subject to import control under part 178 of this chapter.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–215, 50 FR 42161, Oct. 18, 1985; T.D. ATF–426, 65 FR 38197, June 20, 2000]

§47.35 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.

[T.D. ATF–92, 46 FR 46914, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. ATF–426, 65 FR 38197, June 20, 2000]

Subpart E—Permits

§47.41 Permit requirement.

(a) Articles on the U.S. Munitions Import List will not be imported into the United States except pursuant to a permit under this subpart issued by the Director. For articles subject to control under parts 178 or 179 of this chapter, a separate permit is not necessary.

(b) Articles on the U.S. Munitions Import List intended for the United States or any State or political subdivision thereof, or the District of Columbia, which are exempt from import controls of 27 CFR 178.115 shall not be imported into the United States, except by the United States or agency thereof, without first obtaining a permit issued by the Director under this subpart.

(c) A permit is not required for the importation of—

(1)(i) The U.S. Munitions Import List articles from Canada, except articles enumerated in Categories I, II, III, IV, VI(e), VIII(a), XVI, and XX; and

(ii) Nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment thereof (see Category XXI); or

(2) Minor components and parts for Category I(a) and I(b) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms, when the total value does not exceed $100 wholesale in any single transaction.

[T.D. ATF–215, 50 FR 42161, Oct. 18, 1985, as amended by T.D. ATF–426, 65 FR 38197, June 20, 2000]

§47.42 Application for permit.

(a)(1) Persons required to obtain a permit as provided in §47.41 must file a Form 6—Part I, in triplicate, with the Director. The application must be signed and dated and must contain the information requested on the form, including:

(i) The name, address, telephone number, license and registration number, if any (including expiration date) of the importer;

(ii) The country from which the defense article is to be imported;

(iii) The name and address of the foreign seller and foreign shipper;

(iv) A description of the defense article to be imported, including—

(A) The name and address of the manufacturer;

(B) The type (e.g., rifle, shotgun, pistol, revolver, aircraft, vessel, and in the case of ammunition only, ball, wadcutter, shot, etc.);

(C) The caliber, gauge, or size;

(D) The model;

(E) The length of barrel, if any (in inches);

(F) The overall length, if a firearm (in inches);

(G) The serial number, if known;

(H) Whether the defense article is new or used;

(I) The quantity;

(J) The unit cost of the firearm, firearm barrel, ammunition, or other defense article to be imported;

(K) The category of U.S. Munitions Import List under which the article is regulated;

(v) The specific purpose of importation, including final recipient information if different from the importer; and

(vi) Certification of origin.

(2)(i) If the Director approves the application, such approved application will serve as the permit to import the defense article described therein, and importation of such defense article may continue to be made by the licensed/registered importer (if applicable) under the approved application (permit) during the period specified thereon. The Director will furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use.

(ii) If the Director disapproves the application, the licensed/registered importer (if applicable) will be notified of the basis for the disapproval.

(b) For additional requirements relating to the importation of plastic explosives into the United States on or after April 24, 1997, see § 55.183 of this title.

(Approved by the Office of Management and Budget under control number 1512–0017)

[T.D. ATF–215, 50 FR 42161, Oct. 18, 1985, as amended by T.D. ATF–387, 62 FR 8376, Feb. 25, 1997; T.D. ATF–426, 65 FR 38197, June 20, 2000]

§ 47.43 Terms of permit.

(a) Import permits issued under this subpart are valid for one year from their issuance date unless a different period of validity is stated thereon. They are not transferable.

(b) If shipment cannot be completed during the period of validity of the permit, another application must be submitted for permit to cover the unshipped balance. Such an application shall make reference to the previous permit and may include materials in addition to the unshipped balance.

(c) No amendments or alteration of a permit may be made, except by the Director.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–325, 57 FR 29787, July 7, 1992; T.D. ATF–426, 65 FR 38197, June 20, 2000]

§ 47.44 Permit denial, revocation or suspension.

(a) Import permits under this subpart may be denied, revoked, suspended or revised without prior notice whenever the Director finds the proposed importation to be inconsistent with the purpose or in violation of section 38, Arms Export Control Act of 1976 or the regulations in this part.

(b) Whenever, after appropriate consideration, a permit application is denied or an outstanding permit is revoked, suspended, or revised, the applicant or permittee shall be promptly advised in writing of the Director's decision and the reasons therefor.

(c) Upon written request made within 30 days after receipt of an adverse decision, the applicant or permittee shall be accorded an opportunity to present additional information and to have a full review of his case by the Director.

(d) Unused, expired, suspended, or revoked permits must be returned immediately to the Director.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42161, Oct. 18, 1985]

§47.45 Importation.

(a) Articles subject to the import permit procedures of this subpart imported into the United States may be released from Customs custody to the person authorized to import same upon his showing that he has a permit from the Director for the importation of the article or articles to be released. For articles in Categories I and III imported by a registered importer, the importer will also submit to Customs a copy of the export license authorizing the export of the article or articles from the exporting country. If the exporting country does not require issuance of an export license, the importer must submit a certification, under penalty of perjury, to that effect.

(1) In obtaining the release from Customs custody of an article imported pursuant to a permit, the permit holder will prepare Form 6A, in duplicate, and furnish the original to the Customs officer releasing the article. The Customs officer will, after certification, forward the original ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name, address, and license number (if any) of the importer;

(ii) The name of the manufacturer of the defense article;

(iii) The country of manufacture;

(iv) The type;

(v) The model;

(vi) The caliber, gauge, or size;

(vii) The serial number in the case of firearms, if known; and

(viii) The number of defense articles released.

(b) Within 15 days of the date of their release from Customs custody, the importer of the articles released will forward to the address specified on the form a copy of Form 6A on which will be reported any error or discrepancy appearing on the Form 6A certified by Customs and serial numbers if not previously provided on ATF Form 6A.

(Approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–215, 50 FR 42161, Oct. 18, 1985, as amended by T.D. ATF–426, 65 FR 38197, June 20, 2000]

§47.46 Articles in transit.

Articles subject to the import permit procedures of this subpart which enter the United States for temporary deposit pending removal therefrom and such articles which are temporarily taken out of the United States for return thereto shall be regarded as in transit and will be considered neither imported nor exported under this part. Such transactions are subject to the Intransit or Temporary Export License procedures of the Department of State (see 22 CFR Part 123).

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42161, Oct. 18, 1985]

Subpart F—Miscellaneous Provisions

§47.51 Import certification and delivery verification.

Pursuant to agreement with the United States, certain foreign countries are entitled to request certification of legality of importation of articles on the U.S. Munitions Import List. Upon request of a foreign government, the Director will certify the importation, on Form ITA–645P/ATF–4522/DSP53, for the U.S. importer. Normally, the U.S. importer will submit this form to the Director at the time he applies for an import permit. This document will serve as evidence to the government of the exporting company that the U.S. importer has complied with import regulations of the U.S. Government and is prohibited from diverting, transshipping, or reexporting the material described therein without the approval of the U.S. Government. Foreign governments may also require documentation attesting to the delivery of the material into the United States. When such delivery certification is requested by a foreign government, the U.S. importer may obtain directly from the U.S. District Director

of Customs the authenticated Delivery Verification Certificate (U.S. Department of Commerce Form ITA–647P) for this purpose.

(Approved by the Office of Management and Budget under control number 0625–0064)

[T.D. ATF–215, 50 FR 42162, Oct. 18, 1985]

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam, and some of the states that comprised the former Soviet Union (Armenia, Azerbaijan, Belarus, and Tajikistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), and Zaire). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

NOTE: Changes in foreign policy may result in additions to and deletions from the above list of countries. The ATF will publish changes to this list in the FEDERAL REGISTER. Contact the Firearms and Explosives Imports Branch at (202) 927–8320 for current information.

(b) Notwithstanding paragraph (a) of this section, the Director shall deny applications to import into the United States the following firearms and ammunition:

(1) Any firearm located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and any firearm previously manufactured in the Soviet Union, that is not one of the models listed below:

(i) Pistols/Revolvers:

(A) German Model P08 Pistol.

(B) IZH 34M, .22 caliber Target Pistol.

(C) IZH 35M, .22 caliber Target Pistol.

(D) Mauser Model 1896 Pistol.

(E) MC–57–1 Pistol.

(F) MC–1–5 Pistol.

(G) Polish Vis Model 35 Pistol.

(H) Soviet Nagant Revolver.

(I) TOZ 35, .22 caliber Target Pistol.

(ii) Rifles:

(A) BARS–4 Bolt Action Carbine.

(B) Biathlon Target Rifle, .22LR caliber.

(C) British Enfield Rifle.

(D) CM2, .22 caliber Target Rifle (also known as SM2, 22 caliber).

(E) German Model 98K Rifle.

(F) German Model G41 Rifle.

(G) German Model G43 Rifle.

(H) IZH–94.

(I) LOS–7 Bolt Action Rifle.

(J) MC–7–07.

(K) MC–18–3.

(L) MC–19–07.

(M) MC–105–01.

(N) MC–112–02.

(O) MC–113–02.

(P) MC–115–1.

(Q) MC–125/127.

(R) MC–126.

(S) MC–128.

(T) Saiga Rifle.

(U) Soviet Model 38 Carbine.

(V) Soviet Model 44 Carbine.

(W) Soviet Model 91/30 Rifle.

(X) TOZ 18, .22 caliber Bolt Action Rifle.

(Y) TOZ 55.

(Z) TOZ 78.

(AA) Ural Target Rifle, .22LR caliber.

(BB) VEPR Rifle.

(CC) Winchester Model 1895, Russian Model Rifle;

(2) Ammunition located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and ammunition previously manufactured in the Soviet Union, that is 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser); or

(3) A type of firearm the manufacture of which began after February 9, 1996.

(c) The provisions of paragraph (b) of this section shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

(d) A defense article authorized for importation under this part may not be shipped on a vessel, aircraft or other means or conveyance which is owned or

operated by, or leased to or from, any of the countries or areas covered by paragraph (a) of this section.

(e) Applications for permits to import articles that were manufactured in, or have been in, a country or area proscribed under this section may be approved where the articles are covered by Category I(a) of the Import List (other than those subject to the provisions of 27 CFR Part 179), are importable as curios or relics under the provisions of 27 CFR 178.118, and meet the following criteria:

(1) The articles were manufactured in a proscribed country or area prior to the date, as established by the Department of State, the country or area became proscribed, or, were manufactured in a non-proscribed country or area; and

(2) The articles have been stored for the five year period immediately prior to importation in a non-proscribed country or area.

(f) Applicants desiring to import articles claimed to meet the criteria specified in paragraph (e) of this section shall explain, and certify to, how the firearms meet the criteria. The certification statement will be prepared in letter form, executed under the penalties of perjury, and submitted to the Director at the time application is made for an import permit. The certification statement must be accompanied by documentary information on the country or area of original manufacture and on the country or area of storage for the five year period immediately prior to importation. Such information may, for example, include a verifiable statement in the English language of a government official or any other person having knowledge of the date and place of manufacture and/or the place of storage; a warehouse receipt or other document which provides the required history of storage; and any other document that the applicant believes substantiates the place and date of manufacture and the place of storage. The Director, however, reserves the right to determine whether documentation is acceptable. Applicants shall, when required by the Director, furnish additional documentation as may be necessary to determine whether an import permit application should be approved.

[T.D. ATF–202, 50 FR 14382, Apr. 12, 1985, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985; T.D. ATF–287, 54 FR 13681, Apr. 5, 1989; T.D. ATF–323, 57 FR 24189, June 8, 1992; T.D. ATF–349, 58 FR 47831, Sept. 13, 1993; T.D. ATF–367, 60 FR 47866, Sept. 15, 1995; T.D. ATF–396, 62 FR 61234, Nov. 17, 1997]

§ 47.53 Exemptions.

(a) The provisions of this part are not applicable to:

(1) Importations by the United States or any agency thereof;

(2) Importation of components for items being manufactured under contract for the Department of Defense; or

(3) Importation of articles (other than those which would be ''firearms'' as defined in 18 U.S.C. 921(a)(3) manufactured in foreign countries for persons in the United States pursuant to Department of State approval.

(b) Any person seeking to import articles on the U.S. Munitions Import List as exempt under paragraph (a)(2) or (3) of this section may obtain release of such articles from Customs custody by submitting, to the Customs officer with authority to release, a statement claiming the exemption accompanied by satisfactory proof of eligibility. Such proof may be in the form of a letter from the Department of Defense or State, as the case may be, confirming that the conditions of the exemption are met.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985]

§ 47.54 Administrative procedures inapplicable.

The functions conferred under section 38, Arms Export Control Act of 1976, as amended, are excluded from the operation of Chapter 5, Title 5, United States Code, with respect to Rule Making and Adjudication, 5 U.S.C. 553 and 554.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985]

§ 47.55 Departments of State and Defense consulted.

The administration of the provisions of this part will be subject to the guidance of the Secretaries of State and Defense on matters affecting world peace and the external security and foreign policy of the United States.

§ 47.56 Authority of Customs officers.

(a) Officers of the U.S. Customs Service are authorized to take appropriate action to assure compliance with this part and with 27 CFR Parts 178 and 179 as to the importation or attempted importation of articles on the U.S. Munitions Import List, whether or not authorized by permit.

(b) Upon the presentation to him of a permit or written approval authorizing importation of articles on the U.S. Munitions Import List, the Customs officer who has authority to release same may require, in addition to such documents as may be required by Customs regulations, the production of other relevant documents relating to the proposed importation, including, but not limited to, invoices, orders, packing lists, shipping documents, correspondence, and instructions.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985]

§ 47.57 U.S. military defense articles.

(a)(1) Notwithstanding any other provision of this part or of parts 178 or 179 of this chapter, no military defense article of United States manufacture may be imported into the United States if such article was furnished to a foreign government under a foreign assistance or foreign military sales program of the United States.

(2) The restrictions in paragraph (a)(1) of this section cover defense articles which are advanced in value or improved in condition in a foreign country, but do not include those which have been substantially transformed as to become, in effect, articles of foreign manufacture.

(b) Paragraph (a) of this section will not apply if:

(1) The applicant submits with the ATF Form 6—Part I application written authorization from the Department of State to import the defense article; and

(2) In the case of firearms, such firearms are curios or relics under 18 U.S.C. 925(e) and the person seeking to import such firearms provides a certification of a foreign government that the firearms were furnished to such government under a foreign assistance or foreign military sales program of the United States and that the firearms are owned by such foreign government. (See § 178.118 of this chapter providing for the importation of certain curio or relic handguns, rifles and shotguns.)

(c) For the purpose of this section, the term ''military defense article'' includes all defense articles furnished to foreign governments under a foreign assistance or foreign military sales program of the United States as set forth in paragraph (a) of this section.

(Approved by the Office of Management and Budget under OMB Control No. 1512–0017)

[T.D. ATF–287, 54 FR 13681, Apr. 5, 1989, as amended by T.D. ATF–393, 62 FR 61235, Nov. 17, 1997; T.D. ATF–426, 65 FR 38198, June 20, 2000]

Subpart G—Penalties, Seizures and Forfeitures

§ 47.61 Unlawful importation.

Any person who willfully:

(a) Imports articles on the U.S. Munitions Import List without a permit;

(b) Engages in the business of importing articles on the U.S. Munitions Import List without registering under this part; or

(c) Otherwise violates any provisions of this part;

Shall upon conviction be fined not more than $1,000,000 or imprisoned not more than 10 years, or both.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended at 39 FR 4760, Feb. 7, 1974; T.D. ATF–215, 50 FR 42162, Oct. 18, 1985; T.D. ATF–287, 54 FR 13681, Apr. 5, 1989]

§ 47.62 False statements or concealment of facts.

Any person who willfully, in a registration or permit application, makes any untrue statement of a material

fact or fails to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985; T.D. ATF–287, 54 FR 13681, Apr. 5, 1989]

§ 47.63 Seizure and forfeiture.

Whoever knowingly imports into the United States contrary to law any article on the U.S. Munitions Import List; or receives, conceals, buys, sells, or in any manner facilitates its transportation, concealment, or sale after importation, knowing the same to have been imported contrary to law, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both; and the merchandise so imported, or the value thereof shall be forfeited to the United States.

(18 U.S.C. 545)

[T.D. ATF–8, 39 FR 3251, Jan. 25, 1974, as amended by T.D. ATF–215, 50 FR 42162, Oct. 18, 1985]

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

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AUTHORITY: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

SOURCE: T.D. ATF–308, 56 FR 303, Jan. 3, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 53 appear by T.D. ATF–447, 66 FR 19088, Apr. 13, 2001.

Subpart A—Introduction

§ 53.1 Introduction.

The regulations in this part (part 53, subchapter C, chapter I, title 27, Code of Federal Regulations) are designated ''Manufacturers Excise Taxes—Firearms and Ammunition.'' The regulations relate to the tax on the sale of firearms and ammunition imposed by section 4181 of the Internal Revenue Code of 1986, and to certain related administrative provisions of chapter 32, subchapter F, of the Code. Chapter 32, subchapter D of the Code imposes taxes on the sale or use by the manufacturer, producer, or importer of certain recreational equipment specified in that chapter. References in the regulations in this part to the ''Internal Revenue Code'' or the ''Code'' are references to the Internal Revenue Code of 1986 (United States Code of 1986), as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

§ 53.2 Attachment of tax.

(a) For purposes of this part, the manufacturers excise tax generally attaches when the title to the article sold passes from the manufacturer to a purchaser.

(b) When title passes is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes.

(c) In the case of a sale on credit, the tax attaches whether or not the purchase price is actually collected.

(d) Where a consignor (such as a manufacturer) consigns articles to a consignee (such as a dealer), retaining ownership in them until they are disposed of by the consignee, title does not pass, and the tax does not attach until sale by the consignee. Where the

relationship between a manufacturer and a dealer is that of principal and agent, title does not pass, and the tax does not attach, until sale by the dealer.

(e) In the case of a lease, an installment sale, a conditional sale, or a chattel mortgage arrangement or similar arrangement creating a security interest, a proportionate part of the tax attaches to each payment. See section 4217 and §§ 53.103 and 53.104 for a limitation on the amount of tax payable on lease payments.

(f) In the case of use by the manufacturer, the tax attaches at the time the use begins.

§ 53.3 Exemption certificates.

Several sections of the regulations in this part, relating to sales exempt from manufacturers excise tax, require the manufacturer to obtain an exemption certificate from the purchaser to substantiate the exempt character of the sale. Any form of exemption certificate will be acceptable if it includes all the information required to be contained in such a certificate by the pertinent sections of the regulations in this part. These certificates are available as preprinted documents which may be ordered from the Bureau's Distribution Center (see § 53.21 for the address of the Distribution Center). The preprinted certificates may be reproduced as needed.

[T.D. ATF–380, 61 FR 37005, July 16, 1996]

Subpart B—Definitions

§ 53.11 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 meanings 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 other things not enumerated which are in the same general class or are otherwise within the scope thereof.

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 1130.18, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 53—Manufacturers Excise Taxes—Firearms and Ammunition.

Calendar quarter. A period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

Calendar year. The period which begins January 1 and ends on the following December 31.

Chapter 32. For purposes of this part chapter 32 means section 4181, chapter 32, of the Internal Revenue Code of 1986, as amended.

Code. Internal Revenue Code of 1986, as amended.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Electronic fund transfer (EFT). Any transfer of funds effected by a taxpayer's financial institution, 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.

Exportation. The severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

Exporter. The person named as shipper or consignor in the export bill of lading.

Financial institution. A bank or other financial institution, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications Systems (FRCS) or Fedwire. The ''FRCS'' or ''Fedwire'' is a communications network that allows Federal Reserve System member financial institutions to effect a transfer of funds for their customers (or other financial institutions) to the Treasury Account at the Federal Reserve Bank.

Firearms. Any portable weapons, such as rifles, carbines, machine guns, shotguns, or fowling pieces, from which a

shot, bullet, or other projectile may be discharged by an explosive.

Importer. Any person who brings a taxable article into the United States from a source outside the United States, or who withdraws such an article from a customs bonded warehouse for sale or use in the United States. If the nominal importer of a taxable article is not its beneficial owner (for example, the nominal importer is a customs broker engaged by the beneficial owner), the beneficial owner is the ''importer'' of the article for purposes of chapter 32 of the Code and is liable for tax on his sale or use of the article in the United States. See section 4219 of the Code and 27 CFR 53.121 for the circumstances under which sales by persons other than the manufacturer or importer are subject to the manufacturers excise tax.

Knockdown condition. A taxable article that is unassembled but complete as to all component parts.

Manufacturer. Includes any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles. The term also includes a ''producer'' and an ''importer.'' Under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

A manufacturer who sells a taxable article in a knockdown condition is liable for the tax as a manufacturer. Whether the person who buys such component parts or accessories and assembles a taxable article from them will be liable for tax as a manufacturer of a taxable article will depend on the relative amount of labor, material, and overhead required to assemble the completed article and on whether the article is assembled for business or personal use.

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

Pistols. Small projectile firearms which have a short one-hand stock or butt at an angle to the line of bore and a short barrel or barrels, and which are designed, made, and intended to be aimed and fired from one hand. The term does not include gadget devices, guns altered or converted to resemble pistols, or small portable guns erroneously referred to as pistols, as, for example, Nazi belt buckle pistols, glove pistols, or one-hand stock guns firing fixed shotgun or fixed rifle ammunition.

Possession of the United States. Includes Guam, the Midway Islands, Palmyra, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

Purchaser. Includes a lessee where the lessor is also the manufacturer of the article.

Revolvers. Small projectile firearms of the pistol type, having a breech-loading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

Sale. An agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership in goods) to the buyer for a consideration called the price, which may consist of money, services, or other things.

Secretary. The Secretary of the Treasury or his delegate.

Shells and cartridges. Include any article consisting of a projectile, explosive, and container that is designed, assembled, and ready for use without further manufacture in firearms, pistols or revolvers. A person who reloads used shell or cartridge casings is a manufacturer of shells or cartridges within the meaning of section 4181 if such reloaded shells or cartridges are sold by the reloader. However, the reloader is not a

manufacturer of shells or cartridges if, in return for a fee and expenses, he reloads casings of shells or cartridges submitted by a customer and returns the reloaded shells or cartridges with the identical casings provided by the customer to that customer. Under such circumstances, the customer would be the manufacturer of the shells or cartridges and may be liable for tax on the sale of articles. See section 4218 of the Code and § 53.112.

Taxable article. Any article taxable under section 4181 of the Code.

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

Vendor. Includes a lessor where the lessor is also the manufacturer of the article.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991; T.D. ATF–330, 57 FR 40325, Sept. 3, 1992; T.D. ATF–365, 60 FR 33670, June 28, 1995; T.D. ATF–404, 63 FR 52603, Oct. 1, 1998; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

Subpart C—Administrative and Miscellaneous Provisions

§ 53.20 Delegations of the Director.

All of the regulatory authorities of the Director contained in part 53 of the regulations are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.18, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 53—Manufacturers Excise Taxes—Firearms and Ammunition. ATF delegation orders, such as ATF Order 1130.18, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov).

[T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.21 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions on the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov).

(c) *Signature authorization*. An individual's signature on a return, statement, or other document made by or for a corporation or a partnership shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991. Redesignated in part by T.D. ATF–365, 60 FR 33670, June 28, 1995, as amended by T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.22 Employer identification number.

(a) *Requirement of application*. (1) Except for one-time or occasional filers, every person who makes a sale or use of an article with respect to which a tax is imposed by section 4181 of the Code, and who has not earlier been assigned an employer identification number or has not applied for one, shall make an application on Form SS–4 for an employer identification number. The application and any supplementary statement accompanying it shall be prepared in accordance with the applicable form, instructions, and regulations and shall set forth fully and clearly the data therein called for. Form SS–4 may be obtained from any internal revenue district office or internal revenue service center. The application shall be filed with the internal revenue officer designated in the instructions applicable to Form SS–4. The application shall be signed by:

(i) The individual if the person is an individual;

(ii) The president, vice-president, or other principal officer, if the person is a corporation;

(iii) A responsible and duly authorized member or officer having knowledge of its affairs, if the person is a partnership or other unincorporated organization; or

(iv) The fiduciary, if the person is a trust or estate.

An employer identification number will be assigned to the person in due course upon the basis of information reported on the application required under this section.

(2) *Time for filing Form SS–4.* The application for an employer identification number shall be filed no later than the seventh day after the date of the first sale or use of an article with respect to which a tax is imposed by chapter 32 of the Code. However, the application should be filed far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement.

(3) *One-time or occasional filers.* A person who files a return under the provisions of section 53.151(a)(5) is not required to make application for an employer identification number. Such persons may use their social security number on any return, statement or other document submitted to ATF by that person in lieu of an employer identification number.

(b) *Use of employer identification number.* The employer identification number assigned to a person liable for a tax imposed by chapter 32 of the Code shall be shown on any return, statement, or other document submitted to ATF by the person.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–365, 60 FR 33670, June 28, 1995; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.23 Alternate methods or procedures.

(a) A taxpayer, on specific approval by the appropriate ATF officer 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—

(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 relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) Where the taxpayer desires to employ an alternate method or procedure, a written application to do so must be submitted. The application must specifically describe the proposed alternate method or procedure and must set forth the reasons therefor. Alternate methods or procedures must not be employed until the appropriate ATF officer has approved the application. The taxpayer must, 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 appropriate ATF officer, the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization.

[T.D. ATF–365, 60 FR 33670, June 28, 1995, as amended by T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.24 Records.

(a) *In general*—(1) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable appropriate ATF officers to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(2) [Reserved]

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of the records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional

amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and subpart L of this part.

(d) *Place and period for keeping records.* (1) All records required by this part shall be prepared and kept by the person required to keep them, at one or more convenient and safe locations accessible to appropriate ATF officers, and shall at all times be immediately available for inspection by such officers.

(2) Except as otherwise provided in this subparagraph, every person required by the regulations in this part to keep records in respect of a tax shall maintain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least three years after the date the claim is filed.

(e) *Reproduction of original records.* (1) General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records. Any process may be used which accurately and timely reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(2) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record. Such reproduced records shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record.

[T.D. ATF–365, 60 FR 33670, June 28, 1995, as amended by T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

Subparts D–F [Reserved]

Subpart G—Tax Rates

§ 53.61 Imposition and rates of tax.

(a) *Imposition of tax.* Section 4181 of the Code imposes a tax on the sale of the following articles by the manufacturer, producer, or importer thereof:

(1) Pistols;

(2) Revolvers;

(3) Firearms (other than pistols and revolvers); and

(4) Shells and cartridges.

(b) *Parts or accessories*—(1) *In general.* No tax is imposed by section 4181 of the Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories. The tax does attach, however, to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sale of such articles that, although in knockdown condition, are complete as to all component parts.

(2) *Component parts.* Component parts are items that would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer. All component parts for firearms are includible in the price for which the article is sold.

(3) *Nontaxable parts.* Parts sold with firearms that duplicate component parts that are not includible in the price for which the article is sold.

(4) *Nontaxable accessories.* Items that are not designed to be attached to a firearm during use or that are not, in the ordinary course of trade, provided with the firearm at the time of the sale by the manufacturer or importer are not includible in the price for which the article is sold.

(5) *Examples*—(i) *In general*. The following examples are provided as guidelines and are not meant to be all inclusive.

(ii) *Component parts*. Component parts include items such as a frame or receiver, breech mechanism, trigger mechanism, barrel, buttstock, forestock, handguard, grips, buttplate, fore end cap, trigger guard, sight or set of sights (iron or optical), sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, and/or an attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Component parts also include any part provided with the firearm that would affect the tax status of the firearm, such as an attachable shoulder stock.

(iii) *Nontaxable parts*. Nontaxable parts include items such as extra barrels, extra sights, optical sights and mounts (in addition to iron sights), spare magazines, spare cylinders, extra choke tubes, and spare pins.

(iv) *Nontaxable accessories*. Nontaxable accessories include items such as cleaning equipment, slings, slip on recoil pads (in addition to standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, or medallions. Nontaxable accessories also include optional items purchased by the customer at the time of retail sale that do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pads, slings, sling swivels, chokes, and flash hiders/muzzle brakes of a type not provided by the manufacturer or importer of the firearm in the ordinary course of commercial trade.

(c) *Rates of tax*. Tax is imposed on the sale of the articles specified in section 4181 of the Code at the rates indicated below.

	Percent
(1) Pistols	10
(2) Revolvers	10
(3) Firearms (other than pistols and revolvers)	11
(4) Shells and cartridges	11

(d) *Computation of tax*. The tax is computed by applying to the price for which the article is sold the applicable rate. For definition of the term ''price'' see section 4216 of the Code and the regulations contained in subpart J of this part.

(e) *Liability for tax*. The tax imposed by section 4181 of the Code is payable by the manufacturer, producer, or importer making the sale.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–404, 63 FR 52603, Oct. 1, 1998]

§ 53.62 Exemptions.

(a) *Firearms subject to the National Firearms Act*. Section 4182(a) provides that the tax imposed by section 4181 of the Code shall not attach to the sale of any firearms on which the tax imposed by section 5811 of the Code (relating to tax on the transfer of machine guns, short-barreled firearms, and other weapons) has been paid. Any manufacturer, producer, or importer claiming such an exemption from the tax imposed by section 4181 of the Code must maintain such records and be prepared to produce such evidence as will establish the right to the exemption.

(b) *Sales to Defense Department or to U.S. Coast Guard*—(1) *Military department*. Section 4182(b) of the Code provides that the tax imposed by section 4181 of the Code shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for a military department of the United States. For this purpose, the term ''military department'' means the Department of the Army, the Department of the Navy, and Department of the Air Force. Included in the Department of the Navy are naval aviation and the Marine Corps.

(2) *Coast Guard*. Section 655, title 14, U.S.C., provides that no tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for the United States Coast Guard.

(3) *Supporting evidence*. Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 of the Code by reason of section 4182(b) and section 655, title 14 of the Code must maintain such records and be prepared to produce

such evidence as will establish the right to the exemption. Generally, clearly identified orders or contracts of a military department signed by an authorized officer of the military department will be sufficient to establish the right to the exemption. In the absence of such orders or contracts, a statement, signed by an authorized officer of a military department or the Coast Guard, that the prescribed articles were purchased with funds appropriated for that military department or the Coast Guard will constitute satisfactory evidence of the right to an exemption.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 53.63 Other tax-free sales.

For provisions relating to tax-free sales of firearms and ammunition see:

(a) Section 4221 and 27 CFR 53.131, ''Tax-free sales; general rule''.

(b) Section 4223 and 27 CFR 53.132, ''Tax-free sale of articles to be used for, or resold for, further manufacture''.

(c) Section 4222 and 27 CFR 53.140, ''Registration''.

Subparts H–I [Reserved]

Subpart J—Special Provisions Applicable to Manufacturers Taxes

§ 53.91 Charges to be included in sale price.

(a) *In general.* The ''price'' for which an article is sold includes the total consideration paid for the article, whether that consideration is in the form of money, services, or other things. However, for purposes of the taxes imposed under chapter 32 of the Code, certain collateral charges made in connection with the sale of a taxable article must be included in the taxable sale price, whereas others may be excluded. Any charge which is required by a manufacturer, producer, or importer to be paid as a condition of its sale of a taxable article and which is not attributable to an expense falling within one of the exclusions provided in section 4216 of the Code or the regulations thereunder is includable in the taxable sale price. It is immaterial for this purpose that the charge may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the purchaser as a charge earmarked for expenses incurred or to be incurred in his behalf, such as charges for demonstration or display of the article, for sales promotion programs, or otherwise. With respect to the rules relating to exclusion of charges for local advertising of a manufacturer's products, see section 4216(e) of the Code and § 53.100. In the case of sales on credit, a carrying, finance, or service charge is excludable from the sale price if it is reasonably related to the costs of carrying the deferred portion of the sale price (such as interest on the deferred portion of the sale price, expenses of bookkeeping necessary to keep the records of such sales, and expenses of correspondence and other communication in connection with collection).

(b) *Tools and dies.* Separate charges for tools and dies used in the manufacture or production of a taxable article are to be included, in whole or in part, in the sale price on which the tax is based. It is immaterial whether the charges for such items are billed in a lump sum or are amortized or allocated to each of the taxable articles. If, at the termination of a contract to manufacture taxable articles, the tools and dies used in production pass to the purchaser, only the amount of depreciation of the tools and dies incurred in production, computed on a ''production output'' basis, should be included in the sale price. If the purchaser furnishes the tools and dies, the amount of the cost thereof, to the extent that such cost has been depreciated in the production of the taxable articles (computed on a ''production output'' basis), shall be included in determining the sale price of the articles for purposes of computing the tax.

(c) *Charges for warranty.* A charge for a warranty of an article which the manufacturer, producer, or importer requires the purchaser to pay in order to obtain the article shall be included in the sale price of the article on which the tax is computed. On the other

hand, a charge for a warranty of a taxable article paid at the purchaser's option shall not be included in the sale price for purposes of computing tax thereon.

(d) *Charges for coverings, containers, and packing.* Any charge by the manufacturer, producer, or importer for coverings and containers of whatever nature used to pack an article for shipment shall be included as part of the sale price for the purpose of computing the tax, whether or not the charges are identified as such on the invoice or are billed separately. Even though there is an agreement that the manufacturer, producer, or importer will repay all or a portion of the charge for the coverings or containers upon the return thereof, the full charge nevertheless shall be included in the sale price. It is immaterial whether the charge made at the time of sale is more or less than the actual value of the covering or container. See § 53.173(b)(4) for provisions relating to the claiming of a credit or refund in the case of a price readjustment due to the return or repossession of a covering or container. Packing charges are to be included in the sale price whether the charges cover normal packing or special packing services, such as for extra protection of the article or for odd-lot quantities. This rule shall apply whether the packing services are initiated by the manufacturer, producer, or importer or are furnished at the request of the purchaser and whether the packing is performed by the manufacturer, producer, or importer or by another person at his request. If the purchaser supplies packing materials, the fair market value of such materials must be included in the tax base when computing tax liability on the sale of the article.

(e) *Taxable and nontaxable articles sold as a unit.* Where a taxable article and a nontaxable article are sold by the manufacturer as a unit, the tax attaches to that portion of the manufacturer's sale price of the unit which is properly allocable to the taxable article. Normally, the taxable portion of such a unit may be determined by applying to the manufacturer's sale price of the unit the ratio which the manufacturer's separate sale price of the taxable article bears to the sum of the sale prices of both the taxable and nontaxable articles, if such articles are sold separately by the manufacturer. Where the articles (or either one of them) are not sold separately by the manufacturer and do not have established sale prices, the taxable portion is to be determined from a comparison of the actual costs of the articles to the manufacturer. Thus, if the cost of the taxable article represents four-fifths of the total cost of the complete unit, the tax applies to four-fifths of the price charged by the manufacturer for the unit.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 53.92 Exclusions from sale price.

(a) *Tax*—(1) *Tax not part of taxable sale price.* The tax imposed by chapter 32 of the Code on the sale of an article is not part of the taxable sale price of the article. Thus, if a manufacturer computes the tax on a sale price which is determined without regard to the tax, and it charges the proper tax as a separate item, the amount of tax so charged does not become a part of the taxable sale price and no tax is due on the tax so charged. Where no separate charge is made as tax, it will be presumed that the price charged to the purchaser for the article includes the proper tax, and the proper percentage of such price will be allocated to the tax.

(2) *Computation of tax.* If an article subject to tax at the rate of 10 percent is sold for $100 and an additional item of $10 is billed as tax, $100 is the taxable selling price and $10 is the amount of tax due thereon. However, if the article is sold for $100 with no separate billing or indication of the amount of the tax, it will be presumed that the tax is included in the $100, and a computation will be necessary to determine what portion of the total amount represents the sale price of the article and what portion represents the tax. The computation is as follows:

$$\text{Taxable sale price} = \frac{\text{sale price including tax}}{100 + \text{rate of tax}}$$

Thus, if the tax rate is 10 percent and the sale price including tax is $100, the taxable sale price is $90.91 (that is, $100 divided by (100+10)), and the tax is 10 percent of $90.91, or $9.09.

(b) *Transportation, delivery, insurance, or installation charges*—(1) *Charges incurred pursuant to sale.* Charges for transportation, delivery, insurance, installation, and other expenses actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale shall be excluded from the sale price in computing the tax. Such charges include all items of transportation, delivery, insurance, installation, and similar expense incurred after shipment to a customer begins, in response to the customer's order, pursuant to a bona fide sale. However, costs of such nature incurred by a manufacturer, producer, or importer in transporting, in the normal course of business and for its benefit and convenience, articles from a factory or port of entry to a warehouse or other facility (regardless of the location of such warehouse or facility) are not considered as being incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, and charges therefor cannot be excluded from the sale price in computing tax liability. Similarly, an allowance granted by a manufacturer as reimbursement for expenses incurred by the purchaser in shipping used articles to the manufacturer for credit against the purchase price of taxable articles shall not be excluded from the sale price when computing tax due on the sale of the taxable articles. In any event, no charge may be excluded from the sale price unless the conditions set forth in paragraph (b)(2) of this section are complied with. Said conditions are prescribed under the authority granted the Secretary in section 4216(a) of the Code.

(2) *Only actual expenses to be excluded.* Where a separate charge is made for transportation or other expenses incurred in connection with the delivery of an article to the purchaser pursuant to a bona fide sale, there shall be excluded in arriving at the sale price subject to tax only that portion of the charge which represents the actual expenses incurred for the transportation or other excludable expenses. Where a separate charge is less than the actual expense, the difference is presumed to be included in the billed price. Such difference, together with the separate charge, shall be excluded in arriving at the sale price on which the tax is computed. Similarly, where no separate charge is made but the manufacturer, producer, or importer incurs an expense of the type to which this paragraph has application, the amount of such expense actually incurred shall be excluded from the sale price on which the tax is computed. Where transportation expense is incurred in conjunction with a shipment composed of both taxable and nontaxable articles, only the portion of the expense allocable to the taxable articles shall be excludable. In general, unless the taxpayer establishes to the satisfaction of the appropriate ATF officer that another method reasonably apportions such freight expense between taxable and nontaxable articles, such expense should be apportioned on the basis of the relative weights (or, if available, the relative published tariff rates) applicable to the taxable and nontaxable articles. Where it is not feasible to apportion such expense on the basis of relative weights or tariff rates, the expense shall be apportioned on another reasonable basis; for example, in the case of a shipment including both taxable and nontaxable articles which are subject to the same tariff rate, it may be appropriate to apportion the transportation expense on the basis of the relative sale prices. A charge for insurance in connection with the delivery of an article to a purchaser is considered to represent an expense actually incurred only to the extent that an amount equivalent to such charge is paid or payable by the manufacturer to a person authorized to assume such insurance risk.

(3) *Transportation, delivery, or installation services performed by manufacturer.* For purposes of computing the taxable sale price of articles, it is immaterial whether the transportation, delivery, or other services of the type to which this paragraph has application are performed by a common carrier or independent agency for or on behalf of the manufacturer, producer, or importer,

or are performed by the manufacturer, producer, or importer with the use of its own vehicles or other facilities. Thus, where a manufacturer, producer, or importer performs the transportation, delivery, or other services with its equipment, tools, employees, etc., the cost of such services allocable to the sale of the taxable article shall be excluded. In determining whether an expense is an excludable transportation or delivery expense, only those expenses incurred by reason of the fact that the purchaser accepts delivery at some point other than the manufacturer's place of business shall be considered excludable transportation or delivery expenses. All expenses incurred in placing an article packed, ready for shipment on the loading dock at the manufacturer's factory are not excludable transportation or delivery expenses. An allowance granted by the manufacturer, producer, or importer to the purchaser for transportation, delivery, or other expenses incurred or to be incurred by the purchaser in connection with the sale shall be excluded in computing the taxable sale price, if charges for similar expenses would be excludable if incurred by the manufacturer.

(4) *Records in support of exclusion.* Every manufacturer, producer, or importer making sales of taxable articles shall keep records which will disclose the amount of transportation, delivery, insurance, installation or other expense actually incurred by it in connection with the delivery of a taxable article to a purchaser pursuant to a bona fide sale.

(c) *Other charges.* A charge or expense not within the scope of paragraph (a) or (b) of this section, whether or not separately stated, may not be excluded in computing the taxable sale price unless it can be shown by adequate records that the charge or expense is not properly included as a manufacturing or selling expense or is in no way incidental to placing the article in condition packed ready for shipment. Commissions to manufacturers' agents, or allowances, payments, or adjustments made to, and for the benefit of, persons other than the purchaser may not be excluded or deducted, under any condition, in computing the sale price upon which the tax is computed.

§ 53.93 Other items relating to tax on sale price.

(a) *Exchanges.* If, in connection with the sale of an article subject to a tax imposed under chapter 32 of the Code on the price for which sold, a manufacturer receives from its vendee another article in exchange, the tax on the manufacturer's sale shall be computed on the basis of the amount allowed for the article received from the vendee, plus any additional amount charged the vendee.

(b) *Replacements under warranty.* If an article, subject to a tax imposed under chapter 32 of the Code on the price for which sold, is returned to the manufacturer by reason of the failure of the article under a warranty as to its quality or service, and a new article is given by the manufacturer, free, or at a reduced price, the tax on the new article shall be computed on the actual amount, if any, to be paid to the manufacturer for the new article. See § 53.174(b) for the circumstances under which the allowance made by the manufacturer, producer, or importer upon the return of the first article constitutes a price readjustment of the sale price of the first article and the extent, if any, to which a credit may be allowed, or refund made, of the tax paid by the manufacturer, producer, or importer on the sale of the first article.

(c) *Readjustments in sale price.* Readjustment in sale price (such as allowable discounts, rebates, bonuses, etc.) cannot be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the period for which the tax upon the sale is returned. However, if the price upon which the tax was computed is subsequently readjusted, credit may be taken against the tax due on a subsequent return or a claim for refund filed as provided by section 6416(b)(1) of the Code and §§ 53.174–53.176.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993]

§ 53.94 Constructive sale price; scope and application.

(a) *In general.* Section 4216(b) of the Code pertains to those taxes imposed under chapter 32 of the Code that are based on the price for which an article is sold, and contains the provisions for constructing a tax base other than the actual sale price of the article, under certain defined conditions.

(b) *Specific applications.* (1) Section 4216(b)(1) of the Code applies to:

(i) Arm's-length sales at retail or on consignment, other than those sales at retail and to retailers to which section 4216(b)(2) of the Code and § 53.96 apply; and

(ii) Sales otherwise than at arm's length, and at less than fair market price.

(2) Section 4216(b)(2) of the Code applies generally to arm's-length sales of an article at retail or to retailers, or both, where the manufacturer also sells the same article to wholesale distributors.

(3) Section 4216(b)(3) of the Code provides a formula for determining a constructive sale price for sales of taxable articles between members of an affiliated group of corporations (as ''affiliated group'' is defined in section 1504(a) of the Code) in those instances where the purchasing corporation regularly resells to retailers but does not regularly resell to wholesale distributors, and except for situations where section 4216(b)(4) of the Code applies.

(4) Section 4216(b)(4) of the Code provides a special method for computing a constructive sale price for sales of taxable articles between affiliated corporations where the purchasing corporation sells only to retailers, and the normal method of selling within the industry is for manufacturers to sell to wholesale distributors.

(c) *Definitions.* For purposes of section 4216(b) of the Code and §§ 53.94–53.97 and unless otherwise indicated:

(1) *Sale at retail.* A ''sale at retail,'' or a ''retail sale'', is a sale of an article to a purchaser who intends to use or lease the article rather than resell it. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as ''sales at retail'' if the purchaser is not engaged in the business of reselling such articles, and acquires them for the purpose of using them rather than reselling them.

(2) *Retail dealers.* A ''retail dealer'', or ''retailer'', is a person engaged in the business of selling articles at retail.

(3) *Wholesale distributor.* The term ''wholesale distributor'' means a person engaged in the business of selling articles to persons engaged in the business of reselling such articles.

§ 53.95 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) of the Code sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 of the Code on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is:

(1) Sold at retail;

(2) Sold while on consignment; or,

(3) Sold otherwise than through an arm's-length transaction at less than fair market price.

(b) *Sales at retail.* Section 4216(b)(1)(A) of the Code relates to the determination of a constructive sale price for sales of taxable articles sold at arm's-length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. If the constructive sale price is less than the actual sale price, the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market, and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors, there must be taken into consideration the normal industry practices with respect to inclusions and exclusions under section 4216(a) of the Code. However, once a constructive sale price has been determined by the Secretary, no further adjustment of such price shall be made. The provisions of section 4216(b)(1)(A) of the Code and this paragraph shall not

apply in those instances where the provisions of section 4216(b)(2) of the Code and § 53.96 apply.

(c) *Sales on consignment.* As in the case of sales at retail, the constructive sale price for sales on consignment shall be the price for which such articles are sold, in the ordinary course for trade, by manufacturers or producers thereof, as determined by the Secretary. For purposes of section 4216(b)(1)(B) of the Code and this paragraph, an article is considered to be sold on consignment if it is sold while it is on consignment to a person which has the right to sell, and does sell, such article in its own name, but never receives title to the article from the manufacturer. Ordinarily, the constructive sale price of an article sold on consignment is the net price received by the manufacturer from the consignee. The provisions of section 4216(b)(1)(B) of the Code and this paragraph shall not apply if the provisions of section 4216(b)(2) of the Code and § 53.96 apply.

(d) *Sales not at arm's-length.* For purposes of section 4216(b)(1)(C) of the Code and this paragraph, a sale is considered to be made under circumstances otherwise than at ''arm's-length'' if:

(1) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(2) The sale is made pursuant to special arrangements between a manufacturer and a purchaser.

In case of an article sold otherwise than at arm's-length, and at less than fair market price, the constructive sale price shall be the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. Once such a constructive sale price has been determined, no further adjustment of such price shall be made. See sections 4216(b) (3) and (4) of the Code, and § 53.97, for specific methods for determining constructive sale prices for intercompany sales under certain defined conditions.

§ 53.96 Constructive sale price; special rule for arm's-length sales.

(a) *In general.* Section 4216(b)(2) of the Code provides a special rule under which a manufacturer shall determine a constructive sale price for this sale of taxable articles at retail, and to retail dealers, under certain conditions. The rule is applicable where:

(1) The manufacturer regularly sells such articles at retail, or to retailers, or both, as the case may be,

(2) The manufacturer also regularly sells such articles to one or more wholesale distributors in arm's-length transactions, and the manufacturer establishes that its prices in such cases are determined without regard to any benefit to be derived under section 4216(b)(2) of the Code, and

(3) The transactions are arm's-length transactions.

(4) A manufacturer meeting the foregoing requirements shall base its tax liability for sales at retail and sales to retailers on the lower of its actual sale price or the highest price for which it sells the same articles under the same conditions to wholesale distributors.

(b) *Definitions.* For purposes of section 4216(b)(2) of the Code and this section:

(1) *Actual sale price.* ''Actual sale price'' means the actual selling price for an article determined in the same manner as sale price is determined for a taxable sale. Accordingly, such price must reflect the inclusions and exclusions set forth in section 4216(a) of the Code, and any price adjustments described in section 6416(b)(1) of the Code.

(2) *Highest price to wholesale distributors.* The ''highest price'' charged wholesale distributors for an article by a manufacturer, producer, or importer thereof, is the highest price at which the manufacturer, producer, or importer sells the article to wholesale distributors, determined without regard to quantity. Such price shall be determined in the same manner as sale price is determined for a taxable sale with respect to the inclusions and exclusions under section 4216(a) of the Code; however, since the price is to be a ''highest'' price, no further adjustment may be made for price readjustments under section 6416(b)(1) of the Code.

(3) *Regular sales.* An article is considered to be sold ''regularly'' at retail or to retailers if sales are made at retail or to retailers periodically and recurringly as a regular part of the seller's business. If a seller makes only isolated or casual sales of an article at retail or to retailers, it is not considered to be selling ''regularly'' at retail or to retailers. Similarly, a manufacturer is considered to be making regular sales of an article to one or more distributors if it sells the article to at least one distributor periodically and recurringly as a regular part of its business.

(4) *Normal method of sales in industry.* In the absence of a showing to the appropriate ATF officer of a more appropriate manner of determining the normal method of sales within an industry which is practical in application, the normal method of sales within an industry shall be regarded as not being at retail or to retailers, or both, if the industry dollar volume of sales which are at retail or to retailers, or both, is less than half the total industry dollar volume of sales at all levels of distribution by manufacturers, producers, or importers, including sales to other manufacturers, producers, or importers.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 53.97 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3) and (4) of the Code establish procedures for determining a constructive sale price under section 4216(b)(1)(C) of the Code for sales between corporations that are members of the same ''affiliated group'', as that term is defined in section 1504(a) of the Code.

(b) *Sales to which section 4216(b)(3) of the Code applies.* Section 4216(b)(3) of the Code provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) of the Code in those instances where:

(1) A manufacturer, producer or importer regularly sells a taxable article to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producers or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors. Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm's-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for inclusions or exclusions under section 4216(a) of the Code or price readjustments under section 6416(b)(1) of the Code. If both sections 4216(b)(3) and 4216(b)(4) of the Code apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under sections 4216(b)(3) and 4216(b)(4).

(c) *Sales to which section 4216(b)(4) of the Code applies.* Section 4216(b)(4) of the Code provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) of the Code in those instance where:

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer, or importer,

(2) The distributor regularly sells (except for tax-free sales) such article only to retail dealers, and

(3) The normal method of sales for such articles within the industry is to sell such articles in arm's-length transactions to wholesale distributors.

(4) Under section 4216(b)(4) of the Code, the constructive sale price of such article shall be the median price at which the distributor, at the time of the sale by the manufacturer, resells the article to retail dealers, reduced by a percentage of such price equal to the percentage which:

(i) The difference between the median price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers of producers thereof, and the median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of

(ii) The median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers.

(iii) For purposes of this paragraph, the ''median price'' for which an article is sold at a particular level of distribution is the price midway between the highest and lowest prices charged vendees at the particular level of distribution. Where only one price is charged at a level of distribution, ''median price'' is equivalent to ''actual price''. All sale prices referred to in paragraphs (c) and (d) of this section are prices that must reflect the inclusions and exclusions set forth in section 4216(a) of the Code. However, once a constructive sale price has been determined under these paragraphs, no further adjustment of such price is allowed.

(d) *Application of section 4216(b)(4) of the Code.* The application of section 4216(b)(4) of the Code and paragraph (c) of this section may be illustrated by the following example:

Example. M, a corporation engaged in the manufacture of article X, sold 100 of such articles at $10.00 per article to a wholesale distributor N, a corporation engaged in the business of selling X articles to independent retail dealers. N is a member of the same affiliated group of corporations as M. M sells X articles only to N. The normal method of manufacturers' sales of X articles in the industry is to sell to independent wholesale distributors. N corporation sells X articles to retailers for $15.00 each. The price for which comparable X articles are sold to wholesale distributors in the ordinary course of trade by manufacturers thereof is $12.00 per article. Wholesale distributors sell X articles to retailers in the ordinary course of trade for $16.00 per article. Under the foregoing facts the constructive sale price determined under section 4216(b)(4) of the Code and this paragraph is $11.25, computed as follows:

$$\$15.00 - \left(\$15.00 \times \frac{\$16.00 - \$12.00}{\$16.00}\right) = \$11.25$$

(e) *Determination of ''lowest price''.* In addition to other considerations, in determining a ''lowest price'' for purposes of sections 4216(b) (1) and (3) of the Code and § 53.97, such price shall be determined:

(1) Without requiring that a given percentage of sales be made at that price (provided that the volume of sales made at that price is great enough to indicate that those sales have not been engaged in primarily to establish a lower tax base), and

(2) Without including any charge for a fixed amount that the purchaser has an unconditional right to recover on the basis of a contractual arrangement existing at the time of sale.

(f) *Definitions.* For purposes of this section and paragraphs (3) and (4) of section 4216(b) of the Code, the term ''regularly sells'' has the same meaning as that accorded the term ''regular sales'' in § 53.96(b)(3), and the term ''normal method of sales in the industry'' has the same meaning as accorded that term in § 53.96(b)(4).

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 53.98 Computation of tax on leases and installment sales.

(a) *Leases.* When a taxable article is leased by a manufacturer, producer, or importer, liability for tax is incurred, except as provided by section 4217(b) of the Code and § 53.104, on each payment made with respect to such lease. Tax is payable on each lease payment as long as the article is leased by the manufacturer, producer, or importer. The tax payable with respect to each lease payment is a percentage of each payment based on the rate of tax, if any, in effect on the date the lease payment is due. If the article is subsequently sold by the manufacturer, producer, or importer, the tax applies also to such sale, without regard to the tax paid when the article was leased. For definition of the term ''lease'', see § 53.103.

(b) *Installment sales.* When a taxable article is sold under an installment payment contract with title reserved in the seller, or under a conditional sale contract, chattel mortgage arrangement or other arrangement creating a security interest with payments to be made in installments, tax shall be computed and paid on each payment made by the purchaser. The tax payable with each payment is a percentage of each payment based on the rate of tax, if any, in effect on the date the payment is due. The part of each payment that is subject to tax is that portion of the payment equal to

the percentage of the total portion of the payment equal to the percentage of the total charge for the article that is subject to tax. For example, if the total charge for the article is $1,000, and of the total amount charged only 90 percent thereof, or $900, is subject to tax by reason of exclusions, then only 90 percent of the installment payment is subject to tax. If the tax base is a constructive sale price computed under section 4216(b) of the Code that is less than the actual sale price of the article, the portion of each payment subject to tax is the percentage of such payment equal to the percentage that the constructive sale price bears to the actual sale price. For example, if an article is sold at retail for $100, and the constructive sale price for such an article computed under the provisions of section 4216(b)(1)(A) of the Code is $75, the percentage which the constructive sale price bears to the actual sale price is 75 percent. Accordingly, only 75 percent of each installment payment is subject to tax.

(c) *Sales on credit*. Where articles are sold on credit under conditions other than those specified in paragraph (b) of this section, the entire tax shall be reported and paid with the return covering the period in which the sale is made, even though the price may not be paid to the manufacturer, producer, or importer until a later date, or not paid at all.

§ 53.99 Sales of installment accounts.

(a) *In general*. Except as provided in paragraph (d) of this section, in case of a sale or other disposition by a manufacturer, producer, or importer of an installment account of the type specified in section 4216(c) of the Code, the tax shall not apply to subsequent installment payments on such account. Instead, there shall be paid an amount equal to the difference between the tax previously paid on such installment account and the total tax computed by applying:

(1) To each installment due before the sale of the installment account, the rate of tax applicable at the time payment thereof was due, and

(2) To each installment, the time for payment of which has not arrived, the rate of tax which, under the provisions of chapter 32 of the Code as in effect on the date of the sale of the installment account, is (or is to be) in effect on the date such installment is due. However, see paragraph (b) of this section if the sale is made in a bankruptcy or insolvency proceeding. The tax due under this paragraph shall be included in the return for the period in which the account is sold.

(b) *Sale in bankruptcy or insolvency proceeding*. In the case of a sale of an installment account of a manufacturer, producer, or importer pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount of tax due shall be computed and paid as provided in paragraph (a) of this section but shall not exceed the amount of tax computed by multiplying:

(1) The proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment, by

(2) The rate of tax which, under the provisions of chapter 32 of the Code as in effect on the date of the sale of the installment account, is (or is to be) in effect on the date such payment is due.

(c) *Collection of installment accounts on behalf of the manufacturer*. Where a manufacturer, producer, or importer retains title to an installment account but turns it over to another person for collection on a fee basis, no sale of such account (or other disposition as contemplated in section 4216(d) of the Code) has been made. The tax shall continue to be paid as provided by section 4216(c) of the Code.

(d) *Returned installment accounts*. Where an installment account which has been sold or otherwise disposed of is returned to the manufacturer, producer, or importer who sold it under an agreement under which the account was sold, and credit or refund has been allowed under section 6416(b)(5) of the Code and § 53.183, the manufacturer, producer, or importer shall pay tax as provided by section 4216(c) of the Code and § 53.98 on any subsequent payments made on such returned installment account until such time as there shall have been paid the total tax liability

with respect to the account as computed under paragraph (a) of this section.

(e) *Limitation*. The sum of the amounts payable under this section and § 53.98 or an installment account shall not exceed the total amount of tax which would be payable if such installment account had not been sold or otherwise disposed of (computed as provided in subsection (c)).

§ 53.100 Exclusion of local advertising charges from sale price.

(a) *In general*. Section 4216(e) of the Code deals with the treatment to be accorded charges made by a manufacturer for, and reimbursements by a manufacturer or expenditures in connection with the advertising of certain articles subject to excise tax under chapter 32 of the Code. Section 4216(e) of the Code provides an exclusion (which is in addition to the exclusions provided by section 4216(a) of the Code and § 53.92) in respect of charges for local advertising, as defined in paragraph (b) of this section, for purposes of determining the price for which an article is sold. See paragraph (c) of this section. The exclusion provided by section 4216(e) of the Code and paragraph (c) of this section has application only if the advertising is broadcast over a radio or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster. Section 4216(e) of the Code also provides an overall limitation in respect of the sum of the amount of the exclusions from price as charges for local advertising and the amount of the readjustments authorized under section 6416(b)(1) of the Code (relating to credits or refunds for price readjustments) in respect of reimbursements by a manufacturer of expenditures for local advertising. See § 53.101. For provisions prohibiting exclusion from price or readjustment of price in respect of charges for, and reimbursements of expenditures for, advertising other than local advertising, see § 53.102.

(b) *Definition of local advertising*—(1) *In general*. For purposes of the regulations under sections 4216(e) and 6416(b)(1) of the Code (§§ 53.100–53.102 and 53.173–53.176), the term ''local advertising'' means advertising which relates to an article with respect to which tax is imposed under chapter 32 of the Code on the price for which sold and which:

(i) Is initiated or obtained by the purchaser or any subsequent vendee,

(ii) Names the article for which the price is determinable under section 4216 and states the location at which such article may be purchased at retail, and

(iii) Is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(2) *Initiating or obtaining advertising*. For purposes of paragraph (b)(1) of this section, the advertising must be initiated or obtained by one or more of the persons in the chain of distribution of the article (wholesale distributor, jobber, dealer, etc.) who purchased the article for resale. For purposes of this subparagraph, the manufacturer is not considered to be one of the persons in the chain of distribution of the article. In general, advertising of an article is considered to be initiated or obtained by one or more persons in the chain of distribution of the article if any such person:

(i) Takes an active part in the actual planning and development, or in the arrangements or negotiations leading to the development, of the form and content of the advertising, or

(ii) Contracts for the placement of the advertising.

The participation by the manufacturer of the article in the planning, development, or placement of the advertising is immaterial provided the advertising is in fact initiated or obtained by one or more persons in the chain of distribution of the article. Furthermore, it is immaterial whether or not the advertising is subject to the approval of the manufacturer of the article. However, if no person in the chain of distribution of the article takes an active part in the actual planning and development, or in the arrangements or negotiations leading to the development, of the form and content of the advertising, but, rather, all such planning,

development, arrangements, and negotiations are accomplished by the manufacturer of the article, then such manufacturer is considered to have initiated the advertising, and if he also contracts for the placement of the advertising, such advertising does not qualify as ''local advertising''.

(3) *Identification of article and sales location.* To meet the requirements of paragraph (b)(1) of this section, the advertising must identify the article for which the price is determinable under section 4216 of the Code and give the location or locations at which the article may be purchased at retail. All products taxable at the same rate under the same section of chapter 32 of the Code shall be considered to be an ''article'' for purposes of the preceding sentence. No specific method or means of identification is prescribed. The identification of the article may be made through the use of the name of the manufacturer or the use of an established trade-mark, such as a seal, picture, letter or letters, etc., or a combination thereof. The advertising must identify the particular retail establishment or establishments at which the article may be purchased at retail but need not specify the location of any such establishment in terms of the number by which the premises are designated or the name of the street on which the retail premises are situated. However, the location of the retail premises must be described sufficiently, as, for example, by reference to a particular named shopping area or shopping center, to enable customers to find the retail establishment.

(4) *Determination of costs of local advertising.* Where an advertisement identifies more than one article, and all such articles are not taxable, or are not taxable at the same rate under the same section of chapter 32 of the Code, a reasonable allocation of the cost of the advertisement must be made among:

(i) Articles taxable at the same rate under the same section of the Code, and

(ii) Articles which are not taxable under chapter 32 of the Code.

For example, in the case of a single page newspaper or magazine advertisement, an allocation of costs reflecting the lineage or space devoted to the specified categories will be considered to reflect a reasonable allocation of the cost of advertising the different articles. As a general rule, only the cost of the ''spot'' portion identifying the retail establishment is considered ''local advertising'' in the case of national television or radio programs.

(5) *Meaning of ''newspaper''.* The term *newspaper*, as used in paragraph (b)(1) of this section, is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless printed and distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(6) *Meaning of ''magazine''.* The term *magazine*, as used in paragraph (b)(1) of this section, is limited to those publications which are:

(i) Commonly understood to be magazines,

(ii) Printed and distributed periodically at least twice a year, and

(iii) Published for the dissemination of information of a general nature or of special interest to particular groups.

(iv) The term does not include handbills, circulars, flyers or the like, unless printed and distributed as a part of a publication which constitutes a magazine within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be information of a general nature or information of special interest to particular groups within the contemplation of paragraph (b)(6)(iii) of this section.

(7) *Meaning of ''outdoor advertising sign or poster''*. The term ''outdoor advertising sign or poster'', as used in paragraph (b)(1) of this section, means a sign or poster displaying advertising matter, which is located outside of a roofed enclosure. This term includes both signs or posters on billboards, whether placed on or affixed to land, buildings, or other structures, and those which are displayed on or attached to moving objects, provided the signs or posters are located outside of a roofed enclosure. The term ''roofed enclosure'' means a roof structure which is enclosed on more than one-half of its sides by walls, fences, or other barriers.

(c) *Exclusion*—(1) *Conditions and limitations.* A charge for local advertising which is required by a manufacturer to be paid as a condition to his sale of an article is not a part of the taxable price of the article, to the extent that such charge meets each of the following conditions and limitations:

(i) Such charge does not exceed 5 percent of the difference between:

(A) An amount which would constitute the taxable price of the article (computed at the time of the sale of the article) if no part of any charge for local advertising were excludable in computing taxable price, and

(B) The amount of any separate charge for local advertising, whatever the amount of such charge may be,

(ii) Such charge is specifically shown as a separate charge for local advertising on the invoice or statement covering the sale of the article.

(iii) Such charge is billed by the manufacturer with the intention on his part of repaying the amount of the charge to the person purchasing the article from him, or to any person who subsequently purchases the article for resale, in reimbursement of costs incurred for local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. In the absence of evidence to the contrary, the fact of such intention will be assumed in all cases where the manufacturer and his vendees are parties to an advertising plan which calls for such repayments, or the manufacturer can otherwise establish that the vendees to whom he bills such charges understand and expect that such repayments will be made.

(2) *When exclusion ceases to apply*. To the extent that charges for local advertising meet the conditions and limitations stated in paragraph (c)(1) of this section, such charge is excludable in computing the taxable price of the article in respect of which the charge was made. However, the exclusion will cease to apply in respect of any part of such charge which the manufacturer fails to repay before May 1 of the calendar year following the calendar year in which the article was sold, to the person who purchased the article from him, or to some other person who subsequently purchases the article for resale, in reimbursement of costs incurred for local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. If, before such May 1, any part of the charge so excluded has not been so repaid, the manufacturer becomes liable for tax on such May 1 in the same manner as if an article taxable under such section of the Code had been sold by him on such May 1 at a taxable price equivalent to that part of the charge not so repaid. However, see paragraph (b)(2) of § 53.175, relating to price readjustments in cases where local advertising charges are not repaid before such May 1 but are subsequently paid over by the manufacturer to his vendees in reimbursement of costs for local advertising. For provisions relating to the method of determining whether a payment by a manufacturer is or is not attributable to an excluded local advertising charge, see paragraph (b)(3) of § 53.101. In any case where the payment is determined to be attributable to such a charge, the date of the sale in connection with which the charge was made shall be determined on a first-in-first-out basis in respect of the vendee to whom the charge was billed by the manufacturer.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31083, July 9, 1991]

§ 53.101 Limitation on aggregate of exclusions and price readjustments.

(a) *In general.* The sum of the amount excluded from taxable price in respect

of charges for local advertising, as provided in section 4216(e)(1) of the Code and § 53.100, plus the amount of the readjustments for which credits or refunds may be claimed in respect of local advertising, as provided in section 6416(b)(1) of the Code and § 53.175, is subject to an overall 5 percent limitation. This limitation applies to each manufacturer, as of the close of each calendar quarter, in respect of all articles taxable under the same section of chapter 32 of the Code which were sold by such manufacturer in such quarter (and the preceding quarter or quarters, if any, in the calendar year).

(b) *Computation of overall 5 percent limitation*—(1) *In general.* The limitation prescribed by section 4216(e)(2) of the Code (the ''overall 5 percent limitation'' referred to in paragraph (a) of this section) as to the total of the exclusions from price and readjustments of price which may be claimed for local advertising in respect of all articles taxable under the same section of Chapter 32 of the Code shall be computed as of the close of each calendar quarter of the calendar year. The overall 5 percent limitation is 5 percent of the difference between:

(i) The amount which would constitute the total taxable price (computed at the time of sale) of all articles taxable under the same section of chapter 32 of the Code sold by the manufacturer during the elapsed calendar quarters of the calendar year, if no part of any charge for local advertising were excludable in computing taxable price, and

(ii) The total of all amounts billed as separate charges for local advertising of such articles (whatever the amount of any single charge of the total of all charges).

(iii) In making the computations under paragraphs (b)(1) (i) and (ii) of this section, credits or refunds under section 6416(b) of the Code of tax paid on the sale of any such articles are to be disregarded and articles sold taxfree by the manufacturer are to be excluded. The amount by which the overall 5 percent limitation computed as of the close of a particular calendar quarter in respect of articles taxable under the same section of chapter 32 of the Code exceeds the sum of the charges for local advertising excluded in computing the taxable price and the amount of reimbursements for local advertising of such articles made during the elapsed calendar quarters of the calendar year, in respect of which credit or refund has been claimed, represents the unused portion of the overall 5 percent limitation. Such unused portion is the maximum amount of reimbursements for local advertising in respect of which credit or refund may be claimed at the close of the particular calendar quarter, subject to the applicable conditions and limitations governing the right to claim a credit or refund in respect of local advertising (see § 53.175). The unused portion of the overall 5 percent limitation as of the close of the fourth calendar quarter of a calendar year in respect of which credit or refund may not be claimed as of the close of such quarter must be disregarded in computing the overall 5 percent limitation for any subsequent calendar quarter. Moreover, the amount of any reimbursements for local advertising made by a manufacturer in a calendar year which is in excess of the amount of such reimbursements in respect of which credit or refund may be claimed, within the overall limitation, as of the close of the calendar year, may not subsequently serve as the basis for a credit or refund.

(2) *Alternative method of computation in certain cases.* If during the portion of the calendar year ending with the date as of which the overall 5 percent limitation is being computed the amount of the local advertising charge separately billed by the manufacturer has not, in respect of any sale of any articles taxable under the same section of chapter 32 of the Code, exceeded the amount excludable pursuant to § 53.100 in computing taxable price, the overall 5 percent limitation as of the close of a particular calendar quarter in respect of articles taxable under such section is 5 percent of the total taxable price (computed at the time of the sale) of all such articles sold taxpaid during the calendar year.

(3) *Allocation of amounts paid in reimbursement of expenditures for local advertising.* If a manufacturer makes contributions to a local advertising program in connection with which he

makes excludable local advertising charges, it is necessary that reimbursements by the manufacturer for local advertising be attributed to the charges for local advertising, to the manufacturer's contributions, or allocated between them. Whether an amount paid by a manufacturer in reimbursement of expenses for local advertising is or is not a repayment of a local advertising charge which was excluded from taxable price under section 4216(e)(1) of the Code and § 53.100, shall be determined on the basis of an allocation made under the agreement between the manufacturer and his vendee (or any subsequent vendee).

(c) *Examples*. The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). During the first and second calendar quarters of the year, a manufacturer makes sales of articles taxable under section 4181 to his distributors. The total charges for such sales, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a) of the Code, in computing taxable price, are as follows:

First Quarter:	
Articles taxable under Section 4181	$100,000
Local advertising charges	3,000
Total Charges	103,000
Second Quarter:	
Articles taxable under Section 4181	$150,000
Local advertising charges	4,000
Total Charges	154,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $5,500 and $1,000 during the first and second calendar quarters of the year, respectively, to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter:	
1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price	$103,000
2. Amounts billed as separate charges for local advertising	−3,000
3. Difference	100,000
4. Overall 5 percent limitation (5 percent of item 3)	$5,000
5. Amount excluded in computing taxable price	−3,000
6. Unused portion of limitation	2,000
7. Allocation, pursuant to agreement, of $5,500 paid to distributors:	
Charges for local advertising	$3,000
Contributions by manufacturer	$2,500

Readjustment may be claimed in respect of that portion of the total amount repaid to the distributors which is allocated to the manufacturer's contribution ($2,500) to the extent that such portion does not exceed the unused portion of the overall 5 percent limitation ($2,000). Accordingly, as of the close of the first calendar quarter the manufacturer may claim credit or refund in respect of a readjustment of price in the amount of $2,000.

Computation as of close of second calendar quarter:	
1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price ($103,000+$154,000)	$257,000
2. Amounts billed as separate charges for local advertising ($3,000+$4,000)	−7,000
3. Difference	250,000
4. Overall 5 percent limitation (5 percent of item 3)	$12,500
5. Amount excluded in computing taxable price ($3,000+$4,000) plus readjustment claimed at end of first calendar quarter ($2,000)	−9,000
6. Unused portion of limitation	3,500
7. Allocation, pursuant to agreement, of $6,500 ($5,500+$1,000) paid to distributors:	
Charges for local advertising	$3,500
Contributions by manufacturer	$3,000

Although the total reimbursements for local advertising expenses attributable to contributions by the manufacturer ($3,000) does not exceed the unused portion of the overall 5 percent limitation ($3,500), the manufacturer, having taken, at the close of the first calendar quarter, a price readjustment in the amount of $2,000 in respect to his contributions, is entitled at the close of the second calendar quarter to claim credit or refund in respect of a price readjustment in the amount of $1,000 ($3,000 − $2,000).

Example (2). During the first calendar quarter of the year, a manufacturer sold articles taxable under section 4181 to his distributors at a total charge of $106,000, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a) of the Code, in computing taxable price. This total charge of $106,000 was billed as follows:

Total Charge:	
Articles taxable under Section 4181	$100,000
Local advertising charges	6,000
Total charges	106,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $3,000 during the first calendar quarter of the year to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter:	
1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price	$106,000
2. Amounts billed as separate charges for local advertising	−6,000
d. Difference	100,000
4. Overall 5 percent limitation (5 percent of item 3)	5,000
5. Amount excluded in computing taxable price (see paragraph (c) of § 53.100	−5,000
6. Unused portion of limitation	0
7. Allocation, pursuant to agreement, of $3,000 paid to distributors:	.....
Charges for local advertising	2,000
Contributions by manufacturer	1,000

Credit or refund may not be claimed in respect of that portion of the total amount repaid to the distributors ($3,000) which is allocated to the manufacturer's contribution ($1,000) since the amount excluded in computing taxable price is equal to the overall 5 percent limitation.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.102 No exclusion or readjustment for other advertising charges or reimbursements.

(a) *Exclusions from price*. No exclusion in computing the taxable price of any article sold by the manufacturer may be allowed in respect of any charge for advertising if, and to the extent that, such charge:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraphs (a) and (b) of § 53.100, or

(2) Does not satisfy all of the conditions and limitations stated in section 4216(e)(1) of the Code and paragraph (c) of § 53.100.

(b) *Readjustments of price*. No credit or refund under section 6416(b)(1) of the Code may be allowed in respect of any amount which was included in the taxable price of an article sold by the manufacturer and which was later paid by him to his vendee in reimbursement of costs incurred for advertising, if, and to the extent that, the amount so paid:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) of the Code and paragraph (b) of § 53.100, or

(2) Is not within the limitation provided in section 4216(e)(2) of the Code, as computed in accordance with § 53.101, as of the close of the calendar quarter in which the amount is so paid over or as of the close of any subsequent calendar quarter in the same calendar year. See, however, § 53.175, relating to redetermination of price readjustments in cases where local advertising charges excluded from taxable price in one calendar year become taxable as of May 1 of the following calendar year.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.103 Lease considered as sale.

For purposes of chapter 32 of the Code, the lease of an article by a manufacturer, producer, or importer shall be considered a sale of the article. The term *lease* means a contract or agreement, written or verbal, which gives the lessee an exclusive, continuous right to the possession or use of a particular article for a period of time. The term includes any renewal or extension

of a lease or any subsequent lease of the article.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991; T.D. 372, 61 FR 20724, May 8, 1996]

§ 53.104 Limitation on amount of tax applicable to certain leases.

(a) *Conditions for eligibility.* Section 4217(b) of the Code provides for a limitation on the amount of tax that shall apply to the lease, any renewal, or further lease, of an article which, if sold, would be subject to tax on the basis of sale price. Such limitation on the amount of the tax applies with respect to the lease of an article only if, at the time of making the lease, the lessor is engaged in the business of selling in arm's length transactions the same type and model of article. In case of a lease to which section 4217(b) of the Code does not apply, tax shall be computed and paid as provided in section 4216(c) of the Code and paragraph (a) of § 53.98.

(b) *Lessor engaged in business of selling.* The lessor will be regarded as being engaged in the business of selling in arm's length transactions the same type and model of an article as the one being leased if it periodically and recurringly makes bona fide offers for sale of such articles in the regular course of operation of its business, which offers if accepted would constitute sales at arm's length. Whether the offers are bona fide shall be determined on the basis of the facts in each case, such as sales actually made, the nature of the advertising, sales literature, and other means used to effectuate sales. It is not necessary that the offers for sale be made to the same class of purchasers as those to whom the article is being leased.

(c) *Same type and model of article.* To qualify as the ''same type and model of article'', the article offered for sale must be an unused article essentially the same in size, design, and function as the article being leased. Slight differences in appearance or accessories will not render articles dissimilar which are identical in all other respects.

(d) *Basis for tax*—(1) *Tax payable until total tax in paid.* In case of a lease of an article to which section 4217(b) of the Code applies, tax shall be paid on each lease payment in an amount computed by applying to such lease payment a percentage equal to the rate of tax in effect on the date of the lease payment. Such tax payments shall continue to be made under such lease, or any subsequent lease of the article, until the cumulative total of the tax payments equals the total tax. Lease payments made thereafter with respect to that article shall not be subject to tax. For definition of the term ''total tax,'' see paragraph (e) of this section.

(2) *Changes in tax rates.* If the rate of tax is increased or decreased during a lease period, the new rate shall apply to the lease payments made on and after the date of the change, but the amount of the total tax shall remain the same.

(e) *Total tax.* For purposes of this section, the term ''total tax'' means the amount of tax, computed at the rate in effect on the date of the first lease of the article to which section 4217(b) of the Code applies, which would be due on the constructive sale price of the article as determined under section 4216(b) of the Code and § 53.95, as if the article had been sold by a manufacturer at retail on such date.

(f) *Sale of article before total tax becomes payable.* If the lessor sells the article before the total tax has become payable, the tax payable on the sale shall be the lesser of the following amounts:

(1) The difference between:

(i) The total tax, and

(ii) The aggregate tax applicable to lease payments already received; or

(2) A tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold. For purposes of (f)(2) of this section, the provisions of section 4216(b) of the Code for determining a constructive sale price shall not apply if the sale is at arm's length. If the sale is not at arm's length, the tax referred to in (f)(2) of this section shall be computed on a constructive sale price as provided in § 53.95.

(g) *Sale of article after total tax has become payable.* If the lessor sells an article after the total tax has become payable, the tax imposed under chapter 32

of the Code shall not apply to such sale.

USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

§ 53.111 Tax on use by manufacturer, producer, or importer.

(a) *In general.* Section 4218 of the Code imposes tax in respect of certain uses of articles by the actual manufacturer, producer, or importer thereof. This section also applies in respect of the use of articles by any other person who, pursuant to a provision of chapter 32 of the Code, is considered to be, or is treated as, the manufacturer or producer of the articles. See, for example, section 4223 of the Code relating to articles purchased tax free for use in further manufacture.

(b) *Taxable articles in general*—(1) *Application of tax.* If the manufacturer, producer, or importer of an article taxable under chapter 32 of the Code uses the article for any purpose other than that indicated in paragraph (b) (3) of this section, he shall be liable for tax with respect to the use of such article in the same manner as if the article were sold by him.

(2) *Taxable use in manufacturer of nontaxable articles*—(i) *In general.* In the case of an article to which paragraph (b)(1) of this section applies, tax attaches when the manufacturer, producer, or importer of the articles uses it as material in the manufacture or production of, or as a component part of, another article which is not taxable under chapter 32 of the Code, regardless of the disposition made of such other article. (See paragraph (c) of § 53.115 for computation of tax on such use.)

(ii) *Types of use in manufacture of nontaxable articles.* Taxable use may consist of the incorporation of a taxable article into a nontaxable article. Taxable use may also result from the combining of a taxable article (or the components thereof) with a nontaxable article (or the components of a nontaxable article) resulting in a combination end article which itself is not taxable. Although the taxable article may not be a completely separable unit, within the contemplation of the law a taxable article has been produced and incorporated in the combination end article.

(3) *Nontaxable use in manufacturer of taxable articles.* The tax on the use of an article to which paragraph (b)(1) of this section has application shall not apply if the article is used by the manufacturer, producer, or importer thereof as material in the manufacturer or production of, or as a component part of, another article taxable under chapter 32 of the Code to be manfactured or produced by him. It is immaterial what disposition is made of such other article.

(c) *Use after lease.* If the manufacturer, producer, or importer of a taxable article leases such article and thereafter uses the article, he incurs liability for tax on such use as provided in these regulations to the same extent as if the article were sold after being leased. See section 4217 of the Code and the regulations thereunder in this subpart for application and computation of tax in case of leased articles.

(d) *Time of application of tax.* In the case of a taxable use of an article by the manufacturer, producer, or importer thereof, the tax attaches at the time such use begins. If tax applies by reason of the sale of an article by the manufacturer, producer, or importer thereof on or in connection with his sale of another article, the tax attaches at the time of the sale of such other article.

(e) *Exemptions because of other statutory provisions.* Tax does not apply on the use of an article by the manufacturer, producer, or importer thereof if under the applicable provisions of the Code the sale of the article for a similar use would not be subject to tax. Also, tax need not be paid with respect to the use of an article by the manufacturer, producer, or importer thereof if such use would qualify, under the provisions of section 6416(b) of the Code, for credit or refund of the tax paid.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991]

EDITORIAL NOTE: At 56 FR 31084, July 9, 1991, § 53.111 was amended by removing the word ''manufacturer'' and adding the word ''manufacture'' in the heading of paragraph (a)(2), and removing the word ''manufacturer'' and adding the word ''manufacture''

in the first sentence of paragraph (a)(3), effective July 9, 1991; however, these sub–paragraph designations are not included in § 53.111(a). The issuing agency will publish a correction in the FEDERAL REGISTER at a later date.

§ 53.112 Business or personal use of articles.

(a) *Business use.* Section 4218 of the Code applies to the use by a person, in the operation of any business in which he is engaged, of a taxable article which has been manufactured, produced, or imported by him or his agent.

(b) *Personal use.* The tax on use of a taxable article does not attach in cases where an individual incidentially manufacturers, produces, or imports a taxable article for his personal use or causes a taxable article to be manufactured, produced, or imported for his personal use.

§ 53.113 Events subsequent to taxable use of article.

Liability for tax incurred on the use of an article is not extinguished or reduced because of any subsequent sale or lease of the article even if such sale or lease would have been exempt if the article had been so sold or leased prior to use. If a manufacturer, producer, or importer of an article incurs liability for tax on his use thereof, and thereafter sells or leases the article in a transaction which otherwise would be subject to tax, liability for tax is not incurred on such sale or lease.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.114 Use in further manufacture.

For purposes of section 4218 and § 53.111, an article is used as material in the manufacture or production of, or as a component part of, another article, if it is incorporated in, or is a part or accessory of, the other article. In addition, an article is considered to be used as material in the manufacturer of another article if it is partly or entirely consumed in testing such other article; for example, shells or cartridges used in testing new firearms. Similarly, if an article is partly or wholly consumed in quality testing a production run of like articles, such article is also considered to have been used as material in the manufacture of another article. However, if a taxable article that has been used tax free and only partly consumed in testing is later sold, or put to a taxable use by the manufacturer, tax attaches to such sale or use. An article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not used as material in the manufacture or production of or as a component part of, such other article.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.115 Computation of tax.

(a) *Tax based on price.* Tax liability incurred on the use of an article shall be computed on the price at which such or similar articles are sold in the ordinary course of trade by manufacturers, producers, or importers thereof and in the absence of special arrangements. For additional provisions applicable in computing the tax in the case of the use of an article by a manufacturer and producer who purchased the article free of tax under section 4221(a)(1) of the Code for use by him in further manufacture, see section 4223(b) of the Code and the regulations thereunder (§ 53.143).

(b) *Articles regularly sold by manufacturer.* If the manufacturer, producer, or importer of an article regularly sells such articles at wholesale in arm's length transactions, tax liability on his use of any such article shall be computed on his lowest established wholesale price for such articles in effect at the time of the taxable use. In establishing such price, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a) and 6416(b)(1) of the Code, as in effect at the time tax liability on the use of the article is incurred, and the regulations thereunder contained in this subpart and subpart L (§§ 53.91–53.94 and 53.173–53.176). If the manufacturer, producer, or importer of an article does not regularly sell such articles at wholesale in arm's length transactions, a constructive price on which the use tax shall be computed will be determined by the appropriate

ATF officer. This price will be established after considering the selling practices and price structures of manfacturers, producers, and importers of similar articles.

(c) *Articles governed by section 4218(a) used in manufacture of nontaxable combination articles.* If the manufacturer, producer, or importer of an article to which section 4218(a) of the Code applies does not regularly sell such article separately but uses it as material in the manufacture or production of, or as a component part of, a nontaxable combination article consisting of a taxable and nontaxable article, liability for tax on his use shall be computed on the constructive price of the taxable article at the time of use. To determine the constructive price of the taxable article in such case, the combination article is considered to be composed of:

(1) Parts used exclusively in the functioning of the taxable article in the combination;

(2) Parts used exclusively in the functioning of the nontaxable article in the combination, and

(3) Parts, called common parts, which serve a dual function in connection with the parts in both paragraphs (c)(1) and (2) of this section.

The ratio which the cost of the parts in paragraph (c)(1) of this section bears to the sum of the cost of such parts and the parts in paragraph (c)(2) of this section is applied to the lowest established wholesale price for which like combination articles are at the time of the taxable use being sold by the manufacturer or producer in the ordinary course of trade. The resulting amount is the constructive sale price for the taxable article on which tax is to be computed. The cost of the common parts is allocable to the parts in paragraphs (c) (1) and (2) of this section in the same ratio, and, therefore, need not be taken into account in the computation since the inclusion and allocation of the cost of such parts in the determination would not result in a different ratio. In determining the lowest establishment wholesale price for the combination article, there shall be included and excluded, as applicable, the charges and readjustments specified in sections 4216(a) and 6416(b)(1) of the Code, as in effect at the time tax liability on the use of the taxable article is incurred, and the regulations thereunder contained in this subpart and subpart L of this part (§§ 53.91–53.94 and §§ 53.173–53.176). The tax applicable to the use of the article for which a constructive sale price has been computed is not affected by any charges or readjustments of the price for which the nontaxable combination article is sold, whether by reason of the return or repossession of the nontaxable article or its covering or container, or by a bona fide discount, rebate, allowance, or other factor.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

APPLICATION OF TAX IN CASE OF SALES BY OTHER THAN MANUFACTURER OR IMPORTER

§ 53.121 Sales of taxable articles by a person other than the manufacturer, producer, or importer.

(a) *General rule.* If the title to, or ownership of, an article taxable under chapter 32 of the Code is transferred from the manufacturer, producer, or importer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of such article by the transferee is subject to tax to the same extent and manner as if such transferee were the manufacturer, producer, or importer of the article. The following examples illustrate this rule:

(1) The surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, of a deceased manufacturer, producer, or importer of taxable articles, incur liability for tax on all such articles sold by them.

(2) A receiver or trustee in bankruptcy who under a court order conducts or liquidates the business of a manufacturer, producer, or importer of taxable articles, incurs liability for tax on all taxable articles sold by him, regardless of whether the articles were manufactured, produced, or imported before or after he took charge of the business.

(3) An assignee for the benefit of creditors of a manufacturer, producer, or importer incurs liability for tax

with respect to all taxable articles sold by him as such assignee.

(4) If one or more member of a partnership withdraw, or if new partners are admitted, the new partnership so constituted incurs liability for tax on all taxable articles sold by it regardless of when such articles were manufactured, produced, or imported.

(5) A person who acquires title to taxable articles as a result of default of the manufacturer, producer, or importer pursuant to an agreement under the terms of which the articles were pledged as collateral incurs liability for tax with respect to his sale of the articles so acquired.

(6) A person who succeeds to the business of a manufacturer, producer, or importer of taxable articles, such as:

(i) A corporation which results from a consolidation, merger, or reorganization;

(ii) A corporation which acquires the business of an individual or partnership; or

(iii) A stockholder in a corporation who, after its dissolution, continues the business;

incurs liability for the tax on all taxable articles sold by such person. However, where a manufacturer, producer, or importer sells only his assets, rather than ownership of his business, he incurs liability for tax on the sale of any taxable articles included in such assets.

(b) *Transfer of title to damaged articles.* If title to a damaged taxable article is transferred by the manufacturer, producer, or importer thereof to a carrier or insurance company in adjustment of a damage claim, such transfer is not considered a taxable sale of the article. If the article is usable, even though damaged, the carrier or insurance company incurs liability for tax on its sale, lease, or use of the article. Where the article has been damaged to the extent that its only value is as scrap, and it is not restored to usable condition, sale thereof by the carrier or insurance company is not subject to tax.

Subpart K—Exemptions, Registration, Etc.

§ 53.131 Tax-free sales; general rule.

(a) *In general.* Section 4221(a) of the Code sets forth the following exempt purposes for which an article subject to tax under chapter 32 of the Code may be sold tax-free by the manufacturer, producer, or importer:

(1) For use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) For export, or for resale by the purchaser to a second purchaser for export,

(3) For use by the purchaser as supplies for vessels or aircraft,

(4) To a State or local government for the exclusive use of a State or local government, and

(5) To a nonprofit educational organization for its exclusive use.

Section 4221(a) of the Code applies only in those cases where the exportation or use referred to is to occur before any other use, and where the seller, first purchaser, and second purchaser, as may be appropriate, have registered as required under section 4222 of the Code and paragraph (a) of § 53.140. See paragraph (c) of this section for provisions relating to evidence required in support of tax-free sales. See § 53.141 for exceptions to the requirement for registration.Where tax is paid on the sale of an article, but the article is used or resold for use for an exempt purpose, a claim for credit or refund may be filed in accordance with and to the extent provided in sections 6402(a) and 6416 of the Code, and the regulations thereunder (§§ 53.161 and 53.171–53.186).

(b) *Manufacturer relieved of liability in certain cases*—(1) *General rule.* Under the provisions of section 4221(c) of the Code, if an article subject to tax under Chapter 32 of the Code is sold free of tax by the manufacturer of the article for an exempt purpose referred to in

section 4221(c) of the Code and paragraph (b)(2) of this section, the manufacturer shall be relieved of any tax liability under chapter 32 of the Code with respect to such sale if the manufacturer in good faith accepts a proper certification by the purchaser that the article or articles will be used by the purchaser in the stated exempt manner. See paragraph (b)(2) of this section for a list of the exempt purposes referred to in section 4221(c) of the Code.

(2) *Situations wherein section 4221(c) of the Code is applicable.* The following are situations wherein section 4221(c) of the Code is applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

(i) Section 4221(a)(1) of the Code, to the extent that it relates to sales for further manufacture by a first purchaser (see § 53.132),

(ii) Section 4221(a)(3) of the Code, relating to supplies for vessels and aircraft (see § 53.134),

(iii) Section 4221(a)(4) of the Code, relating to sales to State or local governments (see § 53.135),

(iv) Section 4221(a)(5) of the Code, relating to sales to nonprofit educational organizations (see § 53.136).

(3) *Situations wherein section 4221(c) of the Code is not applicable.* The relief from liability for the payment of tax provided by section 4221(c) of the Code is not applicable with respect to sales made tax free on the assumption that one of the following sections of the Code provides exemption for such sales:

(i) Section 4221(a)(1) of the Code, to the extent that it relates to sales for resale to a second purchaser for use by the second purchaser in further manufacture (see § 53.132),

(ii) Section 4221(a)(2) of the Code, relating to sales for export (see § 53.133).

(4) *Duty of seller to ascertain validity of tax-free sale.* If the manufacturer at the time of its sale has reason to believe that the article sold by it is not intended for the exempt purpose indicated by the purchaser, or that the purchaser has failed to register as required, the manufacturer is not considered to have accepted certification from the purchaser in good faith, and is not relieved from liability under the provisions of section 4221(c) of the Code.

(5) *Information to be furnished to purchaser.* A manufacturer selling articles free of tax under this section shall indicate to the purchaser that:

(i) Certain articles normally subject to tax are being sold tax free, and

(ii) The purchaser is obtaining those articles tax free for an exempt purpose under an exemption certificate or its equivalent.

(6) The manufacturer may transmit this information by any convenient means, such as coding of sales invoices, provided that the information is presented with sufficient particularity so that the purchaser is informed that he has obtained the articles tax free and:

(i) The purchaser can compute and remit the tax due if an article sold tax free for further manufacture is diverted to a taxable use,

(ii) The manufacturer can remit the tax due with respect to an article purchased tax free for resale for use in further manufacture or for export if, within the 6-month period described in § 53.132(c) or § 53.133(c), the manufacturer does not receive proof that the article has been exported or resold for use in further manufacturer, or

(iii) The purchaser can notify the manufacturer if an article otherwise purchased tax free is diverted to a taxable use.

(c) *Evidence required in support of tax-free sales*—(1) *Purchasers required to be registered.* Every purchaser who is required to be registered (see § 53.140) shall furnish to the seller, as evidence in support of each tax-free sale made by the seller to such purchaser, the exempt purpose for which the article or articles are being purchased and the registration number of the purchaser. Such information must be in writing and may be noted on the purchase order or other document furnished by the purchaser to the seller in connection with each sale.

(2) *Purchasers not required to be registered.* For the evidence which purchasers not required to register must furnish to the seller in support of each tax-free sale made by the seller to such purchasers, see paragraph (b) of § 53.133 for sales or resales to a foreign purchaser for export, paragraph (d) of

§ 53.134 for sales of supplies to vessels or aircraft, paragraph (c) of § 53.135 for sales to State and local governments, and paragraph (c) of § 53.141 for sales and purchases by the United States.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–380, 61 FR 37005, July 16, 1996]

§ 53.132 Tax-free sale of articles to be used for, or resold for, further manufacture.

(a) *Further manufacture*—(1) *In general*. Under prescribed conditions, an article subject to tax under Chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(1) of the Code, for use by the purchaser in further manufacture, or for resale by the purchaser to a second purchaser for use by the second purchaser in further manufacture. See section 4221(d) (6) of the Code and paragraph (b) of this section for the circumstances under which an article is considered to have been sold for use in further manufacture. See section 6416(b)(3) of the Code and § 53.180 for the circumstances under which credit or refund is available when tax-paid articles are used in further manufacture.

(2) *Proof of resale for use in further manufacture*. See section 4221(b)(1) of the Code and paragraph (c) of this section for provisions under which the exemption provided in section 4221(a)(1) of the Code shall cease to apply in the case of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use in further manufacture unless the manufacturer receives timely proof of resale for further manufacture.

(b) *Circumstances under which an article is considered to have been sold for use in further manufacture*. (1) For purposes of the exemption from the manufacturers excise tax provided by section 4221(a)(1) of the Code, an article shall be treated as sold for use in further manufacture if the article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Code;

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article; for example, shells or cartridges that are used by the manufacturer of firearms to test new firearms. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

(c) *Proof of resale for further manufacture*—(1) *Cessation of exemption*. The exemption provided in section 4221(a)(1) of the Code and described in paragraph (a) of this section in respect of an article sold by the manufacturer to a purchaser for resale to a second purchaser for use by the second purchaser in further manufacture shall cease to apply on the first day following the close of the 6-month period which begins on the date of the sale of such article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless, within such 6-month period, the manufacturer receives proof, in the form prescribed by paragraph (c)(2) of this section, that the article was actually resold by the purchaser to a second purchaser for such use. If, on the first day following the close of the 6-month period, such proof has not been received, the manufacturer shall become liable for tax at that time at the rate in effect when the sale was made but otherwise in the same manner as if the article had been sold by it on such first day at a taxable price equivalent to that at which the article was actually sold. If the manufacturer later obtains such proof, it may file a claim for refund or credit of this tax. The payment of this tax by the manufacturer is not considered an overpayment by the subsequent manufacturer or producer for which the subsequent manufacturer or producer is entitled to a credit or refund under section 6416(b)(3) of the Code. See section 4221(d)(6) of the Code and paragraph (b) of this section for the circumstances under which an article is considered to

have been sold for use in further manufacture.

(2) *Proof of resale*—(i) *Certificate of purchaser*. The proof of resale to be received by the manufacturer, as required under section 4221(b)(1) of the Code, may consist of either a copy of the invoice of the manufacturer's vendee directed to his purchaser which discloses the certificate of registry number held by each party or a statement described in this paragraph. In the case of an invoice of manufacturer's vendee, it must appear from such invoice (or by statement attached thereto) that the article was in fact resold for use in further manufacture. In lieu of such an invoice, proof of resale may consist of a statement, executed and signed by the manufacturer's vendee which includes the following:

(A) Date statement was executed.

(B) Name and address of manufacturer's vendee (if other than the person executing statement).

(C) Certificate of registry number held by vendee.

(D) Specify article(s) purchased tax-free, by whom purchased, certificate of registry number of second purchaser, date of purchase(s), whether articles were purchased as material in the manufacture or production of, or as a component part or parts of, an article or articles taxable under Chapter 32 of the Code.

(E) Statement that person executing statement or manufacturer's vendee possesses proof of tax-free resale of the article(s) in the form of purchase orders and sales invoices and identifying the person who will maintain custody of such proof for 3 years from the date of the statement and will make such proof available for inspection by ATF during such 3 year period.

(F) Statement that a previous statement has not been executed in respect of such certificate of resale and that the person signing the statement is aware that fraudulent use of the statement may subject the person signing the statement and all parties making fraudulent use of the statement to all applicable criminal penalties under the Code.

(G) Name, signature, and title of individual executing statement.

(ii) *Period covered*. Any statement executed and signed by the manufacturer's vendee, as provided in paragraph (c)(2)(i) of this section, may be executed with respect to any one or more articles purchased tax free from a manufacturer and resold for use in further manufacture within the 6-month period prescribed in section 4221(a)(1) of the Code and paragraph (c)(1) of this section. Such statement (or other prescribed proof of resale) must be retained for inspection by the appropriate ATF officer as provided in section 6001 of the Code.

(iii) *ATF I 5600.37*. A preprinted statement, ATF I 5600.37, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.37 may be reproduced as needed.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–380, 61 FR 37005, July 16, 1996]

§ 53.133 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

(a) *In general*. (1) An article subject to tax under chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(2) of the Code and this section, for export, or for resale by the purchaser to a second purchaser for export. See § 53.11 for the meaning of the term ''exportation''. An article may be sold tax free by the manufacturer under the provisions of this section only if the person to whom the manufacturer sells the article intends either to export the article or to resell it to a person who intends to export it. An article may not be sold tax free under the provisions of this section by a manufacturer to a purchaser for resale to a second purchaser which does not intend to export the article itself but plans to resell it to a third purchaser for export. See section 6416(b)(2)(A) of the Code and § 53.177 for the circumstances under which credit or refund of tax is available where tax-paid articles are exported from the United States.

(2) If an article, otherwise taxable under chapter 32 of the Code:

(i) Is sold tax free by the manufacturer pursuant to section 4221(a)(2) of the Code and this section, and

(ii) Is returned subsequently to the United States in an unused and undamaged condition,

then the importer is liable for the tax imposed by chapter 32 of the Code on the subsequent sale or use of the article in the United States. The provisions of this paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1). Q, a U.S. manufacturer of shells and cartridges, previously sold shells and cartridges to R, a company in Canada. The sale was tax free under section 4221(a)(2). Prior to use, R sold the shells and cartridges to S, who imports the articles into the United States and sells them. The sale of the shells and cartridges subjects S to an excise tax liability under section 4181.

Example (2). X, a U.S. firearms manufacturer, sold a rifle to Y company in France. The sale was tax free under section 4221(a)(2). The rifle was sold by Y to W, an individual in the City of Nice, France. After initial use, W resold the rifle to X. X returned the rifle to the United States where it was resold. The resale of the rifle by X does not subject X to an excise tax liability under section 4181.

(b) *Sales or resales to a foreign purchaser for export.* In the case of sales or resales to a foreign purchaser for export, if the first or the second purchaser is located in a foreign country or possession of the United States, such purchaser is not required to register as provided in section 4222(a) of the Code and § 53.140. To establish the right to sell articles tax free for export to a purchaser who is not registered and who is located in a foreign country or a possession of the United States, the manufacturer must obtain from such purchaser at the time title to the article passes or at the time of shipment, whichever is earlier, either:

(1) A written order or contract of sale showing that the manufacturer is to ship the article to a foreign destination; or

(2) Where delivery by the manufacturer is to be made within the United States, a statement from the purchaser showing:

(i) That the article is purchased either to fill existing or future orders for delivery to a foreign destination or for resale to another person engaged in the business of exporting who will export the article, and

(ii) That such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export. See section 4221(b) of the Code and paragraphs (c) and (d) of this section for requirements as to timely proof of exportation and cessation of the exemption for export unless the evidence to show actual exportation has been received by the manufacturer.

(c) *Cessation of exemption.* The exemption provided in section 4221(a)(2) of the Code and paragraph (a) of this section for an article sold by the manufacturer for export or for resale by the purchaser to a second purchaser for export shall cease to apply on the first day following the close of the 6-month period which begins on the date of the sale of the article by the manufacturer, or the date of shipment of the article by the manufacturer, whichever is earlier, unless within the 6-month period the manufacturer receives proof, in the form prescribed by paragraph (d) of this section, that the article was actually exported. If, on the first day following the close of the 6-month period, the proof has not been received, the manufacturer shall become liable for tax at that time at the rate in effect when the sale was made but otherwise in the same manner as if the article had been sold by it on such first day at a taxable price equivalent to that at which the article was actually sold.

(d) *Proof of exportation.* (1) Exportation may be evidenced by:

(i) A copy of the export bill of lading issued by the delivering carrier,

(ii) A certificate by the agent or representative of the export carrier showing actual exportation of the article,

(iii) A certificate of landing signed by a customs officer of the foreign country to which the article is exported,

(iv) Where the foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article, or

(v) Where a department or agency of the United States Government is unable to furnish any one of the foregoing four types of proof of exportation, a

statement or certification on the department or agency stationery, executed by an authorized officer, that the listed or identified articles have, in fact, been exported.

(2) In any case where the manufacturer is not the exporter, the manufacturer must have in its possession a statement from the vendee to whom the manufacturer sold the article stating the following:

(i) Date statement was executed.

(ii) Name and address of manufacturer's vendee (if other than the person executing statement).

(iii) Certificate of registry number held by vendee.

(iv) Specify article(s) purchased tax-free, by whom purchased, and date of purchase.

(v) Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).

(vi) Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to ATF for inspection.

(vii) Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.

(viii) Name, signature, title, and address of individual executing certificate.

(3) The statement executed and signed by the manufacturer's vendee, as provided in paragraph (d)(2) of this section, may be executed with respect to any one or more articles purchased tax free from a manufacturer and exported within the 6-month period prescribed in section 4221(b)(2) of the Code and paragraph (c) of this section. Such statement shall be kept for inspection by the appropriate ATF officer as provided in section 6001 of the Code.

(4) *ATF I 5600.36*. A preprinted statement, ATF I 5600.36, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.36 may be reproduced as needed.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–344, 58 FR 40354, July 28, 1993; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF–380, 61 FR 37006, July 16, 1996]

§ 53.134 Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.

(a) *Supplies for vessels or aircraft*—(1) *In general*. An article subject to tax under chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(3) of the Code and this section, for use by the purchaser as supplies for vessels or aircraft. See paragraph (b) of this section for the meaning of the term ''supplies for vessels or aircraft.'' An article may be sold tax free under the provisions of this section only in those cases where the sale of an article by the manufacturer is made directly to the owner, officer, charterer, or authorized agent of a vessel or aircraft for use as supplies for the vessel or aircraft. No sale may be made tax free to a dealer for resale for use as supplies for vessels or aircraft, even though it is known at the time of sale by the manufacturer that the article will be so resold. See section 6416(b)(2)(B) of the Code and paragraph (c) of § 53.178 for circumstances under which credit or refund of tax is available where tax-paid articles are used, or sold for use, as supplies for vessels or aircraft. An article may not be sold tax free under the provisions of this section by the manufacturer to passengers or members of the crew of a vessel or aircraft.

(2) *Civil aircraft of foreign registry*. In the case of any article sold by the manufacturer for use by the purchaser as supplies for civil aircraft of foreign registry employed in foreign trade or in trade between the United States and any of its possessions, the provisions of this paragraph apply only if the reciprocity requirements of section 4221(e)(1) of the Code are met. See paragraph (c) of this section.

(b) *Meaning of terms*—(1) *Supplies for vessels or aircraft*. The term ''supplies

for vessels or aircraft'' means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels 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.

(2) *Fuel supplies, ships' stores, and legitimate equipment.* The terms ''fuel supplies'', ''ships' stores'', and ''legitimate equipment'' include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or in trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, even though such vessels may make intermediate stops in the United States. The term does not include supplies for vessels engaged in trade:

(i) Between domestic ports in the Atlantic Ocean and the Gulf of Mexico,

(ii) Between domestic ports on the Pacific Ocean,

(iii) Between domestic ports on the Great Lakes, or

(iv) On the inland waterways of the United States.

(3) *Sea stores.* The term *sea stores* includes any article purchased for use or consumption by the passengers or crew, or both, of a vessel during its voyage.

(4) *Vessel.* The term *vessel* includes:

(i) Every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water,

(ii) Civil aircraft registered in the United States and employed in foreign trade or in trade between the United States and any of its possessions, and

(iii) Civil aircraft registered in a foreign country and employed in foreign trade or trade between the U.S. and its possessions.

(5) *Vessels of war of the United States or of any foreign nation.* The term *vessels of war of the United States or of any foreign nation* includes:

(i) Every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water and constituting equipment of the armed forces (including the U.S. Coast Guard and U.S. National Guard) of the United States or of a foreign nation, and

(ii) Aircraft owned by the United States or by any foreign nation and constituting equipment of the armed forces thereof.

(iii) For purposes of this section, vessels or aircraft owned by armed forces are not considered to be equipment of such armed forces while on lease or loan to an organization that is not part of the armed forces.

(6) *Vessels used in fisheries or whaling business.* The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section in the case of articles sold for the prescribed use on vessels employed in the fisheries or whaling business is limited to articles sold by the manufacturer for such use on vessels while employed, and to the extent employed, exclusively in the fisheries or in the whaling business. For purposes of this section, vessels engaged in sport fishing are not considered to be employed in the fisheries business.

(7) *Civil aircraft.* The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section relating to supplies for vessels or aircraft, with respect to civil aircraft, extends only to civil aircraft when employed in foreign trade, or in trade between the United States and any of its possessions. Sales of supplies to civil aircraft when engaged in trade between the Atlantic and the Pacific ports of the United States are not exempt from the tax imposed under chapter 32 of the Code. See section 4221(e)(1) of the Code and paragraph (c) of this section for requirement of reciprocal exemption in the case of a civil aircraft registered in a foreign country.

(8) *Trade.* The term ''trade'' includes the transportation of persons or property for hire and the making of the necessary preparations for such transportation. The term ''trade'' also includes the transportation of property on a vessel or aircraft owned or chartered by the owner of the property in

connection with the purchase, sale, or exchange of the property in a commercial business operation. However, a vessel owned or chartered by a company and used in the transportation of personnel or property of such company to or from its business properties located in a foreign country, or in a possession of the United States, is not engaged in ''trade''.

(c) *Reciprocity required in the case of civil aircraft.* The exemption provided by section 4221(a)(3) of the Code and paragraph (a) of this section with respect to the sales of supplies for civil aircraft registered in a foreign country is further limited in that the privilege of exemption may be granted only if the Secretary of Commerce advises the Secretary of the Treasury that the foreign country allows, or will allow, substantially the same reciprocal privileges. If a foreign country discontinues the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce of the discontinuance of the exemption allowed by the foreign country.

(d) *Evidence required to establish*—(1) *In general.* The exemption provided in section 4221(a)(3) of the Code and paragraph (a) of this section for articles sold for use by the purchaser as supplies for vessels or aircraft applies only:

(i) If both the manufacturer and purchaser are registered under the provisions of section 4222 of the Code, or

(ii) The purchaser or both the manufacturer and the purchaser are not registered but have satisfied the provisions of paragraph (d)(2) of this section.

See paragraph (c) of § 53.131 for the evidence required to establish exemption where the purchaser is registered pursuant to section 4222 of the Code and § 53.140.

(2) *Exemption certificates for use in support of tax-free sales of supplies for vessels and aircraft.* (i) In order to establish exemption from tax under section 4221(a)(3) of the Code in those instances where the purchaser or both the manufacturer and purchaser are not registered under section 4222 of the Code, the manufacturer must obtain (prior to or at the time of the sale) from the owner, charterer, or authorized agent of the vessel or aircraft and retain in the manufacturer's possession a properly executed exemption certificate in the form prescribed by paragraph (d)(2)(iii) of this section. If articles are sold tax-free for use as supplies for civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificate must show the name of the country in which the aircraft is registered.

(ii) Where only occasional sales of articles are made to a purchaser for use as supplies for vessels or aircraft, a separate exemption certificate shall be furnished for each order. However, where sales are regularly or frequently made to a purchaser for such exempt use, a certificate covering all orders for a specified period not to exceed 12 calendar quarters will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be kept for inspection by the appropriate ATF officer as provided in section 6001 of the Code.

(iii) *Acceptable form of exemption certificate.* A certificate of exemption to support tax-free sales under this section must include the following:

(A) Name of owner, charterer, or authorized agent.

(B) Name of company and vessel.

(C) List article(s) covered by the certificate or beginning and ending dates during which orders will be placed (not to exceed 12 calendar quarters).

(D) Statement that articles will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the class of vessels to which section 4221 of the Code applies. Identify class of vessel certificate covers (see paragraphs (a) and (b) of this section).

(E) If articles are purchased for use on civil aircraft engaged in foreign trade or trade between the United States and any of its possessions, state the country in which the aircraft is registered.

(F) Statement that it is understood that if any articles are used for any

purpose other than as stated in the certificate, or are resold or otherwise disposed of, the person executing the certificate must notify the manufacturer.

(G) Statement that the certificate shall not be used to purchase tax-free articles for use as supplies, etc. on pleasure vessels or any type of aircraft except:

(*1*) Civil aircraft employed in foreign trade or trade between the United States and any of its possessions;

(*2*) Aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof.

(H) Statement that it is understood that any fraudulent use of the certificate may subject person executing certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(I) Statement that person executing certificate is prepared to establish by satisfactory evidence the purpose for which the article(s) was used.

(J) Date, name, signature, and address of person executing the certificate.

(iv) *ATF I 5600.34.* A preprinted certificate, ATF I 5600.34, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.34 may be reproduced as needed.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–380, 61 FR 37006, July 16, 1996]

§ 53.135 Tax-free sale of articles to State and local governments for their exclusive use.

(a) *In general.* An article subject to tax under Chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(4) of the code and this section, to a State or local government for the exclusive use of such State or local government. See paragraph (b) of this section for the meaning of the term ''State or local government''. An article may be sold tax free by the manufacturer under this paragraph only in those cases where the sale is made directly to a State or local government for its exclusive use. Accordingly, no sale may be made tax free to a dealer for resale to a State or local government for its exclusive use, even though it is known at the time of sale by the manufacturer that the article will be so resold. A sale of an article to a State or local government for resale is not considered to be a sale for the ''exclusive use'' of the State or local government, within the meaning of section 4221(a)(4) of the Code, and, therefore, such sales may not be made tax free. Such sales are not exempt regardless of whether the resales are made to government employees, or the fact that the article is an item of equipment the employee is required to possess in carrying out his duties. For example, pistols or revolvers may not be sold tax free to a State or local government for resale to its police officers. See section 6416(b)(2)(C) of the Code, and paragraph (d) of § 53.178, for the circumstances under which credit or refund of tax is available where tax-paid articles are sold for the exclusive use of a State or local government.

(b) *State or local government.* The term *State or local government* includes any State, the District of Columbia, and any political subdivision of any of the foregoing. *See*, section 7871(a)(2)(B) of the Code and 26 CFR 305.7701–1 *et seq.*, which provide that an Indian tribal government shall be treated as a State for purposes of exemption from an excise tax imposed by chapter 32. Section 7871(b) of the Code provides that the exemption from tax applies only if the transaction involves the exercise of an essential governmental function of the Indian tribal government.

(c) *Evidence required in support of tax-free sales to State or local governments.* (1) In the case of a State or local government which is registered (see § 53.141 for provisions under which a State or local government may register if it so desires), the provisions of paragraph (c) of § 53.131 have application as to the evidence required in support of tax-free sales. If a State or local government is not registered, the evidence required in support of a tax-free sale to the State or local government shall, except as provided in paragraph (c)(2) of this section, consist of a certificate, executed and signed by an officer or employee

authorized by the State or local government to execute and sign the certificate. If it is impracticable to furnish a separate certificate for each order or contract because of frequency of purchases, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the manufacturer as provided in § 53.24(d). A certificate of exemption to support tax-free sales under this section must contain the following:

(i) Title of official executing certificate, branch of government, date executed, and statement that official is authorized to execute certificate.

(ii) List articles covered by the certificate or beginning and ending dates during which orders will be placed by the purchaser (period not to exceed 12 calendar quarters).

(iii) Name of manufacturer from which articles purchased.

(iv) Governmental unit purchasing articles.

(v) Statement that is understood that articles purchased under this certificate of exemption are limited to use exclusively by the purchasing governmental entity.

(vi) Statement that is understood that any fraudulent use of this certificate may subject the person executing the certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(vii) Name, address, and signature of person executing the certificate.

(2) A purchase order, provided that all of the information required by paragraph (c)(1) of this section is included therein, is acceptable in lieu of a separate exemption certificate.

(3) *ATF I 5600.35.* A preprinted certificate, ATF I 5600.35, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.35 may be reproduced as needed.

(d) *Resale of articles purchased tax free by a State or local government.* If articles purchased tax free for the exclusive use of a State or local government (whether on the basis of a registration number or an exemption certificate) are, prior to use by the State or local government, resold under circumstances that do not amount to an exclusive use by the State or local government (such as pistols or revolvers that are resold by a police department to its police officers), the parties responsible in the State or local government are required to inform the manufacturer, producer, or importer from whom the articles were purchased that they were disposed of in a manner that did not amount to an exclusive use by the State or local government. A willful failure to supply the manufacturer, producer, or importer with the information required by this subparagraph will subject responsible parties to the penalties provided by section 7203 of the Code.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–380, 61 FR 37006, July 16, 1996]

§ 53.136 Tax-free sales of articles to nonprofit educational organizations.

(a) *In general.* An article subject to tax under chapter 32 of the Code may be sold tax free by the manufacturer, pursuant to section 4221(a)(5) of the Code and this section, to a nonprofit educational organization for its exclusive use. See paragraph (b) of this section for the meaning of the term ''nonprofit educational organization''. An article may be sold tax free by the manufacturer under this paragraph only in those cases where the sale of an article by the manufacturer is made directly to a nonprofit educational organization for its exclusive use. Accordingly, no sale may be made tax free to a dealer for resale to a nonprofit educational organization for its exclusive use even though it is known at the time of sale by the manufacturer that the article will be so resold. See section 6416(b)(2)(D) of the Code, and paragraph (e) of § 53.178, for the circumstances under which credit or refund of tax is available where tax-paid articles are sold for the exclusive use of a nonprofit educational organization.

(b) *Nonprofit educational organization.* The term ''nonprofit educational organization'' means an organization described in section 170(b)(1)(A)(ii) of the Code that is exempt from income tax under section 501(a) of the Code. Section 170(b)(1)(A)(ii) describes an ''educational organization'' as one that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of an organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code, provided the primary function of such school is the presentation of formal instruction and provided such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(c) *Evidence required in support of tax-free sales to nonprofit educational organizations.* Every nonprofit educational organization purchasing tax free under section 4221(a)(5) of the Code must furnish the following information to the seller:

(1) The tax exempt purpose for which the article or articles are being purchased, and

(2) Its registration number. Such information must be in writing and may be noted on the purchase order or other document furnished by the purchaser to the seller in connection with each sale ''except that a single notification containing the information described in this paragraph may cover all sales by the seller to the purchaser made during a designated period not to exceed 12 successive calendar quarters.''. See paragraph (c) of § 53.131 for the evidence required to establish exemption.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§§ 53.137–53.139 [Reserved]

§ 53.140 Registration.

(a) *General rule.* Except as provided in § 53.141, tax-free sales under section 4221 of the Code may be made only if the manufacturer, first purchaser, and second purchaser, as the case may be, have registered as required by this section. To secure a Certificate of Registry, the applicant must furnish the information required in paragraph (b) of this section.

(b) *Information to be submitted.* Except as provided in § 53.141, any person who is eligible to sell or purchase articles free of a tax imposed by section 4181 of the Code and who has not registered with the Commissioner of the Internal Revenue Service prior to January 1, 1991 or with ATF in accordance with the provisions of this section shall, prior to making a tax-free sale or purchase, file ATF Form 5300.28, in duplicate, executed in accordance with the instructions contained on the reverse of ATF Form 5300.28. The person who receives an approved Certificate of Registry shall be considered to be registered for purposes of selling or purchasing articles tax free as provided in this section. In the case of a nonprofit educational organization, information shall be furnished showing that the organization is an educational organization described in section 170(b)(1)(A)(ii) of the Code that is exempt from income tax under section 501(a) of the Code, or is a school operated as an activity of an organization described in section 501(c)(3) that is exempt from income tax under section 501(a).

(c) *Evidence required in support of tax-free sales.* See § 53.131(c)(1) for evidence required in support of tax-free sales to purchasers who are required to be registered.

(d) *Failure to register.* If either the seller or purchaser is not registered as required by this section of the regulations, tax-free sales may not be made, except as indicated in § 53.141.

(e) *Cross references.* (1) For exceptions to the requirement for registration, see section 4222(b) of the Code and § 53.141.

(2) For revocation or suspension of registration, see § 53.142.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.141 Exceptions to the requirement for registration.

(a) *State and local governments.* (1) A State or local government purchasing articles direct from the manufacturer for its exclusive use may, but is not required to, register as provided in § 53.140. To establish the right to sell articles tax free to a State or local government that is not registered, the manufacturer must obtain from an authorized official of the State or local government and retain in the manufacturer's possession either a properly executed exemption certificate, or a purchase order that contains the same information required to be furnished in an exemption certificate. See § 53.135(c) for the information necessary to substantiate a tax-free sale under such circumstances.

(2) Each State requesting registration will be assigned one Certificate of Registry. The registration number shown on this certificate may be used by all agencies, boards, and commissions of the State that are authorized by the State to make purchases for the exclusive use of the State. However, the registration number assigned to a State may not be used by any political subdivision of that State, such as a county or municipality. Each political subdivision of a State desiring to obtain a Certificate of Registry must obtain a separate registration number.

(b) *Sales or resales to foreign purchasers for export.* Persons whose principal place of business is not within the United States may, but are not required to, register in order to purchase articles tax free for export. To establish the right to sell articles tax free for export to a purchaser who is not registered and who is located in a foreign country or a possession of the United States, the manufacturer must obtain the evidence required by § 53.133(b).

(c) *United States.* The registration requirements of the regulations in this part do not apply to purchases and sales by the United States or any of its agencies or instrumentalities. The evidence required in support of such tax-free purchases and sales is a notation on the purchase order or other document furnished to the seller clearly indicating that the article or articles are being purchased tax free as authorized by chapter 32 of the Code.

(d) *Supplies for vessels and aircraft.* An article subject to an excise tax imposed by chapter 32 of the Code may be sold tax free by the manufacturer under the provisions of § 53.134 for use by the purchaser as supplies for a vessel or aircraft if both the manufacturer and the purchaser are registered under the provisions of § 53.140. The article also may be sold tax free for such use even though neither the manufacturer nor the purchaser is so registered if the provisions of paragraph (d) of § 53.134 are satisfied.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.142 Denial, revocation or suspension of registration.

(a) The appropriate ATF officer is authorized to deny, revoke or temporarily suspend, upon written notice, the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code in any case in which he finds that:

(1) The registrant is not a bona fide manufacturer, or a purchaser reselling direct to manufacturers or exporters;

(2) The registrant is for some other reason not eligible under these regulations to retain a Certificate of Registry; or

(3) The registrant has used his registration to avoid payment of the tax imposed by section 4181 of the Code, or to postpone or interfere in any manner with the collection of such tax;

(4) Such denial, revocation, or suspension is necessary to protect the revenue; or

(5) The registrant failed to comply with the requirements of paragraph (c) of § 53.140, relating to the evidence required to support a tax-free sale.

(b) The denial, revocation, or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–365, 60 FR 33671, June 28, 1995]

§ 53.143 Special rules relating to further manufacture.

(a) *Purchasing manufacturer to be treated as the manufacturer.* For purposes of Chapter 32 of the Code, a manufacturer or producer to whom an article is sold or resold tax free under section 4221(a)(1) of the Code for use by it in further manufacture shall be treated as the manufacturer or producer of such article. If a manufacturer who purchases an article tax free for further manufacture does not use the article for further manufacture, the sale of the article by it, or its use of the article other than in further manufacture, shall, for purposes of the taxes imposed by chapter 32 of the Code, be treated as a sale or use of the article by the manufacturer thereof. See paragraphs (b) and (c) of this section for determination of taxable sale price where an article purchased tax free for further manufacture is resold, or used other than in further manufacture.

(b) *Computation of tax.* Except as provided in paragraph (c) of this section, the tax liability referred to in paragraph (a) of this section shall be based on the price for which the article was sold by the purchasing manufacturer, or, where the manufacturer uses the article for a purpose other than that for which it was purchased, the tax shall be based on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof. See section 4218(e) of the Code and § 53.115.

(c) *Election.* (1) Instead of computing the tax as described under paragraph (b) of this section, the purchasing manufacturer who has incurred liability for tax on its sale or use of an article as provided by paragraph (a) of this section may compute the tax incurred under chapter 32 of the Code by using as the tax base either the price for which the article was sold to it by the first purchaser, if any, or the price for which such article was sold by the actual manufacturer, producer, or importer of such article. The purchasing manufacturer must have in its possession information upon which to substantiate such basis for tax. For purposes of this paragraph, the price for which the article was sold by the actual manufacturer or by the first purchaser shall be determined as provided in section 4216 of the Code and §§ 53.91–53.102. However, such price shall not be adjusted for any discount, rebate, allowance, return, or repossession of a container or covering, or otherwise.

(2) The election under this paragraph shall be in the form of a statement attached to the return reporting the tax applicable to the sale or use of the article which gave rise to such tax liability. Such election, once made, may not be revoked.

Subpart L—Refunds and Other Administrative Provisions of Special Application to Manufacturers Taxes

§ 53.151 Returns.

(a) *In general.* (1) Liability for tax imposed under chapter 32 of the Code shall be reported on ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return. Except as provided in paragraphs (a)(2) and (b) of this section, a return on Form 5300.26 shall be filed for a period of one calendar quarter.

(2) *Return periods after September 30, 1992.* For return periods after September 30, 1992, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability in a given calandar quarter shall not be required to file a return on ATF Form 5300.26 for that calandar quarter. Except as provided in paragraph (a)(5) of this section, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

(3) *Return periods prior to October 1, 1992.* For return periods prior to October 1, 1992, every person required to make a return on ATF Form 5300.26 shall make a return for each calendar quarter (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 53.152.

(4) *Forms, etc.* Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

(5) *Special rule for one-time or occasional filings for return periods on or after July 1, 1995.* One-time or occasional filers are not required to file quarterly or annual returns pursuant to paragraph (a)(2) of this section if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business. Such persons shall file and pay tax for periods only when liability is incurred. See § 53.159(b)(2), providing that a deposit of taxes is not required for a one-time or occasional filing.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the appropriate ATF officer determines that any taxpayer who is required to deposit taxes under the provision of §§ 53.157 or 53.159 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the appropriate ATF officer, to file a monthly or semimonthly return on ATF Form 5300.26. Every person so notified by the appropriate ATF officer shall file a return for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 53.152 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* The appropriate ATF officer may require the taxpayer, by notice in writing, to file a quarterly or monthly return, if the taxpayer has been filing returns for a semimonthly period, or may require the taxpayer to file a quarterly or semimonthly return, if the taxpayer has been filing monthly returns.

(3) *Return for period change takes effect.* (i) If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return, or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be filed for the month or semimonthly period in which the notice is received and all months or semimonthly periods which are not includable in an earlier period for which the taxpayer is required to file a return.

(ii) If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be filed is the last month or semimonthly period of the calendar quarter in which the notice is received.

(iii) If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which the notice is received.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–330, 57 FR 40325, Sept. 3, 1992; T.D. ATF–365, 60 FR 33671, June 28, 1995]

§ 53.152 Final returns.

(a) *In general.* Any person who is required to make a return on ATF Form 5300.26 pursuant to § 53.151 and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that return period as a final return. A return made as a final return shall be marked ''Final Return'' by the person filing the return. A taxpayer who has only temporarily ceased to incur liability for tax required to be reported on ATF Form 5300.26 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return until such operations are permanently ceased.

(b) *Statement to accompany final return.* Each final return shall have attached a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping the records, and, if the business of the taxpayer has been sold or otherwise transferred to another person, the name and address of that person and the date on which the sale or transfer

took place. If no sale or transfer occurred or if the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–330, 57 FR 40325, Sept. 3, 1992. Redesignated in part by T.D. ATF–365, 60 FR 33670, June 28, 1995]

§ 53.153 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under § 53.151(a) for a return period of one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and § 53.157 have been made in full payment of the taxes due for the period. For purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period.

(b) *Monthly, semimonthly and annual returns*—(1) *Monthly returns.* Each return required to be made under § 53.151(b) for a monthly period shall be filed not later than the 15th day of the month following the close of the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made under § 53.151(b) for a semimonthly period shall be filed not later than the 10th day of the semimonthly period following the close of the period for which it is made.

(3) *Annual returns.* Each return filed under the provisions of § 53.151(a) for a return period of one calendar year shall be filed not later than the 31st day following the close of the calendar year.

(c) *Last day for filing.* If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, ''legal holiday'' is defined by section 7503 of the Code and 26 CFR 301.7503(b).

(d) *Late filing.* The taxpayer is subject to a penalty for failure to file a return or to pay tax within the prescribed time as imposed by section 6651 of the Code, if the return and remittance are not filed before the close of business on the prescribed last day of filing. For additions to the tax in the case of failure to file a return within the prescribed time, see 27 CFR 70.96.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–330, 57 FR 40325, Sept. 3, 1992]

§ 53.154 Manner of filing returns.

(a) Each return on ATF Form 5300.26 shall be filed with ATF, in accordance with the instructions on the form.

(b) When the taxpayer sends the return on ATF Form 5300.26 by U.S. Mail, 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 return. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the 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 return and, if accompanied, of the remittance.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–330, 57 FR 40325, Sept. 3, 1992]

§ 53.155 Extension of time for filing returns.

(a) *In general.* Ordinarily, no extension of time will be granted for filing any return statement or other document required with respect to the taxes impose by chapter 32, because the information required for the filing of those documents is under normal circumstances readily available. However, if because of temporary conditions beyond the taxpayer's control, a taxpayer believes an extension of time for filing is justified, the taxpayer may apply to the appropriate ATF officer for an extension. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part of the tax unless so specified in

the extension. For extensions of time for payment of the tax, see § 53.156.

(b) *Application for extension of time.* The application for an extension of time for filing the return shall be addressed to the appropriate ATF officer with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made on or before the due date of the return, and failure to do so many indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing the return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 53.156 Extension of time for paying tax shown on return.

(a) *In general.* (1) Ordinarily, no extensions of time will be granted for payment of any tax imposed by Chapter 32 of the Code, and shown or required to be shown on any return. However, if because of temporary conditions beyond the taxpayer's control a taxpayer believes an extension of time for payment is justified, the taxpayer may apply for an extension filing ATF Form 5600.38. The period of an extension shall not be in excess of 6 months from the date fixed for payment of the tax, except that if the taxpayer is abroad the period of the extension may be in excess of 6 months.

(2) The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part of the tax unless so specified in the extension. See § 53.155.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term ''undue hardship'' means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of time for payment of the tax shown or required to be shown on any return shall be made on ATF Form 5600.38, Application for Extension of Time for Payment of Tax, and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. The application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the 3 months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed on or before the date prescribed for payment of the amount with respect to which the extension is desired. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request for it must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the payment shall be made on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of time for payment of the tax does not relieve the taxpayer from liability for the payment of interest on the tax during the period of the extension. See section 6601 of the Code and 26 CFR 301.6601–1.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.157 Deposit requirement for deposits made for calendar quarters prior to July 1, 1995.

NOTE: For deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995, see § 53.159.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on ATF Form 5300.26 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for taxes shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on ATF Form 5300.26 for any calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on that form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by the person in accordance with the instructions on ATF Form 5300.27 on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

(2) A person will be considered to have complied with the requirements of paragraph (b)(1) of this section for a semimonthly period if—

(i)(A) The person's deposit for the semimonthly period is not less than 90 percent of the total amount of the excise taxes reportable by the person on ATF Form 5300.26 for the period, and

(B) If the semimonthly period occurs in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month; or

(ii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 45 percent of the total amount of the excise taxes reportable by the person on ATF Form 5300.26 for the month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 50 percent of the total amount of the excise taxes reportable by the person on ATF Form 5300.26 for the second preceding calendar month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iv)(A) The requirements of paragraph (b)(2) (i)(A), (ii)(A), or (iii)(A) of this section are satisfied for the first semimonthly period of a calendar month after December 1990,

(B) If the person's deposit for the second semimonthly period of the calendar month is, when added to the deposit for the first semimonthly period, not less than 90 percent of the total amount of the excise taxes reportable by the person on ATF Form 5300.26 for the calendar month, and

(C) If the semimonthly periods occur in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month.

(3)(i) Paragraph (b)(2) (ii) and (iii) of this section shall not apply to any person who normally incurs in the first semimonthly period in each calendar month more than 75 percent of the person's total excise tax liability under this part for the month.

(ii) Persons who make their deposits in accordance with paragraph (b)(2) (ii), (iii), or (iv) of this section will find it unnecessary to keep their books and records on a semimonthly basis.

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on ATF Form 5300.26 for any calendar quarter beginning after December 31, 1990, has a total liability under this

part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit in accordance with the instructions on ATF Form 5300.27 the full amount by which the person's liability for all excise taxes reportable on the return for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

(d) *Definitions*—(1) *Semimonthly period.* The term *semimonthly period* means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of that month.

(2) *Depositary date.* The term *depositary date* means, in the case of deposits for semimonthly periods beginning after December 31, 1990, the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(3) *Lockbox financial institution.* The term *lockbox financial institution* means the financial institution designated as a depository for the payment of excise taxes on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form.

(e) *Depositary forms and procedures*—(1) *In general.* Each remittance of amounts required to be deposited for periods beginning after December 31, 1990 shall be accompanied by an ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions on the form. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and 26 CFR 301.7502–1) by the lockbox financial institution, or the ATF officer designated on ATF Form 5300.27 or ATF Form 5300.26 accompanying the deposit, or when made by electronic fund transfer, the Treasury Account. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(2) *Number of remittances.* A person required by this section to make deposits may make one or more remittances with respect to the amount required to be deposited. An amount of tax which is not otherwise required by this section to be deposited may, nevertheless, be deposited if the person liable for the tax so desires.

(3) *Information required.* Each person making deposits pursuant to this section shall report on the return for the period with respect to which the deposits are made information regarding the deposits in accordance with the instructions applicable to the return and pay (or deposits by the due date of the return) the balance, if any, of the taxes due for the period.

(4) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, employer identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by applying for them with the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(f) *Nonapplication to certain taxes.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice pursuant to § 53.151(b) to file ATF Form 5300.26 or

(2) Any subsequent month or semimonthly period for which a return on ATF Form 5300.26 is required.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991; T.D. ATF–330, 57 FR 40325, Sept. 3, 1992; T.D. ATF–365, 60 FR 33671, June 28, 1995; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.158 Payment of tax by electronic fund transfer.

(a) *In general.* For return periods after September 30, 1992, any taxpayer liable for firearms and ammunition excise taxes incurred under this part may elect to remit payments and deposits of the taxes (taxpayments) by electronic fund transfer (EFT). A taxpayer who elects to make remittance by EFT must use that method of remitting excise taxes on firearms and ammunition for a minimum of four consecutive calendar quarters. A taxpayer who makes remittance by EFT for a calendar quarter may not use any other method of remitting and ammunition excise taxes for that quarter.

(b) *Requirements.* (1) On or before the 10th day of the calendar quarter preceding the calendar quarter in which the taxpayer will begin remitting taxes by EFT, each taxpayer who elects to make remittances by EFT of firearms and ammunition excise taxes incurred under this part shall give written notice to the appropriate ATF officer, indicating that remittances will be paid by EFT. Taxpayers who gave written notification in a previous calendar quarter electing to make remittances of tax by EFT are not required to give additional written notifications to continue remitting tax by EFT for succeeding calendar quarters.

(2) For each deposit made or return filed in accordance with this subpart, the taxpayer shall direct the taxpayer's financial institution to make an EFT in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 or 53.159, and 53.153. The request will take into account any time limit established by the financial institution.

(3) Taxpayers who elect to discontinue making remittances by EFT of firearms and ammunition excise taxes may make such election at any time following four consecutive calendar quarters in which tax is remitted by EFT. Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 or 53.159, and 53.151 for remittances not made by EFT and notify the appropriate ATF officer by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

(c) *Remittance.* (1) Taxpayers who elect to make firearms and ammunition excise taxpayments by EFT shall file the deposit form and/or return with ATF in accordance with the applicable instructions on the forms.

(2) Remittances will be considered as made when the taxpayment by EFT is received by the Treasury Account when it is paid to a Federal Reserve Bank.

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

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to penalties imposed by 26 U.S.C. 6651 and 6656, as applicable, for failure to make a payment or deposit of tax by EFT on or before the close of business on the prescribed last day for making such payment or deposit.

(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 follows when preparing deposits,

returns and EFT remittances in accordance with this subpart.

[T.D. ATF–330, 57 FR 40326, Sept. 3, 1992, as amended by T.D. ATF–365, 60 FR 33671, June 28, 1995; T.D. ATF–447, 66 FR 19088, Apr. 13, 2001]

§ 53.159 Deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995.

(a) *Definitions*—(1) *Definition of tax liability*. For purposes of this section, the term ''tax liability'' means the total tax liability for the specified period plus or minus any allowable adjustments made in accordance with the instructions applicable to the form on which the return is made.

(2) *Semimonthly period*. Except as provided in paragraph (c)(4)(ii) of this section, the term ''semimonthly period'' means the first 15 days of a calendar month or the remaining portion of a calendar month following the 15th day of that month.

(b) *In general*—(1) *Semimonthly deposits*. Except as provided in paragraphs (b)(2), (c)(2), and (j) of this section, any person required to file a quarterly excise tax return on ATF Form 5300.26 must make a deposit of tax for each semimonthly period as prescribed in paragraph (c) of this section.

(2) *One-time or occasional filings*. No deposit is required in the case of any taxes reportable on a one-time or occasional filing (as defined in § 53.151(a)(5)).

(c) *Amount of deposit*—(1) *In general*. Except as provided in paragraphs (c)(2), (c)(3) and (c)(6) of this section, the deposit of tax for each semimonthly period must be equal to the amount of tax liability incurred during that semimonthly period. Except as provided in paragraph (c)(3) of this section, no deposit is required for any semimonthly period in which no tax liability is incurred.

(2) *De minimis exception*. Except as provided in paragraph (c)(3) of this section, any person who has a tax liability for the current calendar quarter of $2,000 or less is not required to make deposits for that quarter. However, semimonthly deposits of tax are required beginning with the semimonthly period in which unpaid tax liability exceeds $2,000 and for every semimonthly period thereafter in which tax liability is incurred. The first deposit for the current quarter shall be equal to the unpaid tax liability; thereafter, deposits shall be equal to the amount of tax liability incurred during that semimonthly period.

(3) *Amount of deposit; safe harbor rule based on look-back quarter liability*; *In general*. Except as provided in paragraph (c)(6) of this section, any person who made a return of tax on ATF Form 5300.26 reporting taxes for the second preceding calendar quarter (the ''look-back quarter''), or who did not file a return for the look-back quarter because of the provisions of § 53.151(a)(2), is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the current calendar quarter is an amount equal to not less than 1/6 (16.67 percent) of the total tax liability incurred for the look-back quarter;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(4) *Modification for third calendar quarter*. The safe harbor rule in paragraph (c)(3) of this section does not apply for the third calendar quarter unless—

(i) The deposit of taxes for the semimonthly period July 1–September 15 meets the requirements of paragraph (c)(3) of this section; and

(ii) Each deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12th (8.34 percent) of the total tax liability incurred for the look-back quarter.

(5) *Modification for tax rate increase*—(i) *Application*. The safe harbor rule as prescribed in paragraph (c)(3) is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax prescribed by 26 U.S.C. 4181 to which this part 53 applies.

(ii) *Modification*. The amount of deposit for calendar quarters referred to in paragraph (c)(3) of this section must be adjusted so that the deposit of taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person

would have had with respect to the tax for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(6) *First time filers.* Any person who did not file a return of tax on ATF Form 5300.26 for the first and second preceding calendar quarters because they were not engaged in any activity with respect to which tax is reportable on the return in the course of a trade or business, is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the tax liability incurred with respect to those taxes during the semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(d) *Failure to comply with deposit requirements.* (1) If a person fails to make deposits as required under this part, the appropriate ATF officer may withdraw the person's right to use the safe harbor rule provided by paragraph (c)(3) of this section.

(2) *Cross reference.* The appropriate ATF officer may also require a taxpayer who fails to make deposits of tax to file a monthly or semimonthly return, see § 53.151(b)(1).

(e) *Time for making deposit.* Except for deposits for the period September 16–25, each deposit required to be made by this section shall be made not later than the 9th day of the semimonthly period following the close of the period for which it is made. The deposit for the period September 16–25 shall be made not later than September 28. The deposit for the period September 26–30, is due not later than October 9.

(f) *Last day for filing.* (1) Except as provided by paragraph (f)(2) of this section, if the due date of the deposit falls on a Saturday, Sunday, or legal holiday, the deposit and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, ''legal holiday'' is defined by section 7503 of the Code and 27 CFR 70.306(b) of this chapter.

(2) If the required due date of the deposit for the period September 16–25 falls on a Saturday, the deposit and remittance shall be due on the preceding day. If such required due date falls on a Sunday, the return and remittance shall be due on the following day.

(g) *Forms and procedures.* Each remittance of amounts required to be deposited shall be accompanied by ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions contained in ATF Procedure 92–1, Publication 5000.11. The timeliness of the deposit will be determined by the date it is received by the lockbox financial institution, or the ATF officer designated on the form accompanying the deposit, or the Treasury Account, when made by EFT. In order for deposits of less than $20,000 made by U.S. Mail to be considered received timely, the date of mailing must be on or before the second day preceding the due date of the deposit as evidenced by the official postmark of the U.S. Postal Service stamped on the cover in which the deposit was mailed. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the deposit 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 deposit. Any deposit of $20,000 or more must be received by the last day prescribed for making such deposit, regardless of when mailed. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(h) *Number of remittances.* A person required by this section to make deposits

shall make one deposit for a semimonthly period.

(i) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit however, by the fact that no form has been furnished. A person not supplied with the form is required to obtain the form in ample time to make the required deposits within the time prescribed. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950.

(j) *Taxpayers required to file monthly or semimonthly returns.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice pursuant to section 53.151(b) to file ATF Form 5300.26; or

(2) Any subsequent month or semimonthly period for which a return on ATF Form 5300.26 is required.

(3) Taxpayers required to file monthly returns shall make semimonthly deposits of 100 percent of the liability incurred during each semimonthly period by the 9th day of the month following the last day of the semimonthly period. Taxpayers required to file semimonthly returns shall pay any tax due for the semimonthly period with each return.

(k) *Examples.*

Example 1. One-time filing or occasional filing—(1) *Facts.* On October 18, 1995, A, an individual who lives in the United States purchases a custom made rifle outside the United States and imports it into the United States. A uses the rifle on October 20, 1995. A is liable for the firearms excise tax imposed by sections 4181 and 4218(a). Since A does not regularly sell rifles in arm's length transactions, a constructive sale price of $20,000 is determined (§ 53.115(b)). The amount of A's tax liability is $2200, 11 percent of the constructive sale price of the rifle. The liability is incurred during the fourth calendar quarter of 1995, the quarter during which the rifle is used (§ 53.111(d)). A did not import the rifle in the course of its trade or business and does not engage in any activities with respect to which tax is reportable on ATF Form 5300.26 in the course of a trade or business.

(2) *Filing requirement.* A must file a return on Form 5300.26 (§ 53.151(a)) for the fourth calendar quarter of 1995 reporting A's $2200 firearms excise tax liability. The Form 5300.26 is due by January 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). Because A did not import the firearm in the course of its trade or business and does not engage in any activities with respect to which tax is reportable in the course of a trade or business, the return is a one-time filing or occasional filing.

(3) *Payment requirement.* Because A's Form 5300.26 is a one-time filing, A is not required to make deposits of tax (§ 53.159(b)(2)). Instead, A pays the $2200 of tax with the return.

Example 2. Deposit requirement; based on look-back quarter liability—(1) *Facts.* B is a manufacturer of firearms. B sells 75 pistols which have a taxable sale price of $500 each during the second calendar quarter of 1996. B sold 50 of the pistols in the first semimonthly period of May, 1996, and the other 25 pistols in the second semimonthly period of April, 1996. B did not incur tax liability in any other semimonthly period in the second quarter. The amount of B's tax liability for the second calendar quarter is $3,750, 10 percent of the taxable sale price of the pistols. B filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter, on January 31, 1996 reporting tax liability in the amount of $2,700.

(2) *Deposit requirement.* B is required to make deposits of tax for each semimonthly period in the calendar quarter because B has incurred more than $2,000 in liability for the current quarter. B may use the safe harbor rule based on look-back quarter liability to determine the amount of the required deposits (§ 53.159(c)(3)). Under this safe harbor rule, B's deposit for each semimonthly period must equal at least $450.00, 1/6 (16.67 percent) of the tax liability incurred for the look-back quarter. B's deposit must be timely and B must pay the amount of any underpayment by the due date of the return. Accordingly, B meets the deposit requirement if B makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
April 1–15	April 24, 1996	$450.00
April 16–31	May 9, 1996	450.00
May 1–15	May 24, 1996	450.00
May 16–30	June 10, 1996	450.00
June 1–15	June 24, 1996	450.00
June 16–30	July 9, 1996	450.00

The deposit due on June 10, 1996, would ordinarily be due on June 9, 1996. However, because June 9, 1996 is a Sunday, under section 7503, B has an additional day to make the required deposit.

(3) *Filing requirement.* B must file a return on Form 5300.26 for the second calendar quarter of 1996 reporting B's $3750 tax liability (§ 53.151(a)). The form 5300.26 is due by July 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). B must also pay $1050.00, the underpayment amount by which the total tax liability for the second calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

Example 3. Deposit amount; no liability in look-back quarter—(1) *Facts.* C, a manufacturer of ammunition, filed returns for the first, second and third quarters of 1995 reporting C's tax liability. During the fourth quarter of 1995, C did not make any taxable sales of shells or cartridges, thereby incurring no tax liability for that return period. C did not file Form 5300.26 for the fourth calendar quarter since no tax liability was incurred (§ 53.151(a)(2)). C made taxable sales in the second quarter of 1996 amounting to $25,500.00, incurring a tax liability of $2805.

(2) *Deposit requirement.* Ordinarily, C would be required to make deposits of tax for each semimonthly period in the calendar quarter because C's total liability for the current calendar quarter exceeds $2,000. However, since C incurred a tax liability of $0 in the second preceding calendar quarter (the look-back quarter) (§ 53.159(c)(3)), under the safe harbor rule, C is not required to make deposits of tax.

(3) *Filing requirement.* C is required to file a return on Form 5300.26 reporting C's $2805 ammunition excise tax liability. The form 5300.26 is due by July 31, 1996.

(4) *Payment requirement.* C must pay the $2805 tax with the return.

Example 4. Deposit requirement; First time Filer—(1) *Facts.* D, a manufacturer of firearms, began business on 2/16/96. D sold 300 shotguns which had a taxable sales price of $210 each during the first quarter of 1996. D sold 70 shotguns in the second semimonthly period of February, 1996, 130 shotguns in the first semimonthly period of March, 1996 and 100 shotguns in the second semimonthly period of March, 1996. The amount of D's tax liability for the first quarter of 1996 is $6,930, 11 percent of the taxable sale price of the shotguns.

(2) *Deposit requirement.* D is required to make a deposit of tax when D's tax liability exceeds $2,000 (§ 53.159(c)(2)). Therefore, D must make a deposit of tax beginning with the first semimonthly period in March, the semimonthly period in which D's unpaid tax liability exceeded $2,000. Because D, a first time filer, does not have an established look-back quarter, D's deposit of tax must be at least 95 percent of the incurred tax liability. D is required to make deposits of at least 95 percent of incurred tax liability for every semimonthly period in the quarter thereafter. D's deposits must be timely and any underpayment of tax must be paid by the due date of the return. Accordingly, D meets the deposit requirement if D makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
Feb. 16–29	March 11, 1996	$0
March 1–15	March 25, 1996	4,389
March 16–31	April 9, 1996	2,194.50

The deposits due on March 11, 1996, and March 25, 1996, would ordinarily be due on March 9, 1996, and March 24, 1996, respectively. However, because March 9, 1996, is a Saturday, and March 24, 1996, is a Sunday, under section 7503, D has until March 11, 1996, to make the deposit due on March 9, 1996, and until March 25, 1996, to make the deposit due on March 24, 1996.

(3) *Filing requirement.* D must file a return on Form 5300.26 for the first calendar quarter of 1996 reporting D's $6,930 tax liability (§ 53.151(a)). The form 5300.26 is due by April 30, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). D must also pay $346.50, the amount by which the tax liability for the quarter was underpaid, by the due date of the return.

Example 5. Deposit amount; third calendar quarter—(1) *Facts.* E, a manufacturer of firearms, is a semimonthly depositor who makes deposits of tax using the safe harbor rule based on the look-back quarter to determine the amount of tax required to be deposited for the third calendar quarter of 1995. E incurred a tax liability amounting to $38,000 for the third quarter. E filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter on May 1, 1995, reporting tax liability in the amount of $30,000.

(2) *Deposit requirement.* Because E has incurred more than $2,000 in liability and has chosen to make deposits of tax based on the look-back quarter, E is required to make deposits of tax equal to $5,000, 1/6 (16.67 percent) of the tax liability incurred in the look-back quarter, for each semimonthly period in the calendar quarter. However, because of the special rule which modifies the safe harbor rule for deposits of tax for the month of September (§ 53.159(c)(4)), E must make deposits equal to $2500.00 each, 1/12th (8.34 percent) of the tax liability incurred in the look-back quarter for the periods September 16–25 and September 26–30. E's deposits must be timely and E must pay the amount of any underpayment by the due date of the return. Accordingly, E meets the deposit requirement if E makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
July 1–15	July 24, 1995	$5000.00
July 16–31	August 9, 1995	5000.00
Aug. 1–15	August 24, 1995	5000.00
Aug. 16–31	Sept. 11, 1995	5000.00

Semimonthly period	Deposit due by	Amount of deposit
Sept. 1–15	Sept. 25, 1995	5000.00
Sept. 16–25	Sept. 28, 1995	2500.00
Sept. 26–30	October 9, 1995	2500.00

The deposits due on September 11, 1995, and September 25, 1995, would ordinarily be due on September 9, 1995, and September 24, 1995, respectively. However, because September 9, 1995, is a Saturday, and September 24, 1995, is a Sunday, under section 7503, D has until September 11, 1995, to make the deposit due on September 9, 1995, and until September 25, 1995, to make the deposit due on September 24, 1995.

(3) *Filing requirement.* E must file a return on Form 5300.26 for the third calendar quarter of 1995 reporting E's $38,000 tax liability (§ 53.153(a)). E must also pay $8,000, the underpayment amount by which the total tax liability for the third calendar quarter exceeds the total tax liability for the lookback quarter, by the due date of the return.

[T.D. ATF–365, 60 FR 33671, June 28, 1995, as amended by T.D. ATF–447, 66 FR 19089, Apr. 13, 2001]

§ 53.161 Authority to make credits or refunds.

For provisions relating to credits and refunds of certain taxes on sales and services see section 6416 of the Code and §§ 53.171–53.186. For regulations under section 6402 of the Code of general application in respect of credits or refunds, see 27 CFR 70.122, 70.123, and 70.124 (Procedure and Administration).

§ 53.162 Abatements.

For regulations under section 6404 of the Code of general application in respect of abatements of assessments to tax, see 27 CFR 70.125 (Procedure and Administration).

§§ 53.163–53.170 [Reserved]

§ 53.171 Claims for credit or refund of overpayments of manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 32 of the Code shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of 27 CFR 70.123 (Procedure and Administration). A claim on ATF Form 2635 (5620.8) is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 53.185.

§ 53.172 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(2) of the Code*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by Chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2) of the Code.

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that:

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser*—(i) *General rule.* The term ''ultimate purchaser'', as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3)*—(A) *Conditions to be met.* If tax under chapter 32 of the Code is paid in respect of an article and the appropriate ATF officer determines that the article is not subject to tax under chapter 32, the term ''ultimate purchaser'', as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of

the overpayment in respect of the articles held for sale by wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the appropriate ATF officer.

(B) *Supporting statement.* A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased taxpaid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the appropriate ATF officer that the article is not subject to tax under chapter 32 of the Code.

(C) *Inventory requirement.* The inventory shall not include any such article, title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

(b) *Overpayments described in section 6416(b)(2) of the Code*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 of the Code that are determined to be overpayments by reason of section 6416(b)(2) of the Code (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that:

(i) The person neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or

(iii) The person has secured, and will submit upon request of the appropriate ATF officer, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor—General rule.* The term *ultimate vendor*, as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) of the Code (relating to price readjustments), section 6416(b)(3)(A) of the Code (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer taxpaid), or section 6416(b)(5) of the Code (relating to the return to the seller of certain installment accounts which the seller had previously sold). In this regard, see §§ 53.173, 53.180, and 53.183.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.173 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 of the Code that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) of the Code and § 53.174 or § 53.175, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart

which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either:

(a) On the price as so readjusted, or

(b) On the original sale price and a credit or refund claimed in respect of the price readjustment.

A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see 27 CFR 70.123 (Procedure and Administration), § 53.172(a)(2) and § 53.176. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.174 Determination of price readjustments.

(a) *In general*—(1) *Rules of usual application*—(i) *Amount treated as overpayment.* If the tax imposed by chapter 32 of the Code has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of:

(A) The return of the article,

(B) The repossession of the article,

(C) The return or repossession of the covering or container of the article, or

(D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either:

(A) Repays part or all of the purchase price in cash to the vendee,

(B) Credits the vendee's account for part or all of the purchase price, or

(C) Directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a manufacturer's own agents or salesperson for selling the manufacturer's taxable products are not price readjustments for purposes of this section, since those commissions or bonuses are not paid or credited either to the manufacturer's vendee or to a third party for the vendee's benefit. On the other hand, a bonus paid by the manufacturer to a dealer's salesperson for negotiating the sale of a taxable article previously sold to the dealer by the manufacturer is considered to be a readjustment of the price on the original sale of the taxable article, regardless of whether the payment to the salesperson is made directly by the manufacturer or to the salesperson through the dealer. In such a case, the payment is related to the sale of a taxable article and is made for the benefit of the dealer because it is made to the dealer's salesperson to encourage the sale of a product owned by the dealer. Similarly, payments or credits made by a manufacturer to a vendee as reimbursement of interest expense incurred by the vendee in connection with a so-called ''free flooring'' arrangement for the purchase of taxable articles is a price readjustment, regardless of whether the payment or credit is made directly to the vendee or to the vendee's creditor on behalf of the vendee.

(iii) *Limitation on credit or refund.* The credit or refund allowable by reason of a price readjustment in respect of the sale of a taxable article may not exceed an amount which bears the same ratio to the total tax originally due and payable on the article as the amount of the tax-included readjustment bears to the original tax-included sale price of the article.

(2) *Rules of special application*—(i) *Constructive sale price.* If, in the case of a taxable sale, the tax imposed by

chapter 32 of the Code is based on a constructive sale price determined under any paragraph of section 4216(b) of the Code and §§ 53.94–53.97, as determined without reference to section 4218 of the Code, then any price readjustment made with respect to the sale may be taken into account under this section only to the extent that the price readjustment reduces the actual sale price of the article below the constructive sale price.

Examples:

(A) A manufacturer sells a taxable article at retail for $110 tax included. Under section 4216(b)(1) of the Code the constructive sale price (tax included) of the article is determined to be $93. Thereafter, the manufacturer grants an allowance of $10 to the purchaser, which reduces the actual selling price (tax included) to $100. Since the readjustment price exceeds the amount of the constructive sale price, this readjustment is not recognized as a price readjustment under this section.

(B) Subsequently, the manufacturer extends to the purchaser an additional price allowance of $10, thereby reducing the actual sale price to $90. Since the actual sale price is now $3 less than the constructive sale price of $93, the manufacturer has overpaid by the amount of tax attributable to the $3. Assuming the tax rate involved is 10 percent, and the prices involved are tax-included, the overpayment of tax would be $0.27, determined as follows:

$$\frac{\text{tax rate}}{100 + \text{tax rate}} \times \text{tax - included readjustment} = \text{tax overpayment } ((10/110) \times \$3 = \$0.27)$$

(ii) *Price determined under section 4223(b)(2) of the Code.* If a manufacturer (within the meaning of section 4223(a) of the Code) to whom an article is sold or resold free of tax in accordance with the provisions of section 4221(a)(1) of the Code for use in further manufacture diverts the article to a taxable use or sells it in a taxable sale, and pursuant to the provisions of section 4223(b)(2) of the Code computes the tax liability in respect of the use or sale on the price for which the article was sold to the manufacturer or on the price at which the article was sold by the actual manufacturer, a reduction of the price on which the tax was based does not result in an overpayment within the meaning of section 6416(b)(1) of the Code of this section. Moreover, if a manufacturer purchases an article tax free and computes the tax in respect of a subsequent sale of the article pursuant to the provisions of section 4223(b)(2) of the Code, an overpayment does not arise by reason of readjustment of the price for which the article was sold by the manufacturer except where the readjustment results from the return or repossession of the article by the manufacturer, and all of the purchase price is refunded by the manufacturer. See, however, paragraph (b)(4) of this section as to repurchased articles.

(b) *Return of an article*—(1) *Price readjustment.* If a taxable article is returned to the manufacturer who paid the tax imposed by Chapter 32 of the Code on the sale of the article, a price readjustment giving rise to an overpayment results:

(i) If the article is returned before use, and all of the purchase price is repaid to the vendee or credited to the vendee's account, or

(ii) If the article is returned under an express or implied warranty as to quality or service, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, or

(iii) If title is still in the seller, as, for example, in the case of certain installment sales contracts, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account.

(2) *Return of purchase price.* For purposes of paragraph (b)(1) of this section, if all of the purchase price of an article has been returned to the vendee, except for an amount retained by the manufacturer pursuant to contract as reimbursement of expense incurred in connection with the sale (such as a handling or restocking charge), all of the purchase price is considered to have been returned to the vendee.

(3) *Taxability of subsequent sale or use.* If, under any of the conditions described in paragraph (b)(1) of this section, an article is returned to the manufacturer who paid the tax and all of the purchase price is returned to the vendee, the sale is considered to have been rescinded. Any subsequent sale or use of the article by the manufacturer will be considered to be an original sale or use of the article by the manufacturer which is subject to tax under Chapter 32 of the Code unless otherwise exempt. If under any such condition an article is returned to the manufacturer who paid the tax and only part of the purchase price is returned to the vendee, a subsequent sale of the article by the manufacturer will be subject to tax to the extent that the sale price exceeds the adjusted sale price of the first taxable sale.

(4) *Treatment of other transactions as repurchases.* Except as provided in paragraph (b)(1) of this section, a price readjustment will not result when a taxable article is returned to the manufacturer who paid the tax on the sale of the article, even though all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, since such a transaction will be considered to be a repurchase of the article by the manufacturer.

(c) *Repossession of an article.* If a taxable article is repossessed by the manufacturer who paid the tax imposed by chapter 32 of the Code on the sale of the article, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, a price readjustment giving rise to an overpayment will result. However, if the manufacturer later resells the repossessed article for a price in excess of the original adjusted sale price, the manufacturer will be liable for tax under chapter 32 of the Code to the extent that the resale price exceeds the original adjusted sale price.

(d) *Return or repossession of covering or container.* If the covering or container of a taxable article is returned to, or repossessed by the manufacturer who paid the tax imposed by chapter 32 of the Code on the sale of the article, and all or a portion of the purchase price is repaid to the vendee or credited to the vendee's account by reason of the return or repossession of the covering or container, a price adjustment giving rise to an overpayment will result. If a taxable article is considered to have been repurchased, as provided in paragraph (b)(4) of this section, and the covering or container accompanies the taxable article as part of the transaction, the covering or container will also be considered to have been repurchased.

(e) *Bona fide discounts, rebates, or allowances*—(1) *In general.* Except as provided in § 53.175 (relating to readjustments in respect of local advertising), the basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the price actually by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. Generally, the price will be considered to have been readjusted by reason of a bona fide discount, rebate, or allowance, only if the manufacturer who made the taxable sale repays a part of the purchase price in cash to the vendee, or credits the vendee's account, or directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment will be considered to have been made when a bona fide discount, rebate, or allowance is given in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee as of a certain date. On the other hand, repayments made to the vendee do not effectuate price readjustments if given in consideration of circumstances under which the vendee has incurred, or is required to incur, an expense which, if treated as a separate item in the original transaction, would have been incudable in the price of the article for purposes of computing the tax.

Examples. The provisions of paragraph (e)(1) of this section may be illustrated by the following examples:

Example (1). B, a manufacturer of shotguns, bills its distributors in a specified amount per shotgun purchased by them. Thereafter, B issues to each distributor a credit memorandum in the amount of X dollars for each demonstration by the distributor of the shotguns at a sporting goods exhibition. The credit which B allows the distributor for demonstration of B's product does not effect a readjustment of price.

Example (2). C, a manufacturer of firearms, bills its dealers in a specified amount per firearm purchased by them. Thereafter, C remits to the dealer X dollars of the original sale price for each firearm sold by the dealer. An additional amount of Y dollars is paid to the dealer upon a showing by the dealer that the dealer has paid Y dollars to the salesperson who made the sale. In this case, the X dollars paid to the dealer by C constitutes a bona fide discount, rebate, or allowance since payment of such amount is in the nature of a price reduction. In addition, the Y dollars paid to the dealer in reimbursement for the amount paid by the dealer to the salesperson who made the sale, also constitutes a bona fide discount, rebate, or allowance.

(2) *Inability to collect price*. A charge-off of an amount outstanding in an open account, due to inability to collect, is not a bona fide discount, rebate, or allowance and does not, in and of itself, give rise to a price readjustment within the meaning of this section.

(3) *Loss or damage in transit*. If title to an article has passed to the vendee, the subsequent loss, damage, or destruction of the article while in the possession of a carrier for delivery to the vendee does not, in and of itself, affect the price at which the article was sold. However, if the article was sold under a contract providing that, if the article was lost, damaged, or destroyed in transit, title would revert to the vendor and the vendor would reimburse the vendee in full for the sale price, then the original sale is considered to have been rescinded. The vendor is entitled to credit or refund of the tax paid upon reimbursement of the full tax-included sale price to the vendee.

§ 53.175 Readjustment for local advertising charges.

(a) *In general*. If a manufacturer has paid the tax imposed by chapter 32 of the Code on the price of any article sold by the manufacturer and thereafter has repaid a portion of the price to the purchaser or any subsequent vendee in reimbursement of expenses for local advertising of the article or any other article sold by the manufacturer which is taxable at the same rate under the same section of chapter 32 of the Code, the reimbursement will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) of the Code and § 53.101, determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made. The term ''local advertising,'' as used in this section, has the same meaning as prescribed by section 4216(e)(4) of the Code and includes generally, advertising which is broadcast over a radio station or television station, or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(b) *Local advertising charges excluded from taxable price in one year but repaid in following year*—(1) *Determination of price readjustments for year in which charge is repaid*. If the tax imposed by chapter 32 of the Code was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendee before May 1 of the following calendar year, the subsequent repayment of those charges by the manufacturer in reimbursement of expenses for local advertising will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) of the Code and § 53.101, determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made.

(2) *Redetermination of price readjustments for year in which charge was made.* If the tax imposed by chapter 32 of the Code was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendor before May 1 of the following calendar year, the manufacturer may make a redetermination, in respect of the calendar year in which the charge was made, of the price readjustments constituting an overpayment which the manufacturer may claim as a credit or refund. This redetermination may be made by excluding the local advertising charges made in the calendar year that became taxable as of May 1 of the following calendar year.

§ 53.176 Supporting evidence required in case of price readjustments.

No credit or refund of an overpayment arising by reason of a price readjustment described in § 53.174 or § 53.175 shall be allowed unless the manufacturer who paid the tax submits a statement, supported by sufficient available evidence:

(a) Describing the circumstances which gave rise to the price readjustment,

(b) Identifying the article in respect of which the price readjustment was allowed,

(c) Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid,

(d) Giving the name and address of the purchaser to whom the article was sold, and

(e) Showing the amount repaid to the purchaser or credited to the purchaser's account.

§ 53.177 Certain exportations, uses, sales, or resales causing overpayments of tax.

In the case of any payment of tax under chapter 32 of the Code that is determined to be an overpayment by reason of certain exportations, uses, sales, or resales described in section 6416(b)(2) of the Code and § 53.178, the person who paid the tax may file a claim for refund of the overpayment or, in the case of overpayments under chapter 32 of the Code, may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. However, under the circumstances described in section 6416(c) of the Code and § 53.184, the overpayments under chapter 32 may be refunded to an exporter or shipper. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see 27 CFR 70.123 (Procedure and Administration) and 53.179. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

§ 53.178 Exportations, uses, sales, and resales included.

(a) *In general.* The payment of tax imposed by chapter 32 of the Code on the sale of any article, will be considered to be an overpayment by reason of any exportation, use, sale, or resale described in any one of paragraphs (b) to (e), inclusive, of this section. This section applies only in those cases where the exportation, use, sale, or resale (or any combination thereof) referred to in any one or more of these paragraphs occurs before any other use. If any article is sold or resold for a use described in any one of these paragraphs and is not in fact so used, the paragraph is treated in all respects as inapplicable.

(b) *Exportation of tax-paid articles.* A payment of tax under chapter 32 of the Code on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(A) of the Code if the article is by any person exported to a foreign country or shipped to a possession of the United States. It is immaterial for purposes of this paragraph, whether the person who made the taxable sale had knowledge at the time of the sale that the article was being purchased for export to a foreign country or shipment to a possession of the United States. See § 53.184 for the circumstances under which a claim for refund by reason of the exportation of an article may be claimed by the exporter or shipper, rather than by the person who paid the tax. For definition of the

term ''possession of the United States'', see § 53.11.

(c) *Supplies for vessels or aircraft.* A payment of tax under chapter 32 of the Code on the sale of any article, will be considered to be an overpayment under section 6416(b)(2)(B) of the Code if the article is used by any person, or is sold by any person for use by the purchaser, as supplies for vessels or aircraft. The term ''supplies for vessels or aircraft'', as used in this paragraph, has the same meaning as when used in sections 4221(a)(3), 4221(d)(3), and 4221(e)(1) of the Code, and the regulations thereunder (§ 53.134(b)(1)).

(d) *Use by State or local government.* A payment of tax under chapter 32 of the Code on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(C) of the Code if the article is sold by any person to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia. For provisions relating to tax-free sales to a State, any political subdivision thereof, or the District of Columbia, see section 4221(a)(4) of the Code and § 53.131.

(e) *Use by nonprofit educational organization.* A payment of tax under chapter 32 of the Code on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(D) of the Code if the article is sold by any person to a nonprofit educational organization for its exclusive use. The term ''nonprofit educational organization'', as used in this paragraph (e), has the same meaning as when used in section 4221 (a)(5) or (d)(5) of the Code, whichever applies, and the regulations under § 53.136.

§ 53.179 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) of the Code and § 53.178, of tax under chapter 32 of the Code shall be allowed unless the person who paid the tax submits with the claim the evidence required by § 53.172(b)(2) and a statement, supported by sufficient available evidence:

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) of the Code and § 53.177,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) Indicating that the person claiming a credit or refund possesses evidence (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) of the Code and § 53.178.

(b) *Evidence required to be in possession of claimant*—(1) *Evidence required under paragraph (a)(4)*—(i) *In general.* The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in § 53.133 or must, in the case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However, if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.* (A) The certificate executed and signed by the ultimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the

use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject to all applicable criminal penalties under the Internal Revenue Code.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph.

(iii) *Certificate of ultimate vendor*. Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax as provided in paragraph (a)(4) of this section may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and § 53.178 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. A certificate supporting a claim for credit or refund under this section shall contain the following:

(A) Name of ultimate vendor if other than person executing the certificate.

(B) Statement that article(s) was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold.

(C) Description of proof which supports exportation or certificate as to use executed by ultimate purchaser.

(D) Statement that ultimate vendor retains such proof for 3 years from the date of the statement and will, upon request, supply such proof at any time within such 3 year period to the taxpayer to establish that credit or refund is due in respect of the article.

(E) Statement that to the best knowledge and belief of the person executing the certificate, no statement in respect of the proof of exportation or certificate has previously been executed and that the person executing the certificate understands that any fraudulent use of the certificate may subject the person executing the certificate or any other party to all applicable criminal penalties under the Code.

(F) Name, title, address and signature of person executing certificate and date signed.

(G) Description of all articles covered by the certificate, with the corresponding vendor's invoice number, date of resale of article, quantity, whether articles were exported or used and the use made of article or to be made of article.

(iv) *ATF I 5600.33*. ATF I 5600.33, Statement of Ultimate Vendor, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Additional copies may be reproduced as needed.

(2) *Repayment or consent of ultimate vendor*. If the person claiming credit or refund or an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the supporting evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see § 53.172(b)(2).

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–380, 61 FR 37007, July 16, 1996]

§ 53.180 Tax-paid articles used for further manufacture and causing overpayments of tax.

In the case of any payment of tax under chapter 32 of the Code that is determined to be an overpayment under section 6416(b)(3) of the Code and

§ 53.181 by reason of the sale of an article, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer who uses the article in further manufacture of a second article or who sells the article with, or as a part of, the second article manufactured or produced by the subsequent manufacturer, the subsequent manufacturer may file claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see 27 CFR § 70.123 (Procedure and Administration), 53.172 and 53.182. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

§ 53.181 Further manufacture included.

(a) *In general.* The payment of tax imposed by chapter 32 of the Code on the sale of any article by a manufacturer of the article will be considered to be an overpayment by reason of any use in further manufacture, or sale as part of a second manufactured article, described in paragraph (b) of this section. This section applies in those cases where the exportation, use, or sale (or any combination of those activities) referred to in this paragraph occurs before any other use.

(b) *Use of tax-paid articles in further manufacture described in section 6416(b)(3)(A) of the Code.* A payment of tax under chapter 32 of the Code on the sale of any article, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(A) of the Code if the article is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer which is taxable under chapter 32 of the Code. For this purpose it is immaterial whether the second article is sold or otherwise disposed of, or if sold, whether the sale is a taxable sale. Any article to which this paragraph applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article.

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31084, July 9, 1991]

§ 53.182 Supporting evidence required in case of tax-paid articles used for further manufacture.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(3) of the Code and § 53.181 shall be allowed unless the subsequent manufacturer submits with the claim the evidence required by § 53.132 and a statement, supported by sufficient available evidence:

(1) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(3) of the Code and § 53.180,

(2) Showing the name and address of the manufacturer, producer, or importer of the article in respect of which credit or refund is claimed,

(3) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(4) Showing the amount of tax paid in respect of the article by the manufacturer or producer of the article and the date of payment.

(5) Indicating that the article was used by the claimant as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the manufacturer or was sold on or in connection with, or with the sale of, a second article manufactured or produced by the manufacturer, and

(6) Identifying the second article, both as to nature and quantity.

(b) *Evidence required to be in possession of claimant*—(1) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in § 53.179(b)(1)(ii), except

that the information must be furnished in respect of the second article, rather than the article to which the claim relates.

(2) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in § 53.179(b)(2)(iii).

(3) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming the credit or refund. In this regard, see § 53.172(b)(2).

[T.D. ATF–308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF–312, 56 FR 31085, July 9, 1991]

§ 53.183 Return of installment accounts causing overpayments of tax.

(a) *In general.* In the case of any payment of tax under section 4216(d)(1) of the Code in respect of the sale of any installment account that is determined to be an overpayment under section 6416(b)(5) of the Code and paragraph (b) of this section upon return of the installment account, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which that person subsequently files. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see 27 CFR 70.123 (Procedure and Administration) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) of the Code and § 53.185.

(b) *Overpayment of tax allocable to repaid consideration.* The payment of tax imposed by section 4216(d)(1) of the Code on the sale of an installment account by the manufacturer will be considered to be an overpayment under section 6416(b)(5) of the Code to the extent of the tax allocable to any consideration repaid or credited to the purchaser of the installment account upon the return of the account to the manufacturer pursuant to the agreement under which the account originally was sold, if the readjustment of the consideration occurs pursuant to the provisions of the agreement. The tax allocable to the repaid or credited consideration is the amount which bears the same ratio to the total tax paid under section 4216(d)(1) of the Code with respect to the installment account as the amount of consideration repaid or credited to the purchaser bears to the total consideration for which the account was sold. This paragraph (b) does not apply where an installment account is originally sold pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding.

(c) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(5) of the Code and paragraph (b) of this section, of tax under section 4216(d)(1) of the Code shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, indicating:

(1) The name and address of the person to whom the installment account was sold,

(2) The amount of tax due under section 4216(d)(1) of the Code by reason of the sale of the installment account, the amount of the tax paid under section 4216(d)(1) with respect to the sale, and the date of payment,

(3) The amount for which the installment account was sold,

(4) The amount which was repaid or credited to the purchaser of the account by reason of the return of the account to the person claiming the credit or refund, and

(5)(i) The fact that the amount repaid or credited to the purchaser of the account was so repaid or credited pursuant to the agreement under which the account was sold, and

(ii) The fact that the account was returned to the manufacturer pursuant to that agreement.

§ 53.184 Refund to exporter or shipper.

(a) *In general.* Any payment of tax imposed by chapter 32 of the Code that is determined to be an overpayment within the meaning of section 6416(b)(2)(A) of the Code and §§ 53.178 and 53.179, by reason of the exportation of any article may be refunded to the exporter or shipper of the article pursuant to section 6416(c) of the Code, if:

(1) The exporter or shipper files a claim for refund of the overpayment, and

(2) The person who paid the tax waives the right to claim credit or refund of the tax.

No interest shall be paid on any refund allowed under this section. For provisions relating to the evidence required in support of a claim under this paragraph, see 27 CFR 70.123 (Procedure and Administration) and paragraph (b) of this section.

(b) *Supporting evidence required.* No claim for refund of any overpayment of tax to which this section applies shall be allowed unless the exporter or shipper submits with that claim proof of exportation in the form prescribed by § 53.133, and a statement, signed by the person who paid the tax, showing:

(1) That the person who paid the tax waives the right to claim credit or refund of the tax, and

(2) The amount of tax paid on the sale of the article and the date of payment.

§ 53.185 Credit on returns.

Any person entitled to claim refund of any overpayment of tax imposed by chapter 32 of the Code may, in lieu of claiming refund of the overpayment, claim credit for the overpayment on any return of tax under this subpart subsequently filed. Any such credit claimed on a return must be supported by the evidence prescribed in the applicable regulations in this subpart and 27 CFR 70.123 (Procedure and Administration).

§ 53.186 Accounting procedures for like articles.

(a) *Identification of manufacturer.* In applying section 6416 of the Code and the regulations thereunder, a person who has purchased like articles from various manufacturers may determine the particular manufacturer from whom that person purchased any one of those articles by a first-in, first-out (FIFO) method, by a last-in, first-out (LIFO) method, or by any other consistent method approved by the appropriate ATF officer. For the first year for which a person makes a determination under this section, the person may adopt any one of the following methods without securing prior approval by the appropriate ATF officer.

(1) FIFO method.

(2) LIFO method.

(3) Any method by which the actual manufacturer of the article is in fact identified.

(4) Any other method of determining the manufacturer of a particular article must be approved by the appropriate ATF officer before its adoption. After any method for identifying the manufacturer has been properly adopted, it may not be changed without first securing the consent of the appropriate ATF officer.

(b) *Determining amount of tax paid.* In applying section 6416 and §§ 53.171–53.186, if the identity of the manufacturer of any article has been determined by a person pursuant to a method prescribed in paragraph (a) of this section, that manufacturer of the article must determine the tax paid under Chapter 32 of the Code with respect to that article consistently with the method used in identifying the manufacturer.

§ 53.187 OMB control numbers.

(a) *Purpose.* This section collects and displays the control numbers assigned to collections of information in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. ATF intends that this section comply with the requirements of §§ 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control

numbers assigned by OMB to collections of information in the regulations in this part.

(b) *Display*.

27 CFR part 53 section number	OMB control number(s)
§ 53.1	1545–0723
§ 53.3	1545–0685
§ 53.11	1545–0723
§ 53.92	1545–0023
§ 53.93	1545–0023
§ 53.99	1545–0023
§ 53.131	1545–0023
§ 53.132	1545–0023
§ 53.133	1545–0023
§ 53.134	1545–0023
§ 53.136	1545–0023
§ 53.140	1545–0023
§ 53.141	1545–0023
§ 53.142	1545–0023
§ 53.143	1545–0023
§ 53.151	1545–0023, 1545–0723
§ 53.152	1545–0723
§ 53.153	1545–0257, 1545–0723
§ 53.155	1545–0723
§ 53.157	1545–0257
§ 53.171	1545–0023, 1545–0723
§ 53.172	1545–0723
§ 53.173	1545–0723
§ 53.174	1545–0723
§ 53.175	1545–0723
§ 53.176	1545–0723
§ 53.177	1545–0723
§ 53.178	1545–0723
§ 53.179	1545–0723
§ 53.180	1545–0723
§ 53.181	1545–0723
§ 53.182	1545–0723
§ 53.183	1545–0723
§ 53.184	1545–0023, 1545–0723
§ 53.185	1545–0023, 1545–0723
§ 53.186	1545–0723

PART 55—COMMERCE IN EXPLOSIVES

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AUTHORITY: 18 U.S.C. 847.

SOURCE: T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 55 appear by T.D. ATF–463, 66 FR 42734, Aug. 15, 2001.

Subpart A—Introduction

§ 55.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), Public Law 103–322 (108 Stat. 1796), and Public Law 104–132 (110 Stat. 1214).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in explosive materials;

(2) The licensing of manufacturers and importers of, and dealers in, explosive materials;

(3) The issuance of user permits;

(4) The conduct of business by licensees and operations by permittees;

(5) The storage of explosive materials;

(6) The records and reports required of licensees and permittees;

(7) Relief from disabilities under this part;

(8) Exemptions, unlawful acts, penalties, seizures, and forfeitures; and

(9) The marking of plastic explosives.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–363, 60 FR 17449, Apr. 6, 1995; T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778), and regulations of Part 47 of this chapter and in Parts 121 through 128 of Title 22, Code of Federal Regulations. For statutes applicable to nonmailable materials, see 18 U.S.C. 1716 and implementing regulations. For statutes applicable to water quality standards, see 33 U.S.C. 1341.

Subpart B—Definitions

§ 55.11 Meaning of terms.

When used in this part, terms are defined as follows in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender 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.

Act. 18 U.S.C. Chapter 40.

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses. The term does not include black powder.

Approved storage facility. A place where explosive materials are stored, consisting of one or more approved magazines, conforming to the requirements of this part and covered by a license or permit issued under this part.

Articles pyrotechnic. Pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432.

Artificial barricade. An artificial mound or revetted wall of earth of a minimum thickness of three feet, or any other approved barricade that offers equivalent protection.

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.

Authority having jurisdiction for fire safety. The fire department having jurisdiction over sites where explosives are manufactured or stored.

Barricaded. The effective screening of a magazine containing explosive materials from another magazine, a building, a railway, or a highway, either by a natural barricade or by a artificial barricade. To be properly barricaded, a straight line from the top of any sidewall of the magazine containing explosive materials to the eave line of any other magazine or building, or to a point 12 feet above the center of a railway or highway, will pass through the natural or artificial barricade.

Blasting agent. Any material or mixture, consisting of fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing 2 grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40–0.45 grams of PETN base

charge pressed in an aluminum shell with bottom thickness not to exceed to 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

Bulk salutes. Salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of display fireworks.

Bullet-sensitive explosive materials. Explosive materials that can be exploded by 150-grain M2 ball ammunition having a nominal muzzle velocity of 2700 fps (824 mps) when fired from a .30 caliber rifle at a distance of 100 ft (30.5 m), measured perpendicular. The test material is at a temperature of 70 to 75 degrees F (21 to 24 degrees C) and is placed against a ½ inch (12.4 mm) steel backing plate.

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

Business premises. When used with respect to a manufacturer, importer, or dealer, the property on which explosive materials are manufactured, imported, stored or distributed. The premises include the property where the records of a manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are received or stored. The premises includes the property where the records of the users are kept if different than the premises where explosive materials are received or stored.

Chief, Firearms and Explosives Licensing Center. The ATF official responsible for the issuance and renewal of licenses and permits under this part.

Consumer fireworks. Any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder.

Crime punishable by imprisonment for a term exceeding one year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term does not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

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 to perform the duties of an officer of the Customs Service.

Dealer. Any person engaged in the business of distributing explosive materials at wholesale or retail.

Detonator. Any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating-cord delay connectors, and nonelectric instantaneous and delay blasting caps.

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

Display fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as ''consumer fireworks.'' Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49

CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

Distribute. To sell, issue, give, transfer, or otherwise dispose of. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

Executed under penalties of perjury. Signed with the required declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is required, with the declaration:

> ''I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), 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''.

Explosive actuated device. Any tool or special mechanized device which is actuated by explosives, but not a propellent actuated device.

Explosive materials. Explosives, blasting agents, water gels and detonators. Explosive materials include, but are not limited to, all items in the ''List of Explosive Materials'' provided for in § 55.23.

Explosives. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of ''consumer fireworks'' or ''display fireworks'' as defined by this section.

Fireworks mixing building. Any building or area used for mixing and blending pyrotechnic compositions except wet sparkler mix.

Fireworks nonprocess building. Any office building or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

Fireworks plant. All land and buildings thereon used for or in connection with the assembly or processing of fireworks, including warehouses used with or in connection with fireworks plant operations.

Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither explosive materials nor pyrotechnic compositions used to manufacture or assemble fireworks.

Fireworks process building. Any mixing building; any building in which pyrotechnic compositions or explosive materials is pressed or otherwise prepared for finished and assembly; or any finishing or assembly building.

Fireworks shipping building. A building used for the packing of assorted display fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

Flash powder. An explosive material intended to produce an audible report and a flash of light when ignited which includes but is not limited to oxidizers such as potassium chlorate or potassium perchlorate, and fuels such as sulfur or aluminum powder.

Fugitive from justice. Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term also includes any person who has been convicted of any crime and has fled to avoid imprisonment.

Hardwood. Oak, maple, ash, hickory, or other hard wood, free from loose knots, spaces, or similar defects.

Highway. Any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

Importer. Any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

Indictment. Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

Inhabited building. Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials.

Interstate or foreign commerce. Commerce between any place in a State and any place outside of that State, or within any possession of the United States or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

Licensed dealer. A dealer licensed under this part.

Licensed importer. An importer licensed under this part.

Licensed manufacturer. A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Licensee. Any importer, manufacturer, or dealer licensed under this part.

Magazine. Any building or structure, other than an explosives manufacturing building, used for storage of explosive materials.

Manufacturer. Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Mass detonation (mass explosion). Explosive materials mass detonate (mass explode) when a unit or any part of a larger quantity of explosive material explodes and causes all or a substantial part of the remaining material to detonate or explode.

Natural barricade. Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

Number 8 test blasting cap. (See definition of ''blasting agent.'')

Permittee. Any user of explosives for lawful purpose, who has obtained a user permit under this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plywood. Exterior, construction grade (laminated wood) plywood.

Propellant actuated device. Any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

Pyrotechnic compositions. A chemical mixture which, upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

Railway. Any steam, electric, or other railroad or railway which carries passengers for hire.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

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

Salute. An aerial shell, classified as a display firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

Screen barricade. Any barrier that will contain the embers and debris from a fire or deflagration in a process building, thus preventing propagation of fire to other buildings or areas. Such barriers shall be constructed of metal roofing, ¼ to ½ inch (6 to 13 mm) mesh screen, or equivalent material. The barrier extends from floor level to a height such that a straight line from the top of any side wall of the donor building to the eave line of any exposed building intercepts the screen at a point not less than 5 feet (1.5 m) from the top of the screen. The top 5 feet (1.5 m) of the screen is inclined towards the donor building at an angle of 30 to 45 degrees.

Softwood. Fir, pine, or other soft wood, free from loose knots, spaces, or similar defects.

State. A State of the United States. The term includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

State of residence. The State in which an individual regularly resides or maintains his home. Temporary stay in a State does not make the State of temporary stay the State of residence.

Theatrical flash powder. Flash powder commercially manufactured in

premeasured kits not exceeding 1 ounce and mixed immediately prior to use and intended for use in theatrical shows, stage plays, band concerts, magic acts, thrill shows, and clown acts in circuses.

U.S.C. The United States Code.

User-limited permit. A user permit valid only for a single purchase transaction, a new permit being required for a subsequent purchase transaction.

User permit. A permit issued to a person authorizing him (a) to acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and (b) to transport explosive materials in interstate or foreign commerce.

Water gels. Explosives or blasting agents that contain a substantial proportion of water.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–92, 46 FR 46916, Sept. 23, 1981; T.D. ATF–200, 50 FR 10497, Mar. 15, 1985; T.D. ATF–290, 54 FR 53053, Dec. 27, 1989; T.D. ATF–293, 55 FR 3720, Feb. 5, 1990; T.D. ATF–314, 56 FR 49140, Sept. 27, 1991; T.D. ATF–382, 61 FR 38084, July 23, 1996; T.D. ATF–400, 63 FR 45001, Aug. 24, 1998; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

Subpart C—Administrative and Miscellaneous Provisions

§ 55.21 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.

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

[T.D. ATF–92, 46 FR 46916, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996]

§ 55.22 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The permittee or licensee, on specific approval by the Director as provided by this paragraph, 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:

(1) Good cause is 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 that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; 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.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application 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 for it. Alternate methods or procedures may not be employed until the application is approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization. As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and 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:

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph 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 the procedures, conditions, and limitations shall automatically terminate the authority for the variations and the licensee or permittee 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 effective administration of this part is hindered by the continuation of the variation. Where the licensee or permittee desires to employ an emergency variation, he shall submit a written application to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by ATF officers, any application approved by the Director under this section.

§ 55.23 List of explosive materials.

The Director shall compile a list of explosive materials, which shall be published and revised at least annually in the FEDERAL REGISTER. The ''List of Explosive Materials'' (ATF Publication 5400.8) is available at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

[T.D. ATF–290, 54 FR 53054, Dec. 27, 1989, as amended by T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 55.24 Right of entry and examination.

Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or permittee for the purpose of inspecting or examining any records or documents required to be kept under this part, and any explosive materials kept or stored at the premises.

§ 55.25 Disclosure of information.

Upon receipt of written request from any State or any political subdivision of a State, the regional director (compliance) may make available to the State or politicial subdivision any information which the regional director (compliance) may obtain under the Act with respect to the identification of persons within the State or political subdivision, who have purchased or received explosive materials, together with a description of the explosive materials.

§ 55.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

(a) No person, other than a licensee or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials. This paragraph does not apply to:

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (ii) the provisions of § 55.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in

interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term ''destructive device'' in 18 U.S.C. 921(a)(4).

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in interstate or foreign commerce who:

(1) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(4) Has been adjudicated as a mental defective or has been committed to a mental institution.

(c) No person shall knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age,

(2) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,

(3) Is a fugitive from justice,

(4) Is an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or

(5) Has been adjudicated as a mental defective or has been committed to a mental institution.

(d) See § 55.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or possession of plastic explosives that do not contain a detection agent.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–293, 55 FR 3721, Feb. 5, 1990; T.D. ATF–363, 60 FR 17449, Apr. 6, 1995; T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.27 Out-of-State disposition of explosive materials.

No nonlicensee or nonpermittee shall distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

§ 55.28 Stolen explosive materials.

No person shall receive, conceal, transport, ship, store, barter, sell, or dispose of any stolen explosive materials knowing or having reasonable cause to believe that the explosive materials were stolen.

§ 55.29 Unlawful storage.

No person shall store any explosive materials in a manner not in conformity with this part.

§ 55.30 Reporting theft or loss of explosive materials.

(a) Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1–800–800–3855 (nationwide toll free number) and on ATF F 5400.5 (formerly Form 4712) in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.

(b) Any other person, except a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1–800–800–3855 (nationwide toll free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials under paragraphs (a) and (b) of this section must include the following information, if known:

(1) The manufacturer or brand name.

(2) The manufacturer's marks of identification (date and shift code).

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(4) Description (dynamite, blasting agents, detonators, etc.) and United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D, as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

(5) Size (length and diameter).

(d) A carrier of explosive materials who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 1–800–800–3855 (nationwide toll free number). Theft or loss shall also be reported to appropriate local authorities. Reports of theft or loss of explosive materials by carriers shall include the following information, if known:

(1) The manufacturer or brand name.

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(3) Description (United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D) as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.31 Inspection of site accidents or fires; right of entry.

Any ATF officer may inspect the site of any accident or fire in which there is reason to believe that explosive materials were involved. Any ATF officer may enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location.

§ 55.32 Special explosive devices.

The Director may exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of this part. A person who desires to obtain an exemption under this section for any special explosive device, which as designed does not constitute a public safety or security hazard, shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer, the purpose of and use for which it is intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require that a sample of the device be submitted for examination and evaluation. If it is not possible to submit the device, the person requesting the exemption shall advise the Director and designate the place where the device will be available for examination and evaluation.

Subpart D—Licenses and Permits

§ 55.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, shall, before commencing business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under this subpart; except that it is not necessary to obtain a permit if the user intends to lawfully purchase:

(1) Explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, or

(2) Commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(b) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer shall file an application, with the required fee (see § 55.42), with ATF in accordance

with the instructions on the form (see § 55.45). A license shall, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials except under the following circumstances:

(1) A separate license shall not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

(2) A separate license shall not be required of a licensed manufacturer with respect to his on-site manufacturing.

(3) It shall not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(4) A separate license shall not be required of licensed manufacturers with respect to their on-site manufacture of theatrical flash powder.

(c) Except as provided in paragraph (a) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall file an application, with the required fee (see § 55.43), with ATF in accordance with the instructions on the form (see § 55.45). A permit shall, subject to law, entitle the permittee to acquire, transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one permit is required under this part.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–200, 50 FR 10497, Mar. 15, 1985; T.D. ATF–314, 56 FR 49140, Sept. 27, 1991; T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a three year license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—$200.

(2) Importer—$200.

(3) Dealer—$200.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer—$100.

(2) Importer—$100.

(3) Dealer—$100.

[T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—$100 for a three year permit.

(2) User-limited (nonrenewable)—$75.

(b) Each applicant for renewal of a user permit shall pay a fee of $50 for a three year permit.

[T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.44 License or permit fee not refundable.

No refund of any part of the amount paid as a license or permit fee will be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit will be refunded if that application is denied, withdrawn, or abandoned, or if a license is cancelled subsequent to having been issued through administrative error.

§ 55.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with ATF an application for License, Explosives, ATF F 5400.13 with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of a money order or check made

payable to the Bureau of Alcohol, Tobacco and Firearms. ATF F 5400.13 may be obtained from any ATF office.

(b) Any person, except as provided in § 55.41(a), who intends to acquire explosive materials from a licensee in a state other than the State in which that person resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file an application for Permit, Explosives, ATF F 5400.16 or Permit, User Limited Special Fireworks, ATF F 5400.21 with ATF in accordance with the instructions on the form. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application is to be accompanied by the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF F 5400.16 and ATF F 5400.21 may be obtained from any ATF office.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. T.D. ATF–200, 50 FR 10497, Mar. 15, 1985, as amended by T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.46 Renewal of license or permit.

(a) If a licensee or permittee intends to continue the business or operation described on a license or permit issued under this part after the expiration date of the license or permit, he shall, unless otherwise notified in writing by the Chief, Firearms and Explosives Licensing Center, execute and file prior to the expiration of his license or permit an application for license renewal, ATF F 5400.14 (Part III), or an application for permit renewal, ATF F 5400.15 (Part III), accompanied by the required fee, with ATF in accordance with the instructions on the form. In the event the licensee or permittee does not timely file a renewal application, he shall file an original application as required by § 55.45, and obtain the required license or permit in order to continue business or operations.

(b) A user-limited permit is not renewable and is valid for a single purchase transaction. Applications for all user-limited permits must be filed on ATF F 5400.16 or ATF F 5400.21, as required by § 55.45.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–200, 50 FR 10497, Mar. 15, 1985; T.D. ATF–290, 54 FR 53054, Dec. 27, 1989; T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.47 Insufficient fee.

If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–200, 50 FR 10498, Mar. 15, 1985]

§ 55.48 Abandoned application.

Upon receipt of an incomplete or improperly executed application, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered as having been abandoned and the license or permit fee returned.

§ 55.49 Issuance of license or permit.

(a) The Chief, Firearms and Explosives Licensing Center, shall issue a license or permit if (1) a properly executed application for the license or permit is received, and (2) through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit. The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only shall be issued. Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(b) The Chief, Firearms and Explosives Licensing Center, shall approve a properly executed application for a license or permit, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing,

directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom distribution of explosive materials is prohibited under the Act;

(3) The applicant has not willfully violated any provisions of the Act or this part;

(4) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(5) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(6) The applicant has storage for the class (as described in § 55.202) of explosive materials described on the application, unless he establishes to the satisfaction of the Chief, Firearms and Explosives Licensing Center that the business or operations to be conducted will not require the storage of explosive materials.

(7) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business; and

(8) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341).

(c) The Chief, Firearms and Explosives Licensing Center, shall approve or the regional director (compliance) shall deny any application for a license or permit within the 45-day period beginning on the date a properly executed application was received. However, when an applicant for license or permit renewal is a person who is, under the provisions of § 55.83 or § 55.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under § 55.142, as the case may be.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–200, 50 FR 10498, Mar. 15, 1985; T.D. ATF–290, 54 FR 53054, Dec. 27, 1989; T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.50 Correction of error on license or permit.

(a) Upon receipt of a license or permit issued under this part, each licensee or permittee shall examine the license or permit to insure that the information on it is accurate. If the license or permit is incorrect, the licensee or permittee shall return the license or permit to the Chief, Firearms and Explosives Licensing Center, with a statement showing the nature of the error. The Chief, Firearms and Explosives Licensing Center, shall correct the error, if the error was made in his office, and return the license or permit. However, if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Chief, Firearms and Explosives Licensing Center, shall require the licensee or permittee to file an amended application setting forth the correct information and a statement explaining the error contained in the application. Upon receipt of the amended application and a satisfactory explanation of the error, the Chief, Firearms and Explosives Licensing Center, shall make the correction on the license or permit and return it to the licensee or permittee.

(b) When the Chief, Firearms and Explosives Licensing Center, finds through any means other than notice from the licensee or permittee that an incorrect license or permit has been issued, (1) the Chief, Firearms and Explosives Licensing Center, may require the holder of the incorrect license or permit to return the license or permit for correction, and (2) if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Chief, Firearms and Explosives Licensing Center, shall require the licensee or

permittee to file an amended application setting forth the correct information, and a statement satisfactorily explaining the error contained in the application. The Chief, Firearms and Explosives Licensing Center, then shall make the correction on the license or permit and return it to the licensee or permittee.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.51 Duration of license or permit.

An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

[T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.52 Limitations on license or permit.

(a) The license covers the business and class (as described in § 55.202) of explosive materials specified in the license at the licensee's business premises (see § 55.41(b)).

(b) The permit is valid with respect to the type of operations and class (as described in § 55.202) of explosive materials specified in the permit.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.53 License and permit not transferable.

Licenses and permits issued under this part are not transferable to another person. In the event of the lease, sale, or other transfer of the business or operations covered by the license or permit, the successor must obtain the license or permit required by this part before commencing business or operations. However, for rules on right of succession, see § 55.59.

§ 55.54 Change of address.

During the term of a license or permit, a licensee or permittee may move his business or operations to a new address at which he intends to regularly carry on his business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall—

(a) Give notification of the new location of the business or operations to the Chief, Firearms and Explosives Licensing Center at least 10 days before the move; and

(b) Submit the license or permit to the Chief, Firearms and Explosives Licensing Center. The Chief, Firearms and Explosives Licensing Center will issue an amended license or permit, which will contain the new address (and new license or permit number, if any).

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.55 Change in class of explosive materials.

A licensee or permittee who intends to change the class of explosive materials described in his license or permit from a lower to a higher classification (see § 55.202) shall file an application on ATF F 5400.13 or on ATF F 5400.16 with the Chief, Firearms and Explosives Licensing Center, for an amended license or permit. If the change in class of explosive materials would require a change in magazines, the amended application must include a description of the type of construction as prescribed in this part. Business or operations with respect to the new class of explosive materials may not be commenced before issuance of the amended license or amended permit. Upon receipt of the amended license or amended permit, the licensee or permittee shall submit his superseded license or superseded permit and any copies furnished with the license or permit to the Chief, Firearms and Explosives Licensing Center.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989; T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.56 Change in trade name.

A licensee or permittee continuing to conduct business or operations at the location shown on his license or permit is not required to obtain a new license or permit by reason of a mere change in trade name under which he conducts his business or operations. However, the licensee or permittee shall furnish

his license or permit and any copies furnished with the license or permit for endorsement of the change to the Chief, Firearms and Explosives Licensing Center, within 30 days from the date the licensee or permittee begins his business or operations under the new trade name.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.57 Change of control.

In the case of a corporation or association holding a license or permit under this part, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of change in stock ownership or control (in the corporation holding a license or permit or in any other corporation), by operation of law, or in any other manner, the licensee or permittee shall, within 30 days of the change, give written notification executed under the penalties of perjury, to the Chief, Firearms and Explosives Licensing Center. Upon expiration of the license or permit, the corporation or association shall file an ATF F 5400.13 or an ATF F 5400.16 as required by § 55.45, and pay the fee prescribed in § 55.42(b) or § 55.43(b).

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.58 Continuing partnerships.

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to conduct the business or operations under the license or permit of the partnership. If the surviving partner acquires the business or operations on completion of settlement of the partnership, he shall obtain a license or permit in his own name from the date of acquisition, as provided in § 55.45. The rule set forth in this section will also apply where there is more than one surviving partner.

§ 55.59 Right of succession by certain persons.

(a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same business premises for the remainder of the term of license or permit. These persons are:

(1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and

(2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.

(b) In order to secure the right of succession, the person or persons continuing the business or operations shall submit the license or permit and all copies furnished with the license or permit for endorsement of the succession to the Chief, Firearms and Explosives Licensing Center, within 30 days from the date on which the successor begins to carry on the business or operations.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.60 Certain continuances of business or operations.

A licensee or permittee who furnishes his license or permit to the Chief, Firearms and Explosives Licensing Center, for correction, amendment, or endorsement, as provided in this subpart, may continue his business or operations while awaiting its return.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.61 Discontinuance of business or operations.

Where an explosive materials business or operations is either discontinued or succeeded by a new owner, the owner of the business or operations discontinued or succeeded shall, within 30 days, furnish notification of the discontinuance or succession and submit his license or permit and any copies furnished with the license or permit to

the Chief, Firearms and Explosives Licensing Center. (See also § 55.128.)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.62 State or other law.

A license or permit issued under this part confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. The holder of a license or permit issued under this part is not, by reason of the rights and privileges granted by that license or permit, immune from punishment for conducting an explosive materials business or operations in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

§ 55.63 Explosives magazine changes.

(a) *General.* (1) The requirements of this section are applicable to magazines used for other than temporary (under 24 hours) storage of explosives.

(2) A magazine is considered suitable for the storage of explosives if the construction requirements of this part are met during the time explosives are stored in the magazine.

(3) A magazine is considered suitable for the storage of explosives if positioned in accordance with the applicable table of distances as specified in this part during the time explosives are stored in the magazine.

(4) For the purposes of this section, notification of the regional director (compliance) may be by telephone or in writing. However, if notification of the regional director (compliance) is in writing it must be at least three business days in advance of making changes in construction to an existing magazine or constructing a new magazine, and at least five business days in advance of using any reconstructed magazine or added magazine for the storage of explosives.

(b) *Exception.* Mobile or portable type 5 magazines are exempt from the requirements of paragraphs (c) and (d) of this section, but must otherwise be in compliance with paragraphs (a) (2) and (3) of this section during the time explosives are stored in such magazines.

(c) *Changes in magazine construction.* A licensee or permittee who intends to make changes in construction of an existing magazine shall notify the regional director (compliance) describing the proposed changes prior to making any changes. Unless otherwise advised by the regional director (compliance), changes in construction may commence after explosives are removed from the magazine. Explosives may not be stored in a reconstructed magazine before the regional director (compliance) has been notified in accordance with paragraph (a)(4) of this section that the changes have been completed.

(d) *Magazines acquired or constructed after permit or license is issued.* A licensee or permittee who intends to construct or acquire additional magazines shall notify the regional director (compliance) in accordance with paragraph (a)(4) of this section describing the additional magazines and the class and quantity of explosives to be stored in the magazine. Unless otherwise advised by the regional director (compliance), additional magazines may be constructed, or acquired magazines may be used for the storage of explosives. Explosives must not be stored in a magazine under construction. The regional director (compliance) must be notified that construction has been completed.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

Subpart E—License and Permit Proceedings

§ 55.71 Opportunity for compliance.

Except in cases of willfulness or those in which the public interest requires otherwise, and the regional director (compliance) so alleges in the notice of denial of an application or revocation of a license or permit, no license or permit will be revoked or renewal application denied without first calling to the attention of the licensee or permittee the reasons for the contemplated action and affording him an opportunity to demonstrate or achieve compliance with all lawful requirements and to submit facts, arguments, or proposals of adjustment. The notice of contemplated action, ATF F 5400.12,

will afford the licensee or permittee 15 days from the date of receipt of the notice to respond. If no response is received within the 15 days, or if after consideration of relevant matters presented by the licensee or permittee, the regional director (compliance) finds that the licensee or permittee is not likely to abide by the law and regulations, he will proceed as provided in § 55.74.

[T.D. ATF–87, 46 FR 40384, Aug. 7 1981, as amended by T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 55.72 Denial of initial application.

Whenever the regional director (compliance) has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of § 55.49, he shall issue a notice of denial on ATF F 5400.11. The notice will set forth the matters of fact and law relied upon in determining that the application should be denied, and will afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the application, marked ''Disapproved'', will be returned to the applicant.

§ 55.73 Hearing after initial application is denied.

If the applicant for an original license or permit desires a hearing, he shall file a request with the regional director (compliance) within 15 days after receipt of the notice of denial. The request should include a statement of the reasons for a hearing. On receipt of the request, the regional director (compliance) shall refer the matter to an administrative law judge who shall set a time and place (see § 55.77) for a hearing and shall serve notice of the hearing upon the applicant and the regional director (compliance) at least 10 days in advance of the hearing date. The hearing will be conducted in accordance with the hearing procedures prescribed in part 71 of this chapter (see § 55.82). Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his recommended decision. He shall certify to the complete record of the proceedings before him and shall immediately forward the complete certified record, together with four copies of his recommended decision, to the regional director (compliance) for decision.

§ 55.74 Denial of renewal application or revocation of license or permit.

If following the opportunity for compliance under § 55.71, or without opportunity for compliance under § 55.71, as circumstances warrant, the regional director (compliance) finds that the licensee or permittee is not likely to comply with the law or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the regional director (compliance) shall issue a notice of denial of the renewal application or revocation of the license or permit, ATF F 5400.11 or ATF F 5400.10, as appropriate. In either case, the notice will set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The notice will, in the case of revocation of a license or permit, specify the date on which the action is effective, which date will be on or after the date the notice is served on the licensee or permittee. The notice will also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

§ 55.75 Hearing after denial of renewal application or revocation of license or permit.

If a licensee or permittee whose renewal application has been denied or whose license or permit has been revoked desires a hearing, he shall file a request for a hearing with the regional director (compliance). In the case of the revocation of a license or permit, he may include a request for a stay of the effective date of the revocation. On receipt of the request the regional director (compliance) shall advise the licensee or permittee whether the stay of the effective date of the revocation is granted. If the stay of the effective date of the revocation is granted, the regional director (compliance) shall

refer the matter to an administrative law judge who shall set a time and place (see § 55.77) for a hearing and shall serve notice of the hearing upon the licensee or permittee and the regional director (compliance) at least 10 days in advance of the hearing date. If the stay of the effective date of the revocation is denied, the licensee or permittee may request an immediate hearing. In this event, the regional director (compliance) shall immediately refer the matter to an administrative law judge who shall set a date and place for a hearing, which date shall be no later than 10 days from the date the licensee or permittee requested an immediate hearing. The hearing will be held in accordance with the applicable provisions of part 71 of this chapter. Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision. He shall certify to the complete record of the proceeding before him and 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 licensee or permittee or his counsel, and transmit a copy to the attorney for the Government.

§ 55.76 Action by regional director (compliance).

(a) *Initial application proceedings.* If, upon receipt of the record and the recommended decision of the administrative law judge, the regional director (compliance) decides that the license or permit should be issued, the regional director (compliance) shall cause the application to be approved, briefly stating, for the record, his reasons. If he contemplates that the denial should stand, 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 supporting reasons. If the regional director (compliance), 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, the regional director (compliance) shall cause the license or permit to be issued or disapproved the application accordingly. If he disapproves the findings, conclusions, and recommendation 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 the facts in the record. Any decision of the regional director (compliance) ordering the disapproval of an initial application for a license or 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 for his findings and conclusions, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision will be served upon the applicant and the original copy containing certificate of service will be placed in the official record of the proceedings. If the decision of the regional director (compliance) is in favor of the applicant, he shall issue the license or permit, to be effective on issuance.

(b) *Renewal application and revocation proceedings.* Upon receipt of the complete certified records of the hearing, the regional director (compliance) shall enter an order confirming the revocation of the license or permit, or disapproving the application, in accordance with the administrative law judge's findings and decision, unless he disagrees with the findings and decision. A signed duplicate original of the order, ATF F 5400.9, will be served upon the licensee or permittee and the original copy containing certificate of service will be placed in the official record of the proceedings. If the regional director (compliance) disagrees with the findings and decision of the administrative law judge, he shall file a petition with the Director for review of the findings and decision, as provided in § 55.79. In either case, if the renewal application denial is sustained, a copy of the application marked ''Disapproved''

will be returned to the applicant. If the renewal application denial is reversed, a license or permit will be issued to become effective on expiration of the license or permit being renewed, or on the date of issuance, whichever is later. If the proceedings involve the revocation of a license or permit which expired before a decision is in favor of the licensee or permittee, the regional director (compliance) shall:

(1) If renewal application was timely filed and a stay of the effective date of the revocation was granted, cause to be issued a license or permit effective on the date of issuance;

(2) If renewal application was not timely filed but a stay of the effective date of the revocation had been granted, request that a renewal application be filed and, following that, cause to be issued a license or permit to be effective on issuance; or

(3) If a stay of the effective date of the revocation had not been granted, request that an application be filed as provided in § 55.45, and process it in the same manner as for an application for an original license or permit.

(c) *Curtailment of stay of revocation effective date.* If, after approval of a request for a stay of the effective date of an order revoking a license or permit but before actions are completed under this subpart, the regional director (compliance) finds that it is contrary to the public interest for the licensee or permittee to continue the operations or activities covered by his license or permit, the regional director (compliance) may issue a notice of withdrawal of the approval, effective on the date of issuance. Notice of withdrawal will be served upon the licensee or permittee in the manner provided in § 55.81.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.77 Designated place of hearing.

The designated place of hearing set as provided in § 55.73 or § 55.75, will be at the location convenient to the aggrieved party.

§ 55.78 Representation at a hearing.

An applicant, licensee, or permittee may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8, if he has otherwise complied with the applicable requirements of of 26 CFR 601.521 through 601.527. The regional director (compliance) shall be represented in proceedings under §§ 55.73 and 55.75 by an attorney in the office of the chief counsel or regional counsel who is authorized to execute and file motions, briefs, and other papers in the proceedings, on behalf of the regional director (compliance), in his own name as ''Attorney for the Government''.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–92, 46 FR 46916, Sept. 23, 1981]

§ 55.79 Appeal on petition to the Director.

An appeal to the Director is not required prior to filing an appeal with the U.S. Court of Appeals for judicial review. An appeal may be taken by the applicant, licensee, or permittee to the Director from a decision resulting from a hearing under § 55.73 or § 55.75. An appeal may also be taken by a regional director (compliance) from a decision resulting from a hearing under § 55.75 as provided in § 55.76(b). The appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of an administrative law judge's decision or an order. The petition will set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition will be filed with the regional director (compliance) or served on the applicant, licensee, or permittee, as the case may be. In the event of appeal, the regional director (compliance) shall immediately forward the complete original record, by certified mail, to the Director for his consideration, review, and disposition as provided in subpart I of part 71 of this chapter. When, on appeal, the Director affirms the initial decision of the regional director (compliance) or the administrative law judge, as the case may be, the initial decision will be final.

§ 55.80 Court review.

An applicant, licensee, or permittee may, within 60 days after receipt of the decision of the administrative law judge or the final order of the regional director (compliance) or the Director, file a petition for a judicial review of the decision, with the U.S. Court of Appeals for the district in which he resides or has his principal place of business. The Director, upon notification that a petition has been filed, shall have prepared a complete transcript of the record of the proceedings. The regional director (compliance) or the Director, as the case may be, shall certify to the correctness of the transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the U.S. Court of Appeals.

§ 55.81 Service on applicant, licensee, or permittee.

All notices and other formal documents required to be served on an applicant, licensee, or permittee under this subpart will be served by certified mail or by personal delivery. Where service is by personal delivery, the signed duplicate original copy of the formal document will be delivered to the applicant, licensee, or permittee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent, or to its attorney of record.

§ 55.82 Provisions of part 200 made applicable.

The provisions of subpart G of part 200 of this chapter, as well as those provisions of part 71 relative to failure to appear, withdrawal of an application or surrender of a permit, the conduct of hearings before an administrative law judge, and record of testimony, are hereby made applicable to application, license, and permit proceedings under this subpart to the extent that they are not contrary to or incompatible with this subpart.

§ 55.83 Operations by licensees or permittees after notice of denial or revocation.

In any case where a notice of revocation has been issued and a request for a stay of the effective date of the revocation has not been granted, the licensee or permittee shall not engage in the activities covered by the license or permit pending the outcome of proceedings under this subpart. In any case where notice of revocation has been issued but a stay of the effective date of the revocation has been granted, the licensee or permittee may continue to engage in the activities covered by his license or permit unless, or until, formally notified to the contrary: *Provided*, That in the event the license or permit would have expired before proceedings under this subpart are completed, timely renewal application must have been filed to continue the license or permit beyond its expiration date. In any case where a notice of denial of a renewal application has been issued, the licensee or permittee may continue to engage in the activities covered by the existing license or permit after the date of expiration of the license or permit until proceedings under this subpart are completed.

Subpart F—Conduct of Business or Operations

§ 55.101 Posting of license or permit.

A license or permit issued under this part, or a copy of a license or permit, will be posted and available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed.

§ 55.102 Authorized operations by permittees.

(a) *In general.* A permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a permittee's operations bring him within the definition of manufacturer, importer, or dealer under this part, he

shall qualify for the appropriate license.

(b) *Distributions of surplus stocks.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 55.103, and to nonlicensees or to nonpermittees in accordance with § 55.105(d).

[T.D. ATF–400, 63 FR 45002, Aug. 24, 1998]

§ 55.103 Transactions among licensees/permittees.

(a) *General.* (1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

(3) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(4) Where possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a carrier transporting explosive materials to a licensee or permittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and required by this part.

Example 1. An ATF F 5400.8 is required when:

a. An employee of the purchaser takes possession at the distributor's premises.

b. An employee of a carrier hired by the purchaser takes possession at the distributor's premises.

Example 2. An ATF F 5400.8 is not required when:

a. An employee of the distributor takes possession of the explosives for the purpose of transport to the purchaser.

b. An employee of a carrier hired by the distributor takes possession of the explosives for the purpose of transport to the purchaser.

(b) *License/permit verification of individuals.* (1) The distributee shall furnish a certified copy (or, in the case of a user-limited, the original) of the license or permit. The certified copy need be furnished only once during the current term of the license or permit. Also, a licensee need not furnish certified copies of licenses to other licensed locations operated by such licensee.

(2) The distributor may obtain any additional verification as the distributor deems necessary.

(c) *License/permit verification of business organizations.* (1) A business organization may (in lieu of furnishing a certified copy of a license) furnish the distributor a certified list which contains the name, address, license number and date of license expiration of each licensed location. The certified list need be furnished only once during the current term of the license or permit. Also, a business organization need not furnish a certified list to other licensed locations operated by such business organization.

(2) A business organization shall, prior to ordering explosive materials, furnish the licensee or permittee a current certified list of the representatives or agents authorized to order explosive materials on behalf of the business organization showing the name, address, and date and place of birth of each representative or agent. A licensee or permittee shall not distribute

explosive materials to a business organization on the order of a person who does not appear on the certified list of representatives or agents and, if the person does appear on the certified list, the licensee or permittee shall verify the identity of such person.

(d) *Licensee/permittee certified statement.* (1) A licensee or permittee ordering explosive materials from another licensee or permittee shall furnish a current, certified statement of the intended use of the explosive materials; e.g., resale, mining, quarrying, agriculture, construction, road building, oil well drilling, seismographic research, to the distributor.

(2) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(3) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(4) The licensee or permittee purchasing explosive materials need revise the furnished copy of the certified statement only when the information is no longer current.

(e) *User-limited permit transactions.* A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see § 55.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor shall write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.104 Certified copy of license or permit.

Except as provided in § 55.49(a), each person issued a license or permit under this part shall be furnished together with his license or permit a copy for his certification. If a person desires an additional copy of his license or permit for certification and for use under § 55.103, he shall:

(a) Make a reproduction of the copy of his license or permit and execute the certification on it;

(b) Make a reproduction of his license or permit, enter on the reproduction the statement: ''I certify that this is a true copy of a *(insert the word license or permit)* issued to me to engage in the specified business or operations'', and sign his name next to the statement; or

(c) Submit a request, in writing, for certified copies of his license or permit to the Chief, Firearms and Explosives Licensing Center. The request will show the name, trade name (if any), and address of the licensee or permittee and the number of copies of the license or permit desired. There is a fee of $1 for each copy of a license or permit issued by the Chief, Firearms and Explosives Licensing Center under this paragraph. Fee payment must accompany each request for additional copies of a license or permit. The fee must be paid by (1) cash, or (2) money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 55.105 Distributions to nonlicensees and nonpermittees.

(a) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(b) Except as provided in paragraph (c) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, ATF F 5400.4, required by § 55.126. Disposition of ATF F 5400.4 will be made in accordance with § 55.126.

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's

State or residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State and the purchaser and the licensee have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (b), (e), and (f) of this section applicable to intrastate transactions occuring on the licensee's business premises.

(d) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

(e) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity shall verify the identity of the representative or agent of the business entity who is authorized to order explosive materials on behalf of the business entity. Each business entity ordering explosive materials shall furnish the distributing licensee prior to or with the first order of explosive materials a current certified list of the names of representatives or agents authorized to order explosive materials on behalf of the business entity. The business entity ordering explosive materials is responsible for keeping the certified list current. A licensee shall not distribute explosive materials to a business entity on the order of a person whose name does not appear on the certified list.

(f) Where the possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and by this part. (See examples in § 55.103(a).)

(g) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term ''destructive device'' in 18 U.S.C. 921(a)(4).

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–293, 55 FR 3721, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 55.106 Certain prohibited distributions.

(a) A licensee shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located. This paragraph does not apply to the distribution of explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of § 55.105(c) are fully met.

(b) A licensee shall not distribute any explosive materials to any person:

(1) Who the licensee knows is less than 21 years of age;

(2) In any State where the purchase, possession, or use by a person of explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution;

(3) Who the licensee has reason to believe intends to transport the explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into the State or to receive explosive materials in the State; or

(4) Who the licensee has reasonable cause to believe intends to use the explosive materials for other than a lawful purpose.

(c) A licensee shall not distribute any explosive materials to any person knowing or having reason to believe that the person:

(1) Is, except as provided under § 55.142 (d) and (e), under indictment or information for, or was convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act, 21 U.S.C. 802); or

(4) Was adjudicated as a mental defective or was committed to a mental institution.

(d) The provisions of this section do not apply to the purchase of commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of § 55.105(g) are fully met.

§ 55.107 Record of transactions.

Each licensee and permittee shall keep records of explosive materials as required by subpart G of this part.

§ 55.108 Importation.

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Proof of status must be made by the licensed importer or permittee furnishing to the customs officer a certified copy of his license or permit (see § 55.103).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed 50 pounds. Upon submitting to the customs officer completed ATF F 5400.3, certifying that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, black powder may be released from customs custody. The disposition of the executed ATF F 5400.3 will be in accordance with the instructions on the form.

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

(d) For additional requirements relating to the importation of plastic explosives into the United States on or after April 24, 1997, see § 55.183.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–387, 62 FR 8376, Feb. 25, 1997]

§ 55.109 Identification of explosive materials.

(a) Each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The marks required by this section must identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging.

(b) *Exceptions.* (1) Licensed manufacturers of blasting caps are only required to place the identification marks prescribed in paragraph (a) on the containers used for the packaging of blasting caps.

(2) The Director may authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of this part.

(3) The Director may authorize the use of other means of identification on fireworks instead of marks prescribed in paragraph (a) of this section.

Subpart G—Records and Reports

§ 55.121 General.

(a)(1) Licensees and permittees shall keep records pertaining to explosive

materials in permanent form (i.e., commercial invoices, record books) and in the manner required in this subpart.

(2) Licensees and permittees shall keep records required by this subpart on the business premises for five years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee. (See also § 55.128 for discontinuance of business or operations.)

(b) ATF officers may enter the premises of any licensee or permittee for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 55.24). Section 843(f) of the Act requires licensees and permittees to make all required records available for examination or inspection at all reasonable times. Section 834(f) of the Act also requires licensees and permittees to submit all reports and information relating to all required records and their contents, as the regulations in this part prescribe.

(c) Each licensee and permittee shall maintain all records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations in this part prescribe. Sections 842(f) and 842(g) of the Act make it unlawful for any licensee or permittee knowingly to make any false entry in, or fail to make entry in, any record required to be kept under the Act and the regulations in this part.

(Approved by the Office of Management and Budget under control number 1512–0373)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984]

§ 55.122 Records maintained by licensed importers.

(a) Each licensed importer shall take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take a special inventory

(1) At the time of commencing business, which is the effective date of the license issued upon original qualification under this part;

(2) At the time of changing the location of his business to another region;

(3) At the time of discontinuing business; and

(4) At any time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance), and the duplicate retained by the licensed importer. If a special inventory specified by paragraphs (a) (1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a) (1) through (4) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 55.127.)

(b) Each licensed importer shall, not later than the close of the next business day following the date of importation or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of importation or other acquisition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(c) Each licensed importer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det),

display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) The regional director (compliance) may authorize alternate records to be maintained by a licensed importer to record his distribution of explosive materials when it is shown by the licensed importer that alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed importer who proposes to use alternate records shall submit a letter application to the regional director (compliance) and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed importer until approval is received from the regional director (compliance).

(e) Each licensed importer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by § 55.126.

(Approved by the Office of Management and Budget under control number 1512–0373)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–293, 55 FR 3721, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take a special inventory

(1) At the time of commencing business, which is the effective date of the license issued upon original qualification under this part;

(2) At the time of changing the location of his premises to another region;

(3) At the time of discontinuing business; and

(4) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance), and the duplicate retained by the licensed manufacturer. If a special inventory required by paragraphs (a) (1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a) (1) through (4) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 55.127.)

(b) Each licensed manufacturer shall not later than the close of the next business day following the date of manufacture or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of manufacture or other acquisition.

(2) Manufacturer's marks of identification.

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(4) Name, brand name or description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(c) Each licensed manufacturer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) Each licensed manufacturer who manufactures explosive materials for his own use shall, not later than the close of the next business day following the date of use, enter in a separate record the following information:

(1) Date of use.

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(3) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

Exception: A licensed manufacturer is exempt from the recordkeeping requirements of this subsection if the explosive materials are manufactured for his own use and used within a 24 hour period at the same site.

(e) The regional director (compliance) may authorize alternate records to be maintained by a licensed manufacturer to record his distribution or use of explosive materials when it is shown by the licensed manufacturer that alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application to the regional director (compliance) and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed manufacturer until approval is received from the regional director (compliance).

(f) Each licensed manufacturer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by § 55.126.

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[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–293, 55 FR 3721, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.124 Records maintained by licensed dealers.

(a) Each licensed dealer shall take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take a special inventory

(1) At the time of commencing business, which is the effective date of the license issued upon original qualification under this part;

(2) At the time of changing the location of his premises to another region;

(3) At the time of discontinuing business; and

(4) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance), and the duplicate retained by the licensed dealer. If a special inventory required by paragraphs (a) (1) through (4) of this section has not been taken during the calendar year, at least one physical inventory will be taken. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a) (1) through (4) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 55.127.)

(b) Each licensed dealer shall, not later than the close of the next business day following the date of purchase or other acquisition of explosive materials (except as provided in paragraph (d) of this section), enter the following information in a separate record:

(1) Date of acquisition.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(6) Name, address, and license or permit number of the person from whom the explosive materials are received.

(c) Each licensed dealer shall, not later than the close of the next business day following the date of use (if the explosives are used by the dealer)

or the date of distribution of any explosive materials to another licensee or a permittee (except as provided in paragraph (d) of this section), enter in a separate record the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) When a commercial record is kept by a licensed dealer showing the purchase or other acquisition information required for the permanent record prescribed by paragraph (b) of this section, or showing the distribution information required for the permanent record prescribed by paragraph (c) of this section, the licensed dealer acquiring or distributing the explosive materials may, for a period not exceeding seven days following the date of acquisition of distribution of the explosive materials, delay making the required entry into the permanent record of acquisition or distribution. However, until the required entry of acquisition or disposition is made in the permanent record, the commercial record must be (1) kept by the licensed dealer separate from other commercial documents kept by the licensee, and (2) readily available for inspection on the licensed premises.

(e) The regional director (compliance) may authorize alternate records to be maintained by a licensed dealer to record his acquisition or disposition of explosive materials, when it is shown by the licensed dealer that alternate records will accurately and readily disclose the required information. A licensed dealer who proposes to use alternate records shall submit a letter application to the regional director (compliance) and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the licensed dealer until approval is received from the regional director (compliance).

(f) Each licensed dealer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. These records are maintained as prescribed by § 55.126.

(Approved by the Office of Management and Budget under control number 1512–0373)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–293, 55 FR 3721, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.125 Records maintained by permittees.

(a) Each permittee shall take true and accurate physical inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee shall take a special inventory

(1) At the time of commencing business, which is the effective date of the permit issued upon original qualification under this part;

(2) At the time of changing the location of his premises to another region;

(3) At the time of discontinuing business; and

(4) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance) and the duplicate retained by the permittee. If a special inventory required by paragraphs (a) (1) through (4) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a) (1) through (4) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 55.127).

(b) Each permittee shall, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(1) Date of acquisition.

(2) Name or brand name of manufacturer.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), (etc.) and size (length and diameter or diameter only of display fireworks)).

(6) Name, address, and license number of the persons from whom the explosive materials are received.

(c) Each permittee shall, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 55.124(c).

(d) Each permittee shall maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed in § 55.126.

(e) The regional director (compliance) may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records shall submit a letter application to the regional director (compliance) and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

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[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–293, 55 FR 3722, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.126 Explosives transaction record.

(a) A licensee or permittee shall not temporarily or permanently distribute explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an explosives transaction record, ATF F 5400.4.

(b) Before the distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises, or to a nonlicensee or nonpermittee who is not a resident of the State in which the licensee or permittee maintains his business premises and is acquiring explosive materials under § 55.105(c), the licensee or permittee distributing the explosive materials shall obtain an executed ATF F 5400.4 from the distributee which contains all of the information required on the form and by the regulations in this part.

(c) Completed ATF F 5400.4 is to be retained by the licensee or permittee as part of his permanent records in accordance with paragraph (d) of this section.

(d) Each ATF F 5400.4 is retained in numerical (by transaction serial number) order commencing with ''1'' and continuing in regular sequence. When the numbering of any series reaches ''1,000,000,'' the licensee or permittee may recommence the series. The recommenced series is to be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name or trade name, the series in use at the time of the change may be continued.

(e) The requirements of this section are in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of ATF F 5400.4 from the Director.

(Approved by the Office of Management and Budget under control number 1512–0184)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–93, 46 FR 50787, Oct. 15, 1981; T.D. ATF–172, 49 FR 14941, Apr. 16, 1984; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily summary transactions to be kept at each magazine of an approved storage facility;

however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Quantity entries for display fireworks may be expressed as the number and size of individual display fireworks in a finished state or as the number of packaged display segments or packaged displays. Information as to the number and size of display fireworks contained in any one packaged display segment or packaged display shall be provided to any ATF officer on request. Any discrepancy which might indicate a theft or loss of explosive materials is to be reported in acordance with § 55.30.

[T.D. ATF–293, 55 FR 3722, Feb. 5, 1990, as amended by T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.128 Discontinuance of business.

Where an explosive materials business or operations is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business or operations is absolute, the records required by this subpart must be delivered within 30 days following the business or operations discontinuance to any ATF office located in the region in which the business was located, or to the ATF Out-of-Business Records Center, Spring Mills Office Park, 882 T.J. Jackson Drive, Falling Waters, West Virginia 25419. Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority. (See also, § 55.61.)

[T.D. ATF–290, 54 FR 53054, Dec. 27, 1989, as amended by T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001]

§ 55.129 Exportation.

Exportation of explosive materials is to be in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and implementing regulations. However, a licensed importer, licensed manufacturer, or licensed dealer exporting explosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity, the manufacturer's name or brand name of explosive materials, the name and address of the foreign consignee of the explosive materials, and the date the explosive materials were exported. See § 55.180 for regulations concerning the exportation of plastic explosives.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–387, 62 FR 8377, Feb. 25, 1997]

§ 55.130 [Reserved]

Subpart H—Exemptions

§ 55.141 Exemptions.

(a) *General*. Except for the provisions of §§ 55.180 and 55.181, this part does not apply to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which is regulated by the U.S. Department of Transportation and its agencies, and which pertains to safety.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia or the National Formulary. ''The United States Pharmacopeia and The National Formulary,'' USP and NF Compendia, are available from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland 20852.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or its political subdivision.

(4) Small arms ammunition and components of small arms ammunition.

(5) The manufacture under the regulation of the military department of

the United States of explosive materials for, or their distribution to or storage or possession by, the military or naval services or other agencies of the United States.

(6) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as ''consumer fireworks'' or ''articles pyrotechnic.''

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(9) Industrial and laboratory chemicals which are intended for use as reagents and which are packaged and shipped pursuant to U.S. Department of Transportation regulations, 49 CFR Parts 100 to 177, which do not require explosives hazard warning labels.

(b) *Black powder*. Except for the provisions applicable to persons required to be licensed under subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16) or antique devices, as exempted from the term ''destructive devices'' in 18 U.S.C. 921(a)(4).

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981 as amended by T.D. ATF–87, 46 FR 46916, Sept. 23, 1981; T.D. ATF–293, 55 FR 3722, Feb. 5, 1990; T.D. ATF–387, 62 FR 8377, Feb. 25, 1997; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.142 Relief from disabilities incurred by indictment, information or conviction.

(a) Any person may make application for relief from the disabilities under the Act incurred by reason of an indictment or information for, or conviction of, a crime punishable by imprisonment for a term exceeding one year.

(b) An application for relief from disabilities is filed with the Director and supported by data that the applicant considers appropriate. In the case of a corporation, or of any person having the power to direct or control the management of the corporation, the supporting data is to include information as to the absence of culpability in the offense for which the corporation, or any such person, was indicted, formally accused or convicted.

(c) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the indictment, information or conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(d) A person who has been granted relief under this section is relieved of any disabilities imposed by the Act with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, that were incurred by reason of such indictment, information or conviction.

(e)(1) A licensee or permittee who is under indictment or information for, or convicted of, a crime punishable by imprisonment for a term exceeding one year during the term of a current license or permit, or while he has pending a license or permit renewal application, shall not be barred from licensed or permit operations for 30 days after the date of indictment or information or 30 days after the date upon which his conviction becomes final. Also, if he files his application for relief under this section within such 30 day period, he may further continue licensed or permit operations while his application is pending. A licensee or permittee who does not file an application within 30 days from the date of his indictment or information, or within 30 days from the date his conviction becomes final, shall not continue licensed or permit operations beyond 30 days from the date of his indictment or information or beyond 30 days from the date his conviction becomes final.

(2) In the event the term of a license or permit of a person expires during the 30 day period following the date of indictment of information of during the 30 day period after the date upon which his conviction becomes final or while his application for relief is pending, he shall file a timely application for renewal of his license or permit in order to continue licensed or permit operations. The license or permit application is to show that the applicant has been indicted or under information for, or convicted of, a crime punishable by imprisonment for a term exceeding one year.

(3) A licensee or permittee shall not continue licensed or permit operations beyond 30 days following the date the Director issues notification that the licensee's or permittee's application for removal of the disabilities resulting from an indictment, information or conviction has been denied.

(4) When a licensee or permittee may no longer continue licensed or permit operations under this section, any application for renewal of license of permit filed by the licensee or permittee while his application for removal of disabilities resulting from an indictment, information or conviction is pending, will be denied by the regional director (compliance).

Subpart I—Unlawful Acts, Penalties, Seizures and Forfeitures

§ 55.161 Engaging in business without a license.

Any person engaging in the business of importing, manufacturing, or dealing in explosive materials without a license issued under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§ 55.162 False statement or representation.

Any person who knowingly withholds information or makes any false or fictitious oral or written statement or furnishes or exhibits any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§ 55.163 False entry in record.

Any licensed importer, licensed manufacturer, licensed dealer, or permittee who knowingly makes any false entry in any record required to be kept under subpart G of this part, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.164 Unlawful storage.

Any person who stores any explosive material in a manner not in conformity with this part, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 55.165 Failure to report theft or loss.

Any person who has knowledge of the theft or loss of any explosive materials from his stock and fails to report the theft or loss within 24 hours of discovery in accordance with § 55.30, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 55.166 Seizure or forfeiture.

Any explosive materials involved or used or intended to be used in any violation of the Act or of this part or in any violation of any criminal law of the United States are subject to seizure and forfeiture, and all provisions of title 26, U.S.C. relating to the seizure, forfeiture, and disposition of firearms, as defined in 26 U.S.C. 5845(a), will, so far as applicable, extend to seizures and forfeitures under the Act. (See § 72.27 of this title for regulations on summary destruction of explosive materials which are impracticable or unsafe to remove to a place of storage.)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–363, 60 FR 17449, Apr. 6, 1995]

Subpart J—Marking of Plastic Explosives

§ 55.180 Prohibitions relating to unmarked plastic explosives.

(a) No person shall manufacture any plastic explosive that does not contain a detection agent.

(b) No person shall import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent. This paragraph does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States, *i.e.*, not later than June 21, 2013.

(c) No person shall ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. This paragraph does not apply to:

(1) The shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by any person during the period beginning on that date and ending on April 24, 1999; or

(2) The shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to April 24, 1996, by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States, *i.e.*, not later than June 21, 2013.

(d) When used in this subpart, terms are defined as follows:

(1) *Convention on the Marking of Plastic Explosives* means the Convention on the Marking of Plastic Explosives for the Purposes of Detection, Done at Montreal on 1 March 1991.

(2) ''Date of entry into force'' of the Convention on the Marking of Plastic Explosives means that date on which the Convention enters into force with respect to the U.S. in accordance with the provisions of Article XIII of the Convention on the Marking of Plastic Explosives. The Convention entered into force on June 21, 1998.

(3) *Detection agent* means any one of the substances specified in this paragraph when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

(i) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(ii) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(iii) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(iv) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(v) Any other substance in the concentration specified by the Director, after consultation with the Secretary of State and Secretary of Defense, that has been added to the table in Part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(4) *Plastic explosive* means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25 °C, is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature. *High explosives*, as defined in § 55.202(a), are explosive materials which can be

caused to detonate by means of a blasting cap when unconfined.

[T.D. ATF–387, 62 FR 8376, Feb. 25, 1997, as amended by T.D. ATF–419, 64 FR 55628, Oct. 14, 1999]

§ 55.181 Reporting of plastic explosives.

All persons, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on April 24, 1996, shall submit a report to the Director no later than August 22, 1996. The report shall be in writing and mailed by certified mail (return receipt requested) to the Director at P.O. Box 50204, Washington, DC 20091–0204. The report shall include the quantity of plastic explosives possessed on April 24, 1996; any marks of identification on such explosives; the name and address of the manufacturer or importer; the storage location of such explosives, including the city and State; and the name and address of the person possessing the plastic explosives.

(Approved by the Office of Management and Budget under control number 1512–0535)

[T.D. ATF–382, 61 FR 38085, July 23, 1996, as amended by T.D. ATF–387, 62 FR 8377, Feb. 25, 1997]

§ 55.182 Exceptions.

It is an affirmative defense against any proceeding involving §§ 55.180 and 55.181 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(a) Consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(1) Research, development, or testing of new or modified explosive materials;

(2) Training in explosives detection or development or testing of explosives detection equipment; or

(3) Forensic science purposes; or

(b) Was plastic explosive that, by April 24, 1999, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this paragraph, the term ''military device'' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

[T.D. ATF–387, 62 FR 8377, Feb. 25, 1997]

§ 55.183 Importation of plastic explosives on or after April 24, 1997.

Persons filing Form 6 applications for the importation of plastic explosives on or after April 24, 1997, shall attach to the application the following written statement, prepared in triplicate, executed under the penalties of perjury:

(a) ''I declare under the penalties of perjury that the plastic explosive to be imported contains a detection agent as required by 27 CFR 55.180(b)''; or

(b) ''I declare under the penalties of perjury that the plastic explosive to be imported is a ''small amount'' to be used for research, training, or testing purposes and is exempt from the detection agent requirement pursuant to 27 CFR 55.182.''

[T.D. ATF–387, 62 FR 8377, Feb. 25, 1997]

§ 55.184 Statements of process and samples.

(a) A complete and accurate statement of process with regard to any plastic explosive or to any detection agent that is to be introduced into a plastic explosive or formulated in such plastic explosive shall be submitted by a licensed manufacturer or licensed importer, upon request, to the Director.

(b) Samples of any plastic explosive or detection agent shall be submitted by a licensed manufacturer or licensed importer, upon request, to the Director.

(Paragraph (a) approved by the Office of Management and Budget under control number 1512–0539)

[T.D. ATF–387, 62 FR 8378, Feb. 25, 1997]

§ 55.185 Criminal sanctions.

Any person who violates the provisions of 18 U.S.C. 842(l)–(o) shall be fined under title 18, U.S.C., imprisoned for not more than 10 years, or both.

[T.D. ATF–387, 62 FR 8378, Feb. 25, 1997]

§ 55.186 Seizure or forfeiture.

Any plastic explosive that does not contain a detection agent in violation of 18 U.S.C. 842(l)–(n) is subject to seizure and forfeiture, and all provisions of 19 U.S.C. 1595a, relating to seizure, forfeiture, and disposition of merchandise introduced or attempted to be introduced into the U.S. contrary to law, shall extend to seizures and forfeitures under this subpart. See § 72.27 of this chapter for regulations on summary destruction of plastic explosives that do not contain a detection agent.

[T.D. ATF–387, 62 FR 8378, Feb. 25, 1997]

Subpart K—Storage

§ 55.201 General.

(a) Section 842(j) of the Act and § 55.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. Further, section 846 of this Act authorizes regulations to prevent the recurrence of accidental explosions in which explosive materials were involved. The storage standards prescribed by this subpart confer no right or privileges to store explosive materials in a manner contrary to State or local law.

(b) The Director may authorize alternate construction for explosives storage magazines when it is shown that the alternate magazine construction is substantially equivalent to the standards of safety and security contained in this subpart. Any alternate explosive magazine construction approved by the Director prior to August 9, 1982, will continue as approved unless notified in writing by the Director. Any person intending to use alternate magazine construction shall submit a letter application to the regional director (compliance) for transmittal to the Director, specifically describing the proposed magazine. Explosive materials may not be stored in alternate magazines before the applicant has been notified that the application has been approved.

(c) A licensee or permittee who intends to make changes in his magazines, or who intends to construct or acquire additional magazines, shall comply with § 55.63.

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks and articles pyrotechnic.

(e) The provisions of § 55.202(a) classifying flash powder and bulk salutes as high explosives are mandatory after March 7, 1990: *Provided,* that those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by March 7, 1991.

(f) Any person who stores explosive materials shall notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.

(Paragraph (f) approved by the Office of Management and Budget under control number 1512–0536)

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–293, 55 FR 3722, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.202 Classes of explosive materials.

For purposes of this part, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined, (for example, dynamite, flash powders, and bulk salutes). See also § 55.201(e).

(b) *Low explosives.* Explosive materials which can be caused to deflagrate

when confined (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and ''display fireworks'' classified as UN0333, UN0334, or UN0335 by the U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes).

(c) *Blasting agents.* (For example, ammonium nitrate-fuel oil and certain water-gels (see also § 55.11).

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–293, 55 FR 3722, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.203 Types of magazines.

For purposes of this part, there are five types of magazines. These types, together with the classes of explosive materials, as defined in § 55.202, which will be stored in them, are as follows:

(a) *Type 1 magazines.* Permanent magazines for the storage of high explosives, subject to the limitations prescribed by §§ 55.206 and 55.213. Other classes of explosive materials may also be stored in type 1 magazines.

(b) *Type 2 magazines.* Mobile and portable indoor and outdoor magazines for the storage of high explosives, subject to the limitations prescribed by §§ 55.206, 55.208(b), and 55.213. Other classes of explosive materials may also be stored in type 2 magazines.

(c) *Type 3 magazines.* Portable outdoor magazines for the temporary storage of high explosives while attended (for example, a ''day-box''), subject to the limitations prescribed by §§ 55.206 and 55.213. Other classes of explosives materials may also be stored in type 3 magazines.

(d) *Type 4 magazines.* Magazines for the storage of low explosives, subject to the limitations prescribed by §§ 55.206(b), 55.210(b), and 55.213. Blasting agents may be stored in type 4 magazines, subject to the limitations prescribed by §§ 55.206(c), 55.211(b), and 55.213. Detonators that will not mass detonate may also be stored in type 4 magazines, subject to the limitations prescribed by §§ 55.206(a), 55.210(b), and 55.213.

(e) *Type 5 magazines.* Magazines for the storage of blasting agents, subject to the limitations prescribed by §§ 55.206(c), 55.211(b), and 55.213.

§ 55.204 Inspection of magazines.

Any person storing explosive materials shall inspect his magazines at least every seven days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazines, or unauthorized removal of the contents of the magazines.

§ 55.205 Movement of explosive materials.

All explosive materials must be kept in locked magazines meeting the standards in this subpart unless they are:

(a) In the process of manufacture;

(b) Being physically handled in the operating process of a licensee or user;

(c) Being used; or

(d) Being transported to a place of storage or use by a licensee or permittee or by a person who has lawfully acquired explosive materials under § 55.106.

§ 55.206 Location of magazines.

(a) Outdoor magazines in which high explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored, than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhibited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 55.219, except that the table of distances in § 55.224 shall apply to the storage of display fireworks. The distances shown in § 55.219 may not be reduced by the presence of barricades.

(c)(1) Outdoor magazines in which blasting agents in quantities of more than 50 pounds are stored must be located no closer to inhabited buildings, passenger railways, or public highways than the minimum distances specified in the table of distances for storage of explosive materials in § 55.218.

(2) Ammonium nitrate and magazines in which blasting agents are stored must be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the table of distances for the separation of ammonium nitrate and blasting agents in § 55.220. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, etc., may not be less than the distances specified in the table of distances for storage of explosives materials in § 55.218.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–293, 55 FR 3722, Feb. 5, 1990; T.D. ATF–400, 63 FR 45003, Aug. 24, 1998]

§ 55.207 Construction of type 1 magazines.

A type 1 magazine is a permanent structure: a building, an igloo or ''Army-type structure'', a tunnel, or a dugout. It is to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(a) *Buildings*. All building type magazines are to be constructed of masonry, wood, metal, or a combination of these materials, and have no openings except for entrances and ventilation. The ground around building magazines must slope away for drainage or other adequate drainage provided.

(1) *Masonry wall construction*. Masonry wall construction is to consist of brick, concrete, tile, cement block, or cinder block and be not less than 6 inches in thickness. Hollow masonry units used in construction must have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls are to be constructed of, or covered with, a nonsparking material.

(2) *Fabricated metal wall construction*. Metal wall construction is to consist of sectional sheets of steel or aluminum not less than number 14-gauge, securely fastened to a metal framework. Metal wall construction is either lined inside with brick, solid cement blocks, hardwood not less than four inches thick, or will have at least a six inch sand fill between interior and exterior walls. Interior walls are to be constructed of, or covered with, a nonsparking material.

(3) *Wood frame wall construction*. The exterior of outer wood walls is to be covered with iron or aluminum not less than number 26-gauge. An inner wall of, or covered with nonsparking material will be constructed so as to provide a space of not less than six inches between the outer and inner walls. The space is to be filled with coarse, dry sand or weak concrete.

(4) *Floors*. Floors are to be constructed of, or covered with, a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored. Use of pallets covered with a nonsparking material is considered equivalent to a floor constructed of or covered with a nonsparking material.

(5) *Foundations*. Foundations are to be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings is to be enclosed with metal.

(6) *Roof*. Except for buildings with fabricated metal roofs, the outer roof is to be covered with no less than number 26-guage iron or aluminum, fastened to at least ⅞ inch sheathing.

(7) *Bullet-resistant ceilings or roofs*. Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine is to be protected by one of the following methods:

(i) A sand tray lined with a layer of building paper, plastic, or other nonporous material, and filled with not less than four inches of coarse, dry sand, and located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(ii) A fabricated metal roof constructed of 3/16-inch plate steel lined with four inches of hardwood. (For each additional 1/16 inch of plate steel, the hardwood lining may be decreased one inch.)

(8) *Doors*. All doors are to be constructed of not less than ¼ inch plate steel and lined with at least two inches of hardwood. Hinges and hasps are to

be attached to the doors by welding, riveting or bolting (nuts on inside of door). They are to be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) *Locks*. Each door is to be equipped with (i) two mortise locks; (ii) two padlock fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(10) *Ventilation*. Ventilation is to be provided to prevent dampness and heating of stored explosive materials. Ventilation openings must be screened to prevent the entrance of sparks. Ventilation openings in side walls and foundations must be offset or shielded for bullet-resistant purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling must have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(11) *Exposed metal*. No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls, which might be exposed to contact with explosive materials, must be blind nailed, countersunk, or covered with a nonsparking lattice work or other nonsparking material.

(b) *Igloos, ''Army-type structures'', tunnels, and dugouts*. Igloo, ''Army-type structure'', tunnel, and dugout magazines are to be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They must have an earthmound covering of not less than 24 inches on the top, sides and rear unless the magazine meets the requirements of paragraph (a)(7) of this section. Interior walls and floors must be constructed of, or covered with, a nonsparking material. Magazines of this type are also to be constructed in conformity with the requirements of paragraph (a)(4) and paragraphs (a)(8) through (11) of this section.

§ 55.208 Construction of type 2 magazines.

A type 2 magazine is a box, trailer, semitrailer, or other mobile facility.

(a) *Outdoor magazines*—(1) *General*. Outdoor magazines are to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They are to be supported to prevent direct contact with the ground and, if less than one cubic yard in size, must be securely fastened to a fixed object. The ground around outdoor magazines must slope away for drainage or other adequate drainage provided. When unattended, vehicular magazines must have wheels removed or otherwise effectively immobiliized by kingpin locking devices or other methods approved by the Director.

(2) *Exterior construction*. The exterior and doors are to be constructed of not less than ¼-inch steel and lined with at least two inches of hardwood. Magazines with top openings will have lids with water-resistant seals or which overlap the sides by at least one inch when in a closed position.

(3) *Hinges and hasps*. Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks*. Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks must be protected with not less than ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means

of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines*—(1) *General*. Indoor magazines are to be fire-resistant and theft-resistant. They need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine is to be located in a residence or dwelling. The indoor storage of high explosives must not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of explosive materials stored does not exceed 50 pounds. Detonators must be stored in a separate magazine (except as provided in § 55.213) and the total quantity of detonators must not exceed 5,000.

(2) *Exterior construction*. Indoor magazines are to be constructed of wood or metal according to one of the following specifications:

(i) Wood indoor magazines are to have sides, bottoms and doors constructed of at least two inches of hardwood and are to be well braced at the corners. They are to be covered with sheet metal of not less than number 26-gauge (.0179 inches). Nails exposed to the interior of magazines must be countersunk.

(ii) Metal indoor magazines are to have sides, bottoms and doors constructed of not less than number 12-gauge (.1046 inches) metal and be lined inside with a nonsparking material. Edges of metal covers must overlap sides at least one inch.

(3) *Hinges and hasps*. Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks*. Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks must be protected with not less than ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the door hinges and lock hasp are securely fastened to the magazine. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(c) *Detonator boxes*. Magazines for detonators in quantities of 100 or less are to have sides, bottoms and doors constructed of not less than number 12-gauge (.1046 inches) metal and lined with a nonsparking material. Hinges and hasps must be attached so they cannot be removed from the outside. One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter is sufficient for locking purposes.

§ 55.209 Construction of type 3 magazines.

A type 3 magazine is a ''day-box'' or other portable magazine. It must be fire-resistant, weather-resistant, and theft-resistant. A type 3 magazine is to be constructed of not less than number 12-gauge (.1046 inches) steel, lined with at least either ½-inch plywood or ½-inch Masonite-type hardboard. Doors must overlap sides by at least one inch. Hinges and hasps are to be attached by welding, riveting or bolting (nuts on inside). One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter is sufficient for locking purposes. Explosive materials are not to be left unattended in type 3 magazines and must be removed to type 1 or 2 magazines for unattended storage.

§ 55.210 Construction of type 4 magazines.

A type 4 magazine is a building, igloo or ''Army-type structure'', tunnel, dugout, box, trailer, or a semitrailer or other mobile magazine.

(a) *Outdoor magazines*—(1) *General.* Outdoor magazines are to be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines must slope away for drainage or other adequate drainage be provided. When unattended, vehicular magazines must have wheels removed or otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.* Outdoor magazines are to be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundations are to be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the building is to be enclosed with fire-resistant material. The walls and floors are to be constructed of, or covered with, a nonsparking material or lattice work. The doors must be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazine*—(1) *General.* Indoor magazines are to be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. The indoor storage of low explosives must not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of explosive materials stored does not exceed 50 pounds. Detonators that will not mass detonate must be stored in a separate magazine and the total number of electric detonators must not exceed 5,000.

(2) *Construction.* Indoor magazines are to be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors are to be constructed of, or covered with, a nonsparking material. The doors must be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasp are securely fastened to the magazine. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

§ 55.211 Construction of type 5 magazines.

A type 5 magazine is a building, igloo or ''Army-type structure'', tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

(a) *Outdoor magazines*—(1) *General.* Outdoor magazines are to be weather-resistant and theft-resistant. The

ground around magazines must slope away for drainage or other adequate drainage be provided. When unattended, vehicular magazines must have wheels removed or otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction*. The doors are to be constructed of solid wood or metal.

(3) *Hinges and hasps*. Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks*. Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Trailers, semitrailers, and similar vehicular magazines may, for each door, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasp are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(5) *Placards*. The placards required by Department of Transportation regulations at 49 CFR part 172, subpart F, for the transportation of blasting agents shall be displayed on all magazines.

(b) *Indoor magazines*—(1) *General*. Indoor magazines are to be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine is to be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds are subject to the requirements of § 55.206 of this subpart.

(2) *Construction*. The doors are to be constructed of wood or metal.

(3) *Hinges and hasps*. Hinges and hasps are to be attached to doors by welding, riveting, or bolting (nuts on inside). Hinges and hasps must be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks*. Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this subparagraph may have each door locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜ inch diameter, if the door hinges and lock hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–298, 55 FR 21863, May 30, 1990]

§ 55.212 Smoking and open flames.

Smoking, matches, open flames, and spark producing devices are not permitted:

(a) In any magazine;

(b) Within 50 feet of any outdoor magazine; or

(c) Within any room containing an indoor magazine.

§ 55.213 Quantity and storage restrictions.

(a) Explosive materials in excess of 300,000 pounds or detonators in excess of 20 million are not to be stored in one magazine unless approved by the Director.

(b) Detonators are not to be stored in the same magazine with other explosive materials, except under the following circumstances:

(1) In a type 4 magazine, detonators that will not mass detonate may be stored with electric squibs, safety fuse, igniters, and igniter cord.

(2) In a type 1 or type 2 magazine, detonators may be stored with delay devices and any of the items listed in paragraph (b)(1) of this section.

§ 55.214 Storage within types 1, 2, 3, and 4 magazines.

(a) Explosive materials within a magazine are not to be placed directly against interior walls and must be stored so as not to interfere with ventilation. To prevent contact of stored explosive materials with walls, a nonsparking lattice work or other nonsparking material may be used.

(b) Containers of explosive materials are to be stored so that marks are visible. Stocks of explosive materials are to be stored so they can be easily counted and checked upon inspection.

(c) Except with respect to fiberboard or other nonmetal containers, containers of explosive materials are not to be unpacked or repacked inside a magazine or within 50 feet of a magazine, and must not be unpacked or repacked close to other explosive materials. Containers of explosive materials must be closed while being stored.

(d) Tools used for opening or closing containers of explosive materials are to be of nonsparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet are to be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors are not to be stored in any magazine containing high explosives.

§ 55.215 Housekeeping.

Magazines are to be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors are to be regularly swept. Brooms and other utensils used in the cleaning and maintenance of magazines must have no spark-producing metal parts, and may be kept in magazines. Floors stained by leakage from explosive materials are to be cleaned according to instructions of the explosives manufacturer. When any explosive material has deteriorated it is to be destroyed in accordance with the advice or instructions of the manufacturer. The area surrounding magazines is to be kept clear of rubbish, brush, dry grass, or trees (except live trees more than 10 feet tall), for not less than 25 feet in all directions. Volatile materials are to be kept a distance of not less than 50 feet from outdoor magazines. Living foliage which is used to stabilize the earthen covering of a magazine need not be removed.

§ 55.216 Repair of magazines.

Before repairing the interior of magazines, all explosive materials are to be removed and the interior cleaned. Before repairing the exterior of magazines, all explosive materials must be removed if there exists any possibility that repairs may produce sparks or flame. Explosive materials removed from magazines under repair must be (a) placed in other magazines appropriate for the storage of those explosive materials under this subpart, or (b) placed a safe distance from the magazines under repair where they are to be properly guarded and protected until the repairs have been completed.

§ 55.217 Lighting.

(a) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.

(b) Electric lighting used in any explosives storage magazine must meet the standards prescribed by the ''National Electrical Code,'' (National Fire Protection Association, NFPA 70–81), for the conditions present in the magazine at any time. All electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

(c) Copies of invoices, work orders or similar documents which indicate the lighting complies with the National Electrical Code must be available for inspection by ATF officers.

§ 55.218 Table of distances for storage of explosive materials.

Quantity of explosives		Distances in feet							
Pounds over	Pounds not over	Inhabited buildings		Public highways with traffic volume of 3000 or fewer vehicles/day		Passenger railways—public highways with traffic volume of more than 3,000 vehicles/day		Separation of magazines	
		Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
0	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630

Quantity of explosives		Distances in feet							
Pounds over	Pounds not over	Inhabited buildings		Public highways with traffic volume of 3000 or fewer vehicles/day		Passenger railways—public highways with traffic volume of more than 3,000 vehicles/day		Separation of magazines	
		Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

TABLE: AMERICAN TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES (DECEMBER 1910), AS REVISED AND APPROVED BY THE INSTITUTE OF MAKERS OF EXPLOSIVES—JULY, 1991.

Notes to the Table of Distances for Storage of Explosives

(1) Terms found in the table of distances for storage of explosive materials are defined in § 55.11.

(2) When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from each other by not less than the distances shown for ''Separation of Magazines,'' except that the quantity of explosives contained in cap magazines shall govern in regard to the spacing of said cap magazines from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified ''Separation of Magazines'' distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosives stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

(3) All types of blasting caps in strengths through No. 8 cap should be rated at 1½ lbs. (1.5 lbs.) of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

(4) For quantity and distance purposes, detonating cord of 50 or 60 grains per foot should be calculated as equivalent to 9 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

[T.D. ATF–87, 46 FR 40384, Aug. 7, 1981, as amended by T.D. ATF–400, 63 FR 45003, Aug. 24, 1998; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001; T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001]

§ 55.219 Table of distances for storage of low explosives.

Pounds		From inhabited building distance (feet)	From public railroad and highway distance (feet)	From above ground magazine (feet)
Over	Not over			
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

§ 55.220 Table of separation distances of ammonium nitrate and blasting agents from explosives or blasting agents.

TABLE: DEPARTMENT OF DEFENSE AMMUNITION AND EXPLOSIVES STANDARDS, TABLE 5–4.1 EXTRACT; 4145.27 M, MARCH 1969

Donor weight (pounds)		Minimum separation distance of acceptor from donor when barricaded (ft.)		Minimum thickness of artificial barricades (in.)
Over	Not over	Ammonium nitrate	Blasting agent	
0	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30

Donor weight (pounds)		Minimum separation distance of acceptor from donor when barricaded (ft.)		Minimum thickness of artificial barricades (in.)
Over	Not over	Ammonium nitrate	Blasting agent	
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

TABLE: NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) OFFICIAL STANDARD NO. 492, 1968

Notes of Table of Separation Distances of Ammonium Nitrate and Blasting Agents From Explosives or Blasting Agents

(1) This table specifies separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the table as the ''donor.'' Ammonium nitrate, by itself, is not considered to be a donor when applying this table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate is to be included in the mass of the donor.

(2) When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the table must be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the ''donor.'' Where explosives storage is in bullet-resistant magazines or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the table in § 55.218 are not required.

(3) These distances apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer issued by the Fertilizer Institute.[1] Ammonium nitrate failing to pass the test must be stored at separation distances in accordance with the table in § 55.218.

(4) These distances apply to blasting agents which pass the insensitivity test prescribed in regulations of the U.S. Department of Transportation (49 CFR part 173).

(5) Earth or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the ''donor'' when the trees are bare of leaves, are also acceptable.

(6) For determining the distances to be maintained from inhabited buildings, passenger railways, and public highways, use the table in § 55.218.

§ 55.221 Requirements for display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks or articles pyrotechnic.

(a) Display fireworks, pyrotechnic compositions, and explosive materials used to assemble fireworks and articles pyrotechnic shall be stored at all times as required by this Subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

(b) No more than 500 pounds (227 kg) of pyrotechnic compositions or explosive materials are permitted at one time in any fireworks mixing building, any building or area in which the pyrotechnic compositions or explosive materials are pressed or otherwise prepared for finishing or assembly, or any finishing or assembly building. All pyrotechnic compositions or explosive materials not in immediate use will be stored in covered, non-ferrous containers.

(c) The maximum quantity of flash powder permitted in any fireworks process building is 10 pounds (4.5 kg).

(d) All dry explosive powders and mixtures, partially assembled display fireworks, and finished display fireworks shall be removed from fireworks process buildings at the conclusion of a

[1] Definition and Test Procedures for Ammonium Nitrate Fertilizer, Fertilizer Institute 1015–18th St. N.W. Washington, DC 20036.

day's operations and placed in approved magazines.

[T.D. ATF–293, 55 FR 3722, Feb. 5, 1990, as amended by T.D. ATF–400, 63 FR 45004, Aug. 24, 1998]

§ 55.222 Table of distances between fireworks process buildings and between fireworks process and fireworks nonprocess buildings.

Net weight of fireworks [1] (pounds)	Display fireworks [2] (feet)	Consumer fireworks [3] (feet)
0–100	57	37
101–200	69	37
201–300	77	37
301–400	85	37
401–500	91	37
Above 500	Not permitted [4 5]	Not permitted [4 5]

[1] Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

[2] The distances in this column apply only with natural or artificial barricades. If such barricades are not used, the distances must be doubled.

[3] While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

[4] A maximum of 500 pounds of in-process pyrotechnic compositions, either loose or in partially-assembled fireworks, is permitted in any fireworks process building. Finished display fireworks may not be stored in a fireworks process building.

[5] A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building. Quantities in excess of 10 pounds must be kept in an approved magazine.

[T.D. ATF–293, 55 FR 3723, Feb. 5, 1990, as amended by T.D. ATF–400, 63 FR 45004, Aug. 24, 1998]

§ 55.223 Table of distances between fireworks process buildings and other specified areas.

DISTANCE FROM PASSENGER RAILWAYS, PUBLIC HIGHWAYS, FIREWORKS PLANT BUILDINGS USED TO STORE CONSUMER FIREWORKS AND ARTICLES PYROTECHNIC, MAGAZINES AND FIREWORKS SHIPPING BUILDINGS, AND INHABITED BUILDINGS. [3 4 5]

Net weight of fireworks [1] (pounds)	Display fireworks [1] (feet)	Consumer fireworks [2] (feet)
0–100	200	25
101–200	200	50
201–300	200	50
301–400	200	50
401–500	200	50

DISTANCE FROM PASSENGER RAILWAYS, PUBLIC HIGHWAYS, FIREWORKS PLANT BUILDINGS USED TO STORE CONSUMER FIREWORKS AND ARTICLES PYROTECHNIC, MAGAZINES AND FIREWORKS SHIPPING BUILDINGS, AND INHABITED BUILDINGS. [3 4 5]—Continued

Net weight of fireworks [1] (pounds)	Display fireworks [1] (feet)	Consumer fireworks [2] (feet)
Above 500	Not permitted	Not permitted.

[1] Net weight is the weight of all pyrotechnic compositions, and exposive materials and fuse only.

[2] While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

[3] This table does not apply to the separation distances between fireworks process buildings (see § 55.222) and between magazines (see §§ 55.218 and 55.224).

[4] The distances in this table apply with or without artificial or natural barricades or screen barricades. However, the use of barricades is highly recommended.

[5] No work of any kind, except to place or move items other than explosive materials from storage, shall be conducted in any building designated as a warehouse. A fireworks plant warehouse is not subject to § 55.222 or this section, tables of distances.

[T.D. ATF–293, 55 FR 3723, Feb. 5, 1990, as amended by T.D. ATF–400, 63 FR 45004, Aug. 24, 1998]

§ 55.224 Table of distances for the storage of display fireworks (except bulk salutes).

Net weight of firework [1] (pounds)	Distance between magazine and inhabited building, passenger railway, or public highway [3 4] (feet)	Distance between magazines [2 3] (feet)
0–1000	150	100
1001–5000	230	150
5001–10000	300	200
Above 10000	Use table § 55.218	

[1] Net weight is the weight of all pyrotechnic compositions, and exposive materials and fuse only.

[2] For the purposes of applying this table, the term ''magazine'' also includes fireworks shipping buildings for display fireworks.

[3] For fireworks storage magazines in use prior to (30 days from the date of publication of the final rule in the Federal Register), the distances in this table may be halved if properly barricaded between the magazine and potential receptor sites.

[4] This table does not apply to the storage of bulk salutes. Use table at § 55.218.

[T.D. ATF–293, 55 FR 3723, Feb. 5, 1990, as amended by T.D. ATF–400, 63 FR 45004, Aug. 24, 1998]

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AUTHORITY: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

SOURCE: T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 70 appear by T.D. ATF–450, 66 FR 29022–29030, May 29, 2001.

Subpart A—Scope

§ 70.1 General.

(a) The regulations in Subparts C, D, and E of this part set forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for:

(1) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers.

(2) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

(3) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to tax, additional amounts, and assessable penalties; enforced collection activities; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco, and firearms taxes, and registration of persons paying a special tax.

(4) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, firearms, ammunition, and explosives.

(b) The regulations in Subpart F of this part 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 Part I, Subchapter A

of Chapter 51, I.R.C., or by any corresponding provision of prior internal revenue laws.

(c) The regulations in Subpart G of this part implement 26 U.S.C. 5064, which permits payments to be made by the United States for amounts equal to the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, and beer, previously withdrawn, that were lost, made unmarketable, or condemned by a duly authorized official as a result of disaster, vandalism, or malicious mischief. This subpart applies to disasters or other specified causes of loss, occurring on or after February 1, 1979. This subpart does not apply to distilled spirits, wines, and beer manufactured in Puerto Rico and brought into the United States.

[T.D. ATF–376, 61 FR 31031, June 19, 1996]

§ 70.2 Forms prescribed.

(a) The appropriate ATF officer 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. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

[T.D. ATF–376, 61 FR 31031, June 19, 1996, as amended by T.D. ATF–450, 66 FR 29022, May 29, 2001]

§ 70.3 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 70 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.19, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 70, Procedure and administration. ATF delegation orders, such as ATF Order 1130.19, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

[T.D. ATF–450, 66 FR 29022, May 29, 2001]

Subpart B—Definitions

§ 70.11 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 imparting 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.

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 1130.19, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 70, Procedure and Administration.

Bureau. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

CFR. The Code of Federal Regulations.

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.

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

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

Enforced collection. Collection of taxes when a taxpayer neglects or refuses to pay voluntarily. Includes such administrative measures as liens and levies.

Levy. The taking of property by seizure and sale or by collection of money due to the debtor, such as wages.

Lien. A charge upon real or personal property for the satisfaction of some debt or performance of an obligation.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Provisions of 26 U.S.C. enforced and administered by the Bureau. Sections 4181 and 4182 of the Internal Revenue Code of 1986 (the Code), as amended; subchapters F and G of chapter 32 of the Code, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Code; subtitle E of the Code; and subtitle F of the Code as it relates to any of the foregoing.

Secretary. The Secretary of the Treasury or designated delegate.

Seizure. The act of taking possession of property to satisfy a tax liability or by virtue of an execution.

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.

(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 13535, Mar. 31, 1978; 44 FR 55841, Sept. 28,979, as amended by T.D. ATF–77, 46 FR 3002, Jan. 13, 1981; T.D. ATF–301, 55 FR 47608, Nov. 14, 1990; T.D. ATF–331, 57 FR 40327, Sept. 3, 1992; T.D. ATF–378, 61 FR 29955, June 13, 1996; T.D. ATF–450, 66 FR 29022, May 29, 2001]

Subpart C—Discovery of Liability and Enforcement of Laws

EXAMINATION AND INSPECTION

§ 70.21 Canvass of regions for taxable persons and objects.

Each appropriate ATF officer shall, to the extent deemed practicable, cause officers or employees under the appropriate ATF officer's supervision and control to proceed, from time to time, and inquire after and concerning all persons therein who may be liable to pay any tax, imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, and all persons owning or having the care and management of any objects with respect to which such tax is imposed.

[T.D. ATF–331, 57 FR 40327, Sept. 3, 1992, as amended by T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.22 Examination of books and witnesses.

(a) *In general*. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any such tax, or collecting any such liability, any appropriate ATF officer may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summonses*. For the purposes described in paragraph (a) of this section the appropriate ATF officersare authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any person deemed proper, to appear before a designated officer or employee of the Bureau at a time and place named in

the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. Such ATF officer may designate an appropriate ATF officer as the individual before whom a person summoned pursuant to 26 U.S.C. 7602 shall appear. Any such officer, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons. The authority to issue a summons may not be redelegated. See § 70.302 of this part for rules concerning payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and this section.

(Aug. 16, 1954, Chapter 736, 68A Stat. 901; (26 U.S.C. 7602))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–42, 42 FR 8367, Feb. 10, 1977; T.D. ATF–301, 55 FR 47608, Nov. 14, 1990; T.D. ATF–331, 57 FR 40328, Sept. 3, 1992; T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.23 Service of summonses.

(a) *In general.* A summons issued under 26 U.S.C. 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode. The certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) *Persons who may serve summonses.* Any appropriate ATF officer may serve a summons issued under 26 U.S.C. 7602.

(68A Stat. 902, as amended (26 U.S.C. 7603); 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), 27 U.S.C. 205, 22 U.S.C. 2778, 26 U.S.C. 7602, and 5 U.S.C. 301)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; T.D. ATF–201, 50 FR 12533, Mar. 29, 1985; T.D. ATF–249, 52 FR 5961, Feb. 27, 1987; T.D. ATF–301, 55 FR 47608, Nov. 14, 1990; T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.24 Enforcement of summonses.

(a) *In general.* Whenever any person summoned under 26 U.S.C. 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a U.S. magistrate for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.

(b) *Persons who may apply for an attachment.* Appropriate ATF officers are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of a summons may not be redelegated.

(68A Stat. 902, as amended (26 U.S.C. 7604))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973; 38 FR 33767, Dec. 7, 1973, as amended by T.D. ATF–450, 66 FR 29023, May 29, 3001]

§ 70.25 Special procedures for third-party summonses.

(a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as ''third-party recordkeepers'', the person about whom information is being gathered must be notified in advance, except when:

(1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or

(2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

(3) The summons does not identify the person with respect to whose liability the summons is issued (a ''John Doe'' summons issued under the provisions of 26 U.S.C. 7609(f)), or

(4) The appropriate ATF officer petitions, and the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section shall be served upon the person entitled to notice, or mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made:

(1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in this paragraph, or

(2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, expect in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.

(26 U.S.C. 7609)

[T.D. ATF–301, 55 FR 47608, Nov. 14, 1990]

§ 70.26 Third-party recordkeepers.

(a) *Definitions*—(1) *Accountant*. A person is an ''accountant'' under 26 U.S.C. 7609(a)(3)(F) for purposes of determining whether that person is a third-party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) *Attorney*. A person is an ''attorney'' under 26 U.S.C. 7609(a)(3)(E) for purposes of determining whether that person is a third-party recordkeeper if the person is admitted to the bar of a State or the District of Columbia.

(3) *Credit cards*—(i) *Person extending credit through credit cards*. The term ''person extending credit through credit cards or similar devices'' under 26 U.S.C. 7609(a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(ii) [Reserved]

(iii) *Similar devices to credit cards*. An object is a ''similar device'' to a credit card under 26 U.S.C. 7609(a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeper under 26 U.S.C. 7609(a)(3)(C).

(b) *When third-party recordkeeper status arises*. A person is a ''third-party recordkeeper'' with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a

sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to:

(1) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(2) Records relating to transactions involving the use of another issuer's credit card.

(c) *Duty of third-party recordkeeper*—(1) *In General*. Upon receipt of a summons, the third-party recordkeeper (''recordkeeper'') must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution or anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under 26 U.S.C. 7609(a)(3)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable*—(i) *In general*. A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the ''Certificate of the Secretary'' (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary*. The Director may issue to the recordkeeper a ''Certificate of the Secretary'' stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons has expired; and

(B) That no proceeding has been properly instituted within that period.

The appropriate ATF officer may also issue a ''Certificate of the Secretary'' to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs*. Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by 26 U.S.C. 7610, even if the summons ultimately is not enforced.

(26 U.S.C. 7609)

[T.D. ATF–301, 55 FR 47608, Nov. 14, 1990]

§ 70.27 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person*. Under 26 U.S.C. 7609(a), the Bureau must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Bureau to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Bureau issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under 26 U.S.C. 7609(a). Therefore, if the Bureau requests the records of a joint bank account of A and B, both of whom are named in the summons, then both A and B are notified persons entitled to notice under 26 U.S.C. 7609(a).

(b) *Right to institute a proceeding to quash*—(1) *In general*. Title 26 U.S.C. 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on 26 U.S.C. 7609(b). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under 26 U.S.C. 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by 26 U.S.C. 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash*. In order to institute a proceeding to quash a summons, the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than

the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction.

(ii) Notify the Bureau by sending a copy of that petition by registered or certified mail to the Bureau employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Bureau in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Bureau employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person, but instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash*. If the notified person fails to institute a proceeding to quash within 20 days following the day the notice was served on or mailed to such notified person, the Bureau may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see 26 U.S.C. 7609(d)(1)).

(c) *Presumption no notice has been mailed*. Title 26 U.S.C. 7609(b)(2)(B) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Bureau and the summoned person. Unless the notified person has notified both the Bureau and the summoned person in the appropriate manner, the notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Bureau within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(26 U.S.C. 7609)

[T.D. ATF–301, 55 FR 47609, Nov. 14, 1990]

§ 70.28 Summonses excepted from 26 U.S.C. 7609 procedures.

(a) *In aid of the collection of certain liabilities*—(1) *In general*. Title 26 U.S.C. 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee of such a person.

(2) *Examples*. Examples of summonses referred to in paragraph (a)(1) of this section are:

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued to enforce transferee liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement)*. Under 26 U.S.C. 7609(c)(2), a summons issued solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of 26 U.S.C. 7609. A ''numbered account (or similar arrangement)'' under 26 U.S.C. 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. A ''person having a numbered account (or similar arrangement)'' includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

(26 U.S.C. 7609)

[T.D. ATF–301, 55 FR 47610, Nov. 14, 1990]

§ 70.29 Suspension of statutes of limitations.

(a) *Suspension while a proceeding under 26 U.S.C. 7609(b) is pending.* Under 26 U.S.C. 7609(e)(1), the statutes of limitations of 26 U.S.C. 6501 and 6531 are suspended if a notified person with respect to whose liability a summons is issued, or the notified person's agent, nominee, or other person acting under the direction or control of the notified person, takes any action as provided in 26 U.S.C. 7609(b).

(1) *Agent, nominee, etc.* A person is a notified person's agent, nominee, or other person acting under the direction or control of a notified person for purposes of 26 U.S.C. 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under 26 U.S.C. 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(2) *Period during which a proceeding, etc., is pending.* Under 26 U.S.C. 7609(e), the statute of limitations shall be suspended for the period during which a proceeding and any appeals regarding the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in district court. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. The periods of limitations which are suspended under 26 U.S.C. 7609(e) are those which apply to the taxable periods to which the summons relates.

(3) *Taking of action as provided in 26 U.S.C. 7609(b).* Title 26 U.S.C. 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase ''takes any action as provided in subsection (b)'', found in 26 U.S.C. 7609(e), includes any intervention whether or not 26 U.S.C. 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of 26 U.S.C. 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under 26 U.S.C. 7609(b)(2)(B), the notified person has taken an action under 26 U.S.C. 7609(e).

(b) *Suspension after 6 months of service of summons.* In the absence of the resolution of the third-party recordkeeper's response to the summons described in 26 U.S.C. 7609(c) or the summoned party's response to a summons described in 26 U.S.C. 7609(f) the running of any period of limitations under 26 U.S.C. 6501 or under 26 U.S.C. 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in 26 U.S.C. 7609(b)) shall be suspended for the period:

(1) Beginning on the date which is 6 months after the service of such summons, and

(2) Ending with the final resolution of such response.

(26 U.S.C. 7609)

[T.D. ATF–301, 55 FR 47610, Nov. 14, 1990]

§ 70.30 Time and place of examination.

(a) *Time and place.* The time and place of examination pursuant to the provisions of 26 U.S.C. 7602 must be such time and place as may be fixed by an appropriate ATF officer and as are reasonable under the circumstances. The date fixed for appearance shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.* No taxpayer is to be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless an authorized internal revenue or an appropriate ATF officer, after investigation, notifies the taxpayer in writing

that an additional inspection is necessary.

(68A Stat. 902, as amended (26 U.S.C. 7605))

[T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.31 Entry of premises for examination of taxable objects.

(a) *General.* An appropriate ATF officer may, in the performance of his or her duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose.

(b) *Distilled spirits plants.* Any appropriate ATF officer may, at all times, as well by night as by day, enter any plant or any other premises where distilled spirits are produced or rectified, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment and facilities thereon; and make such gauges and inventories as such officer deems necessary. Whenever any appropriate ATF officer, having demanded admittance, and having declared his or her name and office, is not admitted to such premises by the proprietor or other person having charge thereof, such officer may at all times, use such force as is necessary for such officer to gain entry to such premises.

(c) *Authority to break up grounds.* An appropriate ATF officer, and any person acting in his or her aid, may break up the ground on any part of a distilled spirits plant, or any other premises where spirits are produced or rectified, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to determine whether such pipe or other conveyance conveys or conceals any spirits, mash, wort, or beer, or other liquor, from the sight or view of the appropriate ATF officer, so as to prevent or hinder such officer from taking a true account thereof.

(68A Stat. 903, 72 Stat. 1357 (26 U.S.C. 7606, 5203))

[T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.32 Examination of records and objects.

Any appropriate ATF officer may enter, during business hours, the premises of any regulated establishment for the purpose of inspecting and examining any records, articles, or other objects required to be kept by such establishment under 18 U.S.C. chapter 40 or 44, or provisions of 26 U.S.C. enforced and administered by the Bureau, or regulations issued pursuant thereto.

(68A Stat. 715, as amended, 903, 72 Stat. 1348, 1361, 1373, 1381, 1390, 1391, 1395, 82 Stat. 231, as amended, 84 Stat. 955; (26 U.S.C. 5741, 7606, 5146, 5207, 5275, 5367, 5415, 5504, 5555, 18 U.S.C. 923, 843))

[T.D. ATF–331, 57 FR 40328, Sept. 3, 1992, as amended by T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.33 Authority of enforcement officers of the Bureau.

Appropriate ATF officers may perform the following functions:

(a) Carry firearms;

(b) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(c) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(d) In respect to the performance of such duty, make seizures of property

subject to forfeiture to the United States.

(53 Stat. 1291, 62 Stat. 840, 68 Stat. 848, as amended, 72 Stat. 1429, as amended, 82 Stat. 233, as amended, 84 Stat. 956 (49 U.S.C. 782, 18 U.S.C. 3615, 22 U.S.C. 1934, 26 U.S.C. 7608, 18 U.S.C. 924, 844); 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))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990; T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.34 Listing by appropriate ATF officers of taxable objects owned by nonresidents.

Whenever there are any articles in any internal revenue district subject to tax, which are not owned or possessed by, or under the care or control of, any person within such district, and of which no list has been transmitted to the appropriate ATF officer, as required by law or by regulations prescribed pursuant to law, an appropriate ATF officer shall enter the premises where such articles are situated, make such inspection of the articles as may be necessary, and make lists of the same according to the forms prescribed. Such lists, being subscribed by the appropriate ATF officer, are sufficient lists of such articles for all purposes.

[T.D. ATF–450, 66 FR 29023, May 29, 2001]

General Powers and Duties

§ 70.40 Authority to administer oaths and certify.

Appropriate ATF officers are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the tax laws administered by the Bureau, the Federal Alcohol Administration Act, or regulations issued thereunder, except that the authority to certify must not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive.

(68A Stat. 904 (26 U.S.C. 7622))

[T.D. ATF–450, 66 FR 29023, May 29, 2001]

§ 70.41 Rewards for information relating to violations of tax laws administered by the Bureau.

(a) *In general.* An appropriate ATF officer may approve such reward as he or she deems suitable for information that leads to the detection and punishment of any person guilty of violating any tax law administered by the Bureau or conniving at the same. The rewards provided for by 26 U.S.C. 7623 are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

(b) *Eligibility to file claim for reward*—(1) *In general.* Any person, other than certain present or former federal employees (see paragraph (b)(2) of this section), who submits, in the manner set forth in paragraph (d) of this section, information relating to the violation of tax laws administered and enforced by the Bureau, is eligible to file a claim for reward under 26 U.S.C. 7623.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time he came into possession of information relating to violations of tax laws administered by the Bureau, or at the time he divulged such information, shall be eligible for reward under 26 U.S.C. 7623 and this section. Any other federal employee, or former federal employee, is eligible to file a claim for reward if the information submitted came to his knowledge other than in the course of his official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to his death, the informant was eligible to file a claim for such reward under 26 U.S.C. 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to such a claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim for reward.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, must be taken

into account in determining whether a reward must be paid, and, if so, the amount thereof. The amount of a reward shall represent what the appropriate ATF officer deems to be adequate compensation in the particular case, normally not to exceed 10 percent of the additional taxes, penalties, and fines which are recovered as a result of the information. No reward, however, shall be paid with respect to any additional interest that may be collected. Payment of a reward will be made as promptly as the circumstances of the case permit, but generally not until the taxes, penalties, or fines involved have been collected. However, the informant may waive any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, in which case the claim may be immediately processed. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind the appropriate ATF officer with respect to the payment of any reward or the amount thereof.

(d) *Submission of information*. Persons desiring to claim rewards under the provisions of 26 U.S.C. 7623 and this section may submit information relating to violations of tax laws administered by the Bureau to an appropriate ATF officer. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Anonymity*. No unauthorized person shall be advised of the identity of an informant.

(f) *Filing claim for reward*. An informant who intends to claim a reward under 26 U.S.C. 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the informant. Claim for reward under the provisions of 26 U.S.C. 7623 must be made on ATF Form 3200.13. ATF Form 3200.13 should be obtained from the office where the information is filed.

(68A Stat. 904 (26 U.S.C. 7623); 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))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990; T.D. ATF–312, 56 FR 31085, July 9, 1991; T.D. ATF–450, 66 FR 29024, May 29, 2001]

§ 70.42 Returns prepared or executed by appropriate ATF officers.

(a) *Preparation of returns*—(1) *General*. If any person, required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return, fails to make such return, it may be prepared by an appropriate ATF officer provided the person required to make the return consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it must be received by the appropriate ATF officer, as the return of such person.

(2) *Responsibility of person for whom return is prepared*. A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by such person.

(b) *Execution of returns*—(1) *General*. If any person, required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return, fails to make a return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the appropriate ATF officer must make such return from such officer's own knowledge and from such information as the officer can obtain through testimony or otherwise.

(2) *Status of returns*. Any return made in accordance with paragraph (b)(1) of this section and subscribed by the appropriate ATF officer is prima facie good and sufficient for all legal purposes.

(c) *Cross references.* (1) For provisions that the return executed by an appropriate ATF officer will not start the running of the period of limitations on assessment and collection, see 26 U.S.C. 6501(b)(3) and § 70.222(b) of this part.

(2) For additions to the tax and additional amounts for failure to file returns, see section 6651 of the Internal Revenue Code.

(3) For additions to the tax for failure to pay tax, see sections 5684, 5761, and 6653 of the Internal Revenue Code.

(4) For failure to make deposit of taxes or overstatement of deposit claims, see section 6656 of the Internal Revenue Code.

(5) For an additional penalty for tendering a bad check or money order, see section 6657 of the Internal Revenue Code.

(6) For certain failures to pay tax with respect to cases pending under Title 11 of the United States Code, see section 6658 of the Internal Revenue Code.

(7) For failure to supply identifying numbers, see section 6676 of the Internal Revenue Code.

(8) For penalties for aiding and abetting understatement of tax liability, see section 6701 of the Internal Revenue Code.

(9) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203 of the Internal Revenue Code.

(10) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207 of the Internal Revenue Code.

(11) For authority to examine books and witnesses, see section 7602 of the Internal Revenue Code and § 70.22.

(26 U.S.C. 6020)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606 and 47610, Nov. 14, 1990; T.D. ATF–450, 66 FR 29024, May 29, 2001]

Subpart D—Collection of Excise and Special (Occupational) Tax

COLLECTION—GENERAL PROVISIONS

§ 70.51 Collection authority.

The taxes imposed by provisions of 26 U.S.C. enforced and administered by the Bureau must be collected by appropriate ATF officers.

(26 U.S.C. 6301)

[T.D. ATF–450, 66 FR 29024, May 29, 2001]

§ 70.52 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by that individual.

(26 U.S.C. 6064)

[T.D. ATF–301, 55 FR 47611, Nov. 14, 1990]

RECEIPT OF PAYMENT

§ 70.61 Payment by check or money order.

(a) *Authority to Receive*—(1) *General.* (i) The appropriate ATF officer may accept checks 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 money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in U.S. currency at par, and subject to the further provisions contained in this section. The appropriate ATF officer may accept such checks or money orders in payment for internal revenue stamps (authorized under Subtitle E of the Internal Revenue Code or any provision of Subtitle F which relates to Subtitle E) to the extent and under the conditions prescribed in paragraph (a)(2) of this section. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Bureau of Alcohol, Tobacco and Firearms. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term ''money order'' means:

(A) U.S. postal, bank, express, or telegraph money order; and

(B) Money order issued by a domestic building and loan association (as defined in section 7701(a)(19) of the Internal Revenue Code) or by a similar association incorporated under the laws of a possession of the United States;

(C) A money order issued by such other organization as the appropriate ATF officer may designate; and

(D) A money order described in paragraph (a)(1)(ii) of this section in cases therein described. However, the appropriate ATF officers may refuse to accept any personal check whenever there is good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his/her tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(A) Each person whose tax is to be paid by the remittance;

(B) The amount of the payment on account of each such person; and

(C) The kind of tax paid.

(2) *Payment for internal revenue stamps—In general.* The appropriate ATF officer may accept checks and money orders described in paragraph (a)(1) of this section, in payment for internal revenue stamps authorized under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E. However, the appropriate ATF officer may refuse to accept any personal check whenever there is good reason to believe that the check will not be honored upon presentment.

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products, pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under chapter 52 of the Internal Revenue Code), or pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges (imposed under chapter 32 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the appropriate ATF officers finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be 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 or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

(b) *Checks or money orders not paid—* (1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes is not released from liability until the check or money order is paid; and, if the check or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 of the Internal Revenue Code. For assessment of the amount of a check or money order not duly paid see section 6201(a)(2)(B) of the Internal Revenue Code.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check (or other guaranteed draft) or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has

the right to exact payment from the person required to make the payment.

(26 U.S.C. 6311)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990; T.D. ATF–331, 57 FR 40328, Sept. 3, 1992; T.D. ATF–353, 59 FR 2522, Jan. 18, 1994]

§ 70.62 Fractional parts of a cent.

In the payment of any 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. Fractional parts of a cent shall not be disregarded in the computation of taxes.

(26 U.S.C. 6313)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.63 Computations on returns or other documents.

(a) *Amounts shown on forms.* To the extent permitted by any ATF form or instructions prescribed for use with respect to any ATF return, declaration, statement, or other document, or supporting schedules, any amount required to be reported in such form may be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts may be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1. The following illustrates the application of this paragraph:

Exact amount	To be reported as
$18.49	$18
$18.50	19
$18.51	19

(b) *Election not to use whole dollar amounts*—(1) *Method of election.* Where any ATF form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election.* The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election.* The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period.

(4) *Fractional part of a cent.* For treatment of the fractional part of a cent in the payment of taxes, see 26 U.S.C. 6313 and § 70.62 of this part.

(c) *Inapplicability to computation of amount.* The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of liability must be taken into account at its exact amount, including cents, in computing the amount of total liability required to be reported on a tax return or supporting schedule. It is the amount of total liability, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(26 U.S.C. 6102)

[T.D. ATF–301, 55 FR 47611, Nov. 14, 1990]

§ 70.64 Receipt for taxes.

The appropriate ATF officer must, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In

addition, an appropriate ATF officer or employee must issue a receipt for each payment of 1 dollar or more made in cash, whether or not requested. In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(26 U.S.C. 6314)

[T.D. ATF–301, 55 FR 47611, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29024, May 29, 2001]

§ 70.65 Use of commercial banks.

For provisions relating to the use of commercial banks and electronic fund transfer of taxpayment to the Treasury Account, see the regulations relating to the particular tax.

(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–77, 46 FR 3002, Jan. 13, 1981. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

ASSESSMENT

§ 70.71 Assessment authority.

The appropriate ATF officers are authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau. The appropriate ATF officers are further authorized and required to make the determinations and the assessments of such taxes. The term ''taxes'' includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the appropriate ATF officers to make assessment includes the following:

(a) *Taxes shown on return.* The appropriate ATF officer shall assess all taxes determined by the taxpayer or by the appropriate ATF officer and disclosed on a return or list.

(b) *Unpaid taxes payable by stamp.* (1) If without use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs, the appropriate ATF officer, upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the appropriate ATF officer must make assessment therefor upon the person the appropriate ATF officer determines to be liable for the tax. However, the appropriate ATF officer may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the appropriate ATF officer shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by appropriate ATF officer.

(26 U.S.C. 6201)

[T.D. ATF–301, 55 FR 47611, Nov. 14, 1990]

§ 70.72 Method of assessment.

The assessment shall be made by an appropriate ATF officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an appropriate ATF officer. If the taxpayer requests a copy of the record of assessment, the taxpayer shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the

taxable period, if applicable, and the amounts assessed.

(26 U.S.C. 6203)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606 and 47612, Nov. 14, 1990; T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.73 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the appropriate ATF officer, subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

[T.D. ATF–301, 55 FR 47612, Nov. 14, 1990]

§ 70.74 Request for prompt assessment.

(a) Except as otherwise provided in § 70.223 of this part, any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable, shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the appropriate ATF officer. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of 26 U.S.C. 6501(d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper regional director (compliance) or with the Chief, Tax Processing Center. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment shall be begun, after the expiration of 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the appropriate ATF officer that the corporation contemplates dissolution at or before the expirationof such 18-month period; the dissolution is in good faith begun before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the appropriate ATF officer that a dissolution has in good faith begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

(26 U.S.C. 6501(d))

[T.D. ATF–301, 55 FR 47612, Nov. 14, 1990, as amended by T.D. ATF–353, 59 FR 2522, Jan. 18, 1994]

§ 70.75 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

(a) If the appropriate ATF officer believes that the collection of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau will be jeopardized by delay, the appropriate ATF officer must, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. An appropriate ATF officer will make an assessment under this section if collection is determined to be in jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the

United States or to conceal himself or herself.

(2) The taxpayer is or appears to be designing quickly to place the taxpayer's property beyond the reach of the Government either by removing it from the United States, by concealing it, or by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be threatened.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the appropriate ATF officer shall, without delay, issue a notice and demand for payment thereof in full.

(c) See 26 U.S.C. 7429 with respect to requesting the appropriate ATF officer to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see § 70.76 of this part.

(26 U.S.C. 6862 and 6863)

[T.D. ATF–301, 55 FR 47612, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.76 Stay of collection of jeopardy assessment; bond to stay collection.

(a) The collection of taxes assessed under 26 U.S.C. 6862 (referred to as a ''jeopardy assessment'' for purposes of this section) of any tax may be stayed by filing with the appropriate ATF officer a bond on the form to be furnished by ATF upon request.

(b) The bond may be filed:

(1) At any time before the time collection by levy is authorized under 26 U.S.C. 6331(a), or

(2) After collection by levy is authorized and before levy is made on any property or rights to property, or

(3) In the discretion of the appropriate ATF officer, after any such levy has been made and before the expiration of the period of limitations on collection.

(c) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the appropriate ATF officer) of the jeopardy assessment collection of which is sought to be stayed. See 26 U.S.C. 7101 and § 70.281, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), for which the collection is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(d) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or of any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the appropriate ATF officer, then the bond shall (at the request of the taxpayer) be proportionately reduced.

(26 U.S.C. 6863)

[T.D. ATF–301, 55 FR 47613, Nov. 14, 1990]

§ 70.77 Collection of jeopardy assessment; stay of sale of seized property pending court decision.

(a) *General rule.* In the case of an assessment under 26 U.S.C. 6862, and property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold until the latest of the following occurs:

(1) The period provided in 26 U.S.C. 7429(a)(2) to request the appropriate ATF officer to review the action taken expires.

(2) The period provided in 26 U.S.C. 7429(b)(1) to file an action in U.S. District Court expires if a request for redetermination is made to the appropriate ATF officer.

(3) The U.S. District Court judgment in such action becomes final, if a civil action is begun in accordance with 26 U.S.C. 7429(b).

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold:

(1) If the taxpayer files with the appropriate ATF officer a written consent to the sale, or

(2) If the appropriate ATF officer determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or

(3) If the property is of a type to which 26 U.S.C. 6336 (relating to sale of perishable goods) is applicable.

(26 U.S.C. 6863)

[T.D. ATF–301, 55 FR 47613, Nov. 14, 1990, as amended by T.D. ATF–353, 59 FR 2522, Jan. 18, 1994]

NOTICE AND DEMAND

§ 70.81 Notice and demand for tax.

(a) *General rule*. Where it is not otherwise provided by provisions of 26 U.S.C. enforced and administered by the Bureau, the appropriate ATF officer shall, after the making of an assessment of a tax pursuant to § 70.71 of this part, give notice to each person liable for the unpaid tax, stating the basis for the tax due, the amount of tax, interest, additional amounts, additions to the tax and assessable penalties, and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment*. If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

(26 U.S.C. 6303 and 7521)

[T.D. ATF–301, 55 FR 47613, Nov. 14, 1990]

§ 70.82 Payment on notice and demand.

Upon receipt of notice and demand from the appropriate ATF officer, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

[T.D. ATF–301, 55 FR 47613, Nov. 14, 1990]

INTEREST

§ 70.90 Interest on underpayments.

(a) *General rule*. Interest at the underpayment rate referred to in § 70.93 of this part shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Interest on penalties, additional amounts, or additions to the tax*— (1) *General*. Interest shall be imposed on any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) of the Internal Revenue Code) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(2) *Interest on certain additions to tax*. Interest shall be imposed under this section on any addition to tax imposed by section 6651(a)(1) of the Internal Revenue Code for the period which (i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and (ii) ends on the date of payment of such addition to tax.

(c) *Payments made within 10 days after notice and demand*. If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(d) *Satisfaction by credits*. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under section 6601 of the Internal Revenue Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(e) *Last date prescribed for payment*. (1) In determining the last date prescribed for payment, any extension of time

granted for payment of tax shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in § 70.93 of this part is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance of a notice and demand for the tax.

(26 U.S.C. 6601)

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF–301, 55 FR 47613, Nov. 14, 1990]

§ 70.91 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to 26 U.S.C. 7405, shall bear interest at the underpayment rate referred to in § 70.93 of this part.

(26 U.S.C. 6602)

[T.D. ATF–301, 55 FR 47614, Nov. 14, 1990]

§ 70.92 Interest on overpayments.

(a) *General rule*. Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in § 70.93 of this part from the date of overpayment of the tax.

(b) *Date of overpayment*. Except as provided in section 6401(a) of the Internal Revenue Code, relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability.

(c) *Period for which interest is allowable in case of refunds*. If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the appropriate ATF officer which shall not be more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(d) *Period for which interest allowable in case of credits*—(1) *General rule*. If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under paragraph (d)(2) of this section of the amount against which such overpayment is credited.

(2) *Determination of due date*—(i) *General*. The term *due date*, as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the appropriate ATF officer makes demand for the payment of the tax. Therefore, the due date of the tax is the date fixed for the payment of the tax;

(ii) *Tax not due yet*. If a taxpayer agrees to the crediting of an overpayment against tax and the schedule of allowance is signed prior to the date on which such tax would otherwise become due, then the due date of such tax shall be the date on which such schedule is signed;

(iii) *Interest*. In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit

against interest that accrues from any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

(26 U.S.C. 6611)

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF–301, 55 FR 47614, Nov. 14, 1990; T.D. ATF–358, 59 FR 29367, June 7, 1994]

§ 70.93 Interest rate.

(a) *In general.* The interest rate established under 26 U.S.C. 6621(a)(2) shall be:

(1) On amounts outstanding before July 1, 1975, 6 percent per annum.

(2) On amounts outstanding:

After	And before	Rate per annum (percent)
June 30, 1975	Feb. 1, 1976	9
Jan. 31, 1976	Feb. 1, 1978	7
Jan. 31, 1978	Feb. 1, 1980	6
Jan. 31, 1980	Feb. 1, 1982	12
Jan. 31, 1982	Jan. 1, 1983	20

(3) On amounts outstanding after December 31, 1982, the adjusted rates for overpayment and underpayment established by the Commissioner of Internal Revenue under 26 U.S.C. 6621. These adjusted rates shall be published by the Commissioner in a Revenue Ruling. See § 70.94 of this part for application of daily compounding in determining interest accruing after December 31, 1982. Because interest accruing after December 31, 1982, accrues at the prescribed rate per annum compounded daily, the effective annual percentage rate of interest will exceed the prescribed rate of interest.

(b) *Applicability of interest rates.* (1) *Computation.* Interest and additions to tax on any amount outstanding on a specific day shall be computed at the annual rate applicable on such day.

(2) *Additions to tax.* Additions to tax under any section of the Internal Revenue Code that refers to the annual rate established under 26 U.S.C. 6621, shall be computed at the same rate per annum as the interest rate set forth under paragraph (a) of this section.

(3) *Interest.* Interest provided for under any section of the Internal Revenue Code that refers to the annual rate established under this section, including 26 U.S.C. 6332(d)(1), 6343(c), 6601(a), 6602, 6611(a), 7426(g), and 28 U.S.C. 1961(c)(1) or 2411, shall be computed at the rate per annum set forth under paragraph (a) of this section.

[T.D. ATF–301, 55 FR 47614, Nov. 14, 1990]

§ 70.94 Interest compounded daily.

(a) *General rule.* Effective for interest accruing after December 31, 1982, in computing the amount of any interest required to be paid under any provision of 26 U.S.C. or under 28 U.S.C. 1961(c)(1) or 2411, by the appropriate ATF officer or by the taxpayer, or in computing any other amount determined by reference to such amount of interest, or by reference to the interest rate established under 26 U.S.C. 6621, such interest or such other amount shall be compounded daily by dividing such rate of interest by 365 (366 in a leap year) and compounding such daily interest rate each day.

(b) *Applicability to unpaid amounts on December 31, 1982.* The unpaid interest (or other amount) that shall be compounded daily includes the interest (or other amount) accrued but unpaid on December 31, 1982.

(26 U.S.C. 6622)

[T.D. ATF–301, 55 FR 47614, Nov. 14, 1990]

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Additions to the Tax and Additional Amounts

§ 70.95 Scope.

For purposes of the administration of excise taxes by the Bureau of Alcohol, Tobacco and Firearms in accordance with Title 26 of the United States Code, the penalties prescribed in §§ 70.96 through 70.107 shall apply.

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF–301, 55 FR 47614, Nov. 14, 1990]

§ 70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax*—(1) *Failure to file tax return*. In the case of failure to file a return required under authority of:

(i) Title 26 U.S.C. 61, relating to returns and records;

(ii) Title 26 U.S.C. 51, relating to distilled spirits, wines and beer;

(iii) Title 26 U.S.C. 52, relating to tobacco products, and cigarette papers and tubes; or

(iv) Title 26 U.S.C. 53, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the appropriate ATF officer to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent therof if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under paragraph (a)(1) of this section shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (a)(2) of this section.

(2) *Failure to pay tax shown on return*. In case of failure to pay the amount shown as tax on any return required to be filed after December 31, 1969 (without regard to any extension of time for filing thereof), specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the appropriate ATF officer to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) *Failure to pay tax not shown on return*. In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to 26 U.S.C. 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount shown in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the appropriate ATF officer to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The maximum amount of the addition permitted under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(1) of this section, which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days from the date of notice and demand. The preceding sentence applies to amounts assessed on or before December 31, 1986.

(4) *Increases in penalties in certain cases*. For increases in penalties for failure to file a return or pay tax in certain cases, see 26 U.S.C. 6651(d) or (f).

(b) *Month defined*. (1) If the date prescribed for filing the return or paying tax is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay tax continues shall constitute a month for purposes of section 6651.

(2) If the date prescribed for filing the return or paying tax is a date other than the last day of a calendar month, the period which terminates with the

date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return or paying tax, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a return is not timely filed or tax is not timely paid, the fact that the date prescribed for filing the return or paying tax, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(c) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for the taxpayers failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the appropriate ATF officer. In addition, where special tax returns of liquor dealers are delivered to an appropriate ATF officer, such statement may be delivered with the return. If the appropriate ATF officer determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in 26 CFR 1.6161–1(b)) if paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of a tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of assets and anticipated income will be insufficient to pay the tax, has not exercised ordinary business care and prudence in providing for the payment of a tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of a tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay the tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if such taxpayer made reasonable efforts to conserve sufficient assets in marketable form to satisfy a tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

(d) *Penalty imposed on net amount due*—(1) *Credits against the tax.* The amount of tax required to be shown on the return for purposes of section 6651(a)(1) and the amount shown as tax on the return for purposes of section 6651(a)(2) shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(2) *Partial payments.* (i) The amount of tax required to be shown on the return for purposes of section 6651(a)(2) of

the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month, and

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 of the Internal Revenue Code shall be assessed with respect to an underpayment of tax if an addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d) of the Internal Revenue Code.

(26 U.S.C. 6651)

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D ATF–301, 55 FR 47614, Nov. 14, 1990; T.D. ATF–353, 59 FR 2522, Jan. 18, 1994; T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.97 Failure to pay tax.

(a) *Negligence*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of 5 percent of the underpayment, and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or if earlier, the date or the payment of the tax).

(2) Underpayment taken into account reduced by a portion attributable to fraud. There shall not be taken into account under paragraph (a) of this section any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under paragraph (b) of this section.

(3) *Negligence.* For purposes of paragraph (a) of this section, the term ''negligence'' includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term ''disregard'' includes any careless, reckless, or intentional disregard.

(4) The provisions of paragraph (a) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(b) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) The provisions of paragraph (b) of this section, apply to returns the due date for which (determined without regard to extensions) is on or before December 31, 1986.

(c) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of 75 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) Determination of portion attributable to fraud. If the regional director(s) (compliance) or the Chief, Tax Processing Center establishes that any

portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

(3) The provisions of this paragraph (c) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(d) *Definition of underpayment.* For purposes of this section, the term *underpayment* means the amount by which such tax imposed by the Internal Revenue Code exceeds the excess of—

(1) The sum of,

(i) The amount shown as the tax by the taxpayer upon the taxpayers return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a) of the Internal Revenue Code), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus;

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(2) *The amount of rebates made.* For purposes of paragraph (d) of this section, the term *rebate* means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (d)(1) of this section over the rebates previously made.

(e) *No delinquency penalty if fraud assessed.* If any penalty is assessed under paragraph (b) or (c) of this section (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 of the Internal Revenue Code (relating to failure to file such return or pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(f) *Failure to pay stamp tax.* Any person who willfully fails to pay any tax which is payable by stamp or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(g) *Additional penalty.* For additional penalty for failure to pay certain liquor and tobacco taxes, see 27 CFR 70.102.

(26 U.S.C. 6653)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–353, 59 FR 2522, Jan. 18, 1994]

§ 70.98 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the provisions of 26 U.S.C. enforced and administered by the Bureau or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under 26 U.S.C. 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be:

(1) For penalties assessed before October 22, 1986, 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(2) For penalties assessed after October 21, 1986, on deposits of taxes required to be made before January 1, 1990, 10 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(3) For deposits of taxes required to be made after December 31, 1989.

(i) 2 percent of the amount of the underpayment if the failure is for not more than 5 days,

(ii) 5 percent of the amount of the underpayment if the failure is for more than 5 days but not more than 15 days,

(iii) 10 percent of the amount of the underpayment if the failure is for more than 15 days,

(iv) 15 percent of the amount of the underpayment if the tax is not deposited before the earlier of:

(A) The day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

(B) The day on which notice and demand for immediate payment is given under 26 U.S.C. 6862 or the last sentence of 26 U.S.C. 6331(a).

For purposes of this section, the term ''underpayment'' means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.* To show that the underpayment was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the appropriate ATF officer. If the appropriate ATF officer determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

(26 U.S.C. 6656)

[T.D. ATF–251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF–301, 55 FR 47615, Nov. 14, 1990; T.D. ATF–353, 59 FR 2523, Jan. 18, 1994]

§ 70.100 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal revenue tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, that person shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the appropriate ATF officer.

(26 U.S.C. 7304)

[T.D. ATF–301, 55 FR 47615, Nov. 14, 1990]

§ 70.101 Bad checks.

If any check or money order in payment of any amount receivable under Title 26 of the United States Code is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person establishes to the satisfaction of the appropriate ATF officer that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47615, Nov. 14, 1990]

§ 70.102 Coordination with title 11.

(a) *Certain failures to pay tax.* No addition to the tax shall be made under section 6651 of the Internal Revenue Code for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) If such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee and

(i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) *Exception for collected taxes.* Paragraph (a) of this section shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(26 U.S.C. 6658)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.103 Failure to pay tax.

Whoever fails to pay any tax imposed by Part I of Subchapter A of Chapter 51 of the Internal Revenue Code (liquor taxes) or by Chapter 52 (tobacco taxes) at the time prescribed shall, in addition to any other penalty provided in the Internal Revenue Code, be liable to

a penalty of 5 percent of the tax due but unpaid. For additional penalties for failure to pay tax, see 27 CFR 70.97.

(26 U.S.C. 5684(a) and 5761(b))

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

Assessable Penalties

§ 70.111 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by Subchapter B, Chapter 68, of the Internal Revenue Code shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Internal Revenue Code to ''tax'' imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by Subchapter B of Chapter 68.

(b) *Person defined.* For purposes of Subchapter B of Chapter 68 of the Internal Revenue Code, the term ''person'' includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(26 U.S.C. 6671)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.112 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 of the Internal Revenue Code applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653 of the Internal Revenue Code, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

(26 U.S.C. 6672)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.113 Penalty for failure to supply taxpayer identification number.

(a) *In general.* Except as provided in paragraph (b) of this section, any person who is required by the regulations under section 6109 of the Internal Revenue Code to include the taxpayer identification number in any return, statement, or other document, fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $50 for each such failure, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000. For returns having a due date (determined without regard to extensions) after December 31, 1986, the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If any person who is required by the regulations under section 6109 of the Internal Revenue Code to supply a taxpayer identification number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the appropriate ATF officer that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(c) *Persons required to supply taxpayer identification numbers.* For regulations under section 6109 of the Internal Revenue Code relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

(26 U.S.C. 6723)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47615, Nov. 14, 1990]

§ 70.114 Penalties for aiding and abetting understatement of tax liability.

(a) *Imposition of penalty*. Any person—(1) Who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws,

(2) Who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) Who knows that such portion (if so used) will result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under paragraph (b).

(b) *Amount of penalty*—(1) *General*. Except as provided in paragraph (b)(2) of this section, the amount of the penalty imposed by paragraph (a) of this section shall be $1,000.

(2) *Corporations*. If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) of this section shall be $10,000.

(3) *Only one penalty per person per period*. If any person is subject to a penalty under paragraph (a) of this section with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under paragraph (a) of this section with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) *Activities of subordinates*—(1) *General*. For purpose of paragraph (a) of this section, the term ''procures'' includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term ''subordinate'' means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge*. Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance*. For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties*. The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

ABATEMENTS, CREDITS AND REFUNDS

Procedure in General

§ 70.121 Amounts treated as overpayments.

(a) The term *overpayment* includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.122 Authority to make credits or refunds.

The appropriate ATF officer, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall

be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the appropriate ATF officer.

(26 U.S.C. 6402)

[T.D. ATF–301, 55 FR 47615, Nov. 14, 1990]

§ 70.123 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting evidence, shall be filed with the appropriate ATF officer. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the appropriate ATF officer of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for the refund or credit.

(2) The appropriate ATF officers do not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2635 (5620.8).

(d) *Proof of representative capacity.* If a return is filed by an individual and, after the individuals death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(e) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in paragraph (e)(2) of this section, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing the attorney or agent to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see 31 U.S.C. 3727.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47615, Nov. 14, 1990; T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the appropriate ATF officer determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the appropriate ATF officer may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.123 of this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the appropriate ATF officer fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

§ 70.125 Abatements.

(a) The appropriate ATF officer may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to ATF, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims must be filed with the appropriate ATF officer who made demand for the amount assessed.

(c) The appropriate ATF officer may issue uniform instructions to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1512–0141)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.126 Date of allowance of refund or credit.

The date on which the appropriate ATF officer, first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in §§ 70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990]

RULE OF SPECIAL APPLICATION

§ 70.131 Conditions to allowance.

(a) For regulations under section 6416 of the Internal Revenue Code, see part 53 of this chapter, relating to manufacturers excise taxes on firearms and ammunition.

(b) For regulations under section 6423 of the Internal Revenue Code, see part 29 of this chapter, relating to distilled

spirits, wine, and beer; and part 46 of this chapter, relating to tobacco products, and cigarette papers and tubes.

(26 U.S.C. 6416 and 6423)

[T.D. ATF–331, 57 FR 40328, Sept. 3, 1992, as amended by T.D. ATF–457, 66 FR 32219, June 14, 2001; T.D. ATF–462, 66 FR 42737, Aug. 15, 2001]

LIEN FOR TAXES

SOURCE: Sections 70.141 through 70.151 added by T.D. ATF–301, 55 FR 47616, Nov. 14, 1990, unless otherwise noted.

§ 70.141 Lien for taxes.

If any person liable to pay any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of this section and §§ 70.161 and 70.162 of this part, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(26 U.S.C. 6321)

§ 70.142 Scope of definitions.

Except as otherwise provided by § 70.143 of this part, the definitions provided by §§ 70.143 apply for purposes of § 70.142 through 70.149 and §§ 70.231 through 70.234 of this part.

§ 70.143 Definitions.

(a) *Security interest*—(1) *In general.* The term *security interest* means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists ay any time:

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in paragraph (a)(2) of this section) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in paragraph (a)(3) of this section). For purposes of paragraph (a)(1) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is in existence when the contract is made. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of paragraph (a) of this section, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of § 70.145(a) of this part, a security interest must be in existence within the meaning of paragraph (a) of this section before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* For purposes of paragraph (a) of this section, a security interest is deemed to be protected against a subsequent judgment lien on:

(i) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(ii) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of paragraph (a)(2) of this section, the dates described in paragraphs (a)(2) (i) and (ii) of this section shall be determined without regard to any rule or principle of local law which permits the relation back or the making of any requisite action retroactive to a date earlier than the date on which the action is actually performed. For purposes of paragraph (a) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(3) *Money or money's worth.* For purposes of paragraph (a) of this section,

the term ''money or money's worth'' includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of paragraph (a) of this section, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 70.232(e) of this part.

(b) *Mechanic's lienor.* The term *mechanic's lienor* means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of:

(1) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(2) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(c) *Motor vehicle.* (1) The term *motor vehicle* means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is ''registered for highway use'' at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to the dealer, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term *security* means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term *tax lien filing* means the filing of notice of the lien imposed by 26 U.S.C. 6321 in accordance with § 70.148 of this part.

(f) *Purchaser*—(1) *In general.* The term *purchaser* means a person who, for adequate and full consideration in money or money's worth (as defined in paragraph (f)(3) of this section), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of paragraph (f) of this section, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

(i) A lease of property,

(ii) A written executory contract to purchase or lease property,

(iii) An option to purchase or lease property and any interest therein, or

(iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of paragraph (f) of this section, the term ''adequate and full consideration in money or money's worth'' means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term ''money or money's worth.'' Adequate

and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of an obligation, such as the consideration in an installment purchase contract where the purchaser has not completed the installment payments.

(g) *Judgment lien creditor.* The term *judgment lien creditor* means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If, under local law, levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term ''judgment'' does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

(26 U.S.C. 6323)

§ 70.144 Special rules.

(a) *Actual notice or knowledge.* For purposes of 26 U.S.C. 6321 through 6327, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation:* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by 26 U.S.C. 6321 or 6324. Thus, if a tax lien imposed by 26 U.S.C. 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 70.148 of this part), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on ATF Form 5651.2 ''Notice of Federal Tax Lien Under Internal Revenue Laws.'' The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make a request to the office of the Bureau named on the notice of lien with respect to which the request is made. The request should clearly describe the property

subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

(26 U.S.C. 6323)

§ 70.145 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by 26 U.S.C. 6321 is not valid against any purchaser (as defined in § 70.143(f) of this part), holder of a security interest (as defined in § 70.143(a) of this part), mechanic's lienor (as defined in § 70.143(b) of this part), or judgment lien creditor (as defined in § 70.143(g) of this part) until a notice of lien is filed in accordance with § 70.148 of this part. Except as provided by 26 U.S.C. 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 70.148 of this part, the interest acquired by such person is subject to the lien imposed by 26 U.S.C. 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 70.232, 70.233, and 70.234 of this part, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 70.146 of this part. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by 26 U.S.C. 6321, see § 70.147 of this part. For provisions relating to certain other interests arising after tax lien filing, see § 70.231 of this part.

(26 U.S.C. 6323)

§ 70.146 45-day period for making disbursements.

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.149 of this part, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is:

(a) In property which is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(b) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of paragraph (a) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if the contract has been made by such time. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of paragraph (b) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See § 70.143 (a) and (e) of this part for definitions of the terms ''security interest'' and ''tax lien filing,'' respectively. See § 70.144(a) of this part for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(26 U.S.C. 6323)

§ 70.147 Priority of interest and expenses.

(a) *In general.* If the lien imposed by 26 U.S.C. 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by 26 U.S.C. 6321.

(b) *Collection expenses*. The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of the holder's interest or to collect, by foreclosure or otherwise, the amount due the holder from the property subject to the protected holder's lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens*. The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to the lien or security interest if both the lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of § 70.144(b) of this part, to the rights of the holder of the sales tax lien, the holder of the lien or security interest will also be entitled to any additional protection afforded by 26 U.S.C. 6323(i)(2)

(26 U.S.C. 6323).

§ 70.148 Place for filing notice; form.

(a) *Place for filing*. The notice of lien referred to in § 70.145 of this part shall be filed as follows:

(1) *Under State laws*—(i) *Real property*. In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property*. In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provision of paragraph (b)(2) of this section, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

(2) *With the clerk of the United States district court*. Whenever a State has not

by law designated one office which meets the requirements of paragraph (a)(1) (i) or (ii) of this section, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of paragraph (a)(1)(i) of this section, if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all property located in such State, county or other governmental subdivision. A State has not by law designated one office meeting the requirements of paragraph (a)(1)(ii) of this section, if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by 26 U.S.C. 6321 is deemed situated, under the provision of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (b)(2) of this section, the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form*—(1) *In general.* The notice referred to in § 70.145 of this part shall be filed on ATF Form 5651.2, ''Notice of Federal Tax Lien under Internal Revenue Laws''. Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notices contain a description of the property subject to the lien.

(2) *ATF Form 5651.2 defined.* The term ''ATF Form 5651.2'' generally means a paper form. However, if a State in which a notice referred to in § 70.145 of this part is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium the term ''ATF Form 5651.2'' includes an ATF Form 5651.2 filed by the use of any electronic or magnetic medium permitted by that State. An ATF Form 5651.2 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

(26 U.S.C. 6323)

§ 70.149 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provision of paragraphs (b)(1)(i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence), the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* Except as provided below, if the appropriate ATF officer fails to refile a notice of lien in the manner described in paragraphs (b)

and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the appropriate ATF officer to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period. However, if a suit or levy referred to in the preceding sentence is dismissed or released, respectively, and property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Bureau may nevertheless file a new lien either on the prescribed form for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of 26 U.S.C. 6323(f) and § 70.148 of this part and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien*—(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only:

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of 26 U.S.C. 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under paragraph (a)(1)(i) of this section is completed, the Bureau receives written information (in the manner described in paragraph (b)(2) of this section) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with 26 U.S.C. 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located in the District of Columbia or outside the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of 26 U.S.C. 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in paragraph (b)(1)(ii) of this section, more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Paragraph (b)(1)(ii) of this section is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under paragraph (b)(l)(i) of this section is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* For purposes of this section, a notice of change of a taxpayer's residence will be effective only if it:

(A) Is received, in writing, from the taxpayer or the taxpayer's representative by the appropriate ATF officer who filed the original notice of lien.

(B) Relates to an unpaid tax liability of the taxpayer, and

(C) States the taxpayer's name and the address of the taxpayer's new residence.

Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. A return or amended return filed by the taxpayer with the Bureau which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of the taxpayer's new residence, and the taxpayer's identifying number required by 26 U.S.C. 6109 is sufficient notice under this paragraph.

(ii) *Other rules applicable.* Except as provided in paragraph (b)(2)(i) of this section, no communication (either written or oral) to the Bureau will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Bureau has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Bureau without reference to the provisions of 26 U.S.C. 7502.

(c) *Required refiling period.* For the purpose of this section, the term ''required refiling period'' means:

(1) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(2) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(26 U.S.C. 6323)

§ 70.150 Release of lien or discharge of property.

(a) *Release of lien.* An appropriate ATF officer is charged with releasing liens or discharging property from liens. The appropriate ATF officer must issue a certificate of release of a lien imposed with respect to any tax imposed by a provision of 26 U.S.C. enforced and administered by the Bureau, not later than 30 days after the day on which either:

(1) The appropriate ATF officer finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the appropriate ATF officer.

(2) The appropriate ATF officer is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof and any expenses to which the Government has been put in the matter), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the appropriate ATF officer and the taxpayer. For provisions relating to bonds, see 26 U.S.C. 7101 and 7102 and §§ 70.281 and 70.282 of this part.

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if the Bureau determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(2) *Part payment; interest of United States valueless—(i) Part payment.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if there is paid over to the Bureau in partial satisfaction of the liability secured by the lien an amount determined by the Bureau to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the appropriate ATF officer will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The appropriate ATF officer may, in that official's discretion, issue a certificate of discharge of any part of the property subject to the lien if the Bureau determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this paragraph (b)(2), in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the appropriate ATF officer shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the appropriate ATF officer may, in that official's discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if such part of the property is sold and, pursuant to a written agreement with the appropriate ATF officer, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(c) *Subordination of lien*—(1) *By payment of the amount subordinated.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if there is paid over to the appropriate ATF officer an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to the appropriate ATF officer after an application for a certificate of subordination is approved, the appropriate ATF officer will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if the appropriate ATF officer believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to lien and will facilitate the ultimate collection of the tax liability.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(d) *Nonattachment of lien.* If the appropriate ATF officer determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 70.148 of this part refers to such person, the appropriate ATF officer may issue a certificate of nonattachment. Such certificate shall state that

the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(e) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in paragraphs (e) (2) and (3) of this section, if a certificate is issued under 26 U.S.C. 6325 by the appropriate ATF officer and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect:

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (c) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (d) of this section, the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment*—(i) *In general.* If the appropriate ATF officer determines that either:

(A) A certificate of release or a certificate of nonattachment of the general tax lien imposed by 26 U.S.C. 6321 was issued erroneously or improvidently, or

(B) A certificate of release of such lien was issued in connection with a compromise agreement under 26 U.S.C. 7122 which has been breached,and if the period of limitation on collection after assessment of the tax liability has not expired, the appropriate ATF officer may revoke the certificate and reinstate the tax lien.

(ii) *Method of revocation and reinstatement.* The revocation and reinstatement described in paragraph (e)(2)(i) of this section is accomplished by:

(A) Mailing notice of the revocation to the taxpayer at the taxpayer's last known address, and

(B) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(A) *Effective date.* A tax lien reinstated in accordance with the provisions of this paragraph (e)(2) is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of paragraph (e)(2)(ii)(A) of this section, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of paragraph (e)(2)(ii)(B) of this section, if the filing is required by reason of the fact that a notice of the lien had been filed.

(B) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by 26 U.S.C. 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the liability is satisfied or until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 70.145 of this part until notice of the reinstated lien has been filed in accordance with the provisions of § 70.148 of this part subsequent to or concurrent with the time the reinstated lien became effective.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of 26 U.S.C. subtitle F, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a

Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(f) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by 26 U.S.C. 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(26 U.S.C. 6325)

[T.D. ATF–301, 55 FR 47616, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.151 Administrative appeal of the erroneous filing of notice of Federal tax lien.

(a) *In general.* Any person may appeal to the officer who filed the Federal tax lien on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying tax liability that led to the imposition of a lien.

(b) *Certificate of Release.* If the officer who filed the lien determines that the filing of the notice of any lien was erroneous that officer shall expeditiously, and to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(c) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of Federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or

(3) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of Federal tax lien.

(d) *Notice of Federal tax lien that lists multiple liabilities.* When a notice of Federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of Federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the officer who filed the Federal tax lien shall issue a certificate of release with respect to such liabilities.

(e) *Procedures for appeal*—(1) *Manner.* An appeal of the filing of notice of Federal tax lien shall be made in writing to the officer who filed the lien.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of Federal tax lien;

(ii) A copy of the notice of Federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of Federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (f) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the identity of the court, the district in which the bankruptcy petition was filed, a docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of Federal tax lien shall be made within 1

year after the taxpayer becomes aware of the erroneously filed tax lien.

(f) *Proof of full payment.* As used in paragraph (e)(2)(iii)(A) of this section, the term ''proof of full payment'' means:

(1) A Bureau of Alcohol, Tobacco and Firearms receipt reflecting full payment of the tax liability in question prior to the date the Federal tax lien was filed;

(2) A cancelled check payable to the Bureau of Alcohol, Tobacco and Firearms in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the officer who filed the lien.

(g) *Exception.* Whenever necessary to protect the interests of the government, an appropriate ATF officer other than the officer who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(h) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of Federal tax lien.

[T.D. ATF–316, 56 FR 55079, Oct. 24, 1991]

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

§ 70.161 Levy and distraint.

(a) *Authority to levy*—(1) *In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the appropriate ATF officer who initiated the assessment may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in § 70.162(a) of this part. The appropriate ATF officer may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The appropriate ATF officer may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax. For exemption of certain property from levy, see 26 U.S.C. 6334 and §§ 70.241 through 70.245 of this part. For exemption of certain property from levy, see 26 U.S.C. 6334 and §§ 70.241 through 70.245 of this part. As used in 26 U.S.C. 6331 and this section, the term ''tax'' includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see 26 U.S.C. 6323(i)(2) and § 70.144 of this part concerning the subrogation rights of certain transferees. Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. Except as provided in § 70.162(c) of this part with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the appropriate ATF officer until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made. For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made, including interest thereon to the date of surrender. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the appropriate ATF officer finds that the collection of any tax is in jeopardy, that officer may make notice and demand for immediate payment of such tax and, upon

failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in 26 U.S.C. 6331(a) or the 30-day period provided in 26 U.S.C. 6331(d).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation*—(i) *Federal employees.* Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this paragraph, the term ''employer'' means:

(A) The officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or

(B) Any other officer or employee designated by the head of the branch, department, or agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made.

If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the appropriate ATF officer of the name and address of each officer or employee so designated and the scope or extent of the authority of such designee.

(ii) *State and municipal employees.* Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See 26 U.S.C. 6334(c).

(5) *Noncompetent Indians.* Solely for purposes of 26 U.S.C. 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the appropriate ATF officer may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by 26 U.S.C. 6321 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

(c) *Service of notice of levy by mail.* A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certified or registered mail, return receipt requested, the date of delivery on the receipt is treated as the

date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may upon written notice to the appropriate ATF officer, have all notices of levy by mail sent to one designated ofice. After such a notice is received by the appropriate ATF officer, notices of levy by mail will sent to the designated office until a written notice withdrawing the request or a written notice designating a difference office is received by the appropriate ATF officer.

(26 U.S.C. 6331 and 6332)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973,as amended by T.D. ATF–450, 66 FR 29026, May 29, 2001]

§ 70.162 Levy and distraint on salary and wages.

(a) *Notice of intent to levy*. Levy may be made for any unpaid tax only after the appropriate ATF officer has notified the taxpayer in writing of the intent to levy. The notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or be sent by certified or registered mail to the taxpayer's last known address, no less than 30 days before the day of levy. The notice of intent to levy is in addition to, and may be given at the same time as, the notice and demand described in § 70.161 of this part.

(b) *Jeopardy*. Paragraph (a) of this section does not apply to a levy if the appropriate ATF officer has made a finding under § 70.161(a)(2) of this part that the collection of tax is in jeopardy.

(c) *Continuing effect of levy on salary or wages*. A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is released under 26 U.S.C. 6343 and § 70.167 of this part. For this purpose, the term ''salary or wages''includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. The levy attaches to both salary or wages earned but not yet paid at the time of the levy, and salary or wages earned and becoming payable (or paid in the form of an advance) subsequent to the date of the levy, until the levy is released pursuant to paragraph (d) of this section. In general, salaries or wages that are the subject of a continuing levy, if not exempt from levy under 26 U.S.C. 6334(a) (8) or (9), become payable to the officer who made the levy as the payor would otherwise be obligated to pay over the money to the taxpayer. For example, if the wage earner is paid on the Wednesday following the close of each workweek, a levy made upon the taxpayer's employer on any Monday would reach both the wages due for the prior workweek and the wages for succeeding workweeks as such wages become payable. In such a case the levy would be satisfied if the employer, on the first Wednesday after the levy and on each Wednesday thereafter, pays over to the officer who made the levy wages which would otherwise be paid to the employee on such Wednesday, until the employer receives a notice of release from levy described in paragraph (d) of this section. See, however, § 70.245(d) of this part for rules which permit a delayed payment to the officer who made the levy in certain cases where amounts payable to the taxpayer are exempt from levy under 26 U.S.C. 6334 (a)(9) and (d).

(d) *Release and notice of release from levy*. The officer who made the levy will promptly release a continuing levy on salary or wages when the conditions of 26 U.S.C. 6343 are met. The officer who made the levy will also promptly notify the person upon whom the levy was made that it has been released.

(26 U.S.C. 6331)

§ 70.163 Surrender of property subject to levy.

(a) *Requirement*—(1) *In general*. Except as otherwise provided in 26 U.S.C. 6332, relating to levy in the case of banks or life insurance and endowment contracts, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the officer who made the levy, surrender the property or rights (or discharge the obligation) to the officer who made the levy, except that part of the property or rights (or

obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Property held by banks.* (i) Any bank shall surrender any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(ii) Notwithstanding paragraph (a)(1) of this section, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), an appropriate ATF officer shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that such officer intends to reach such deposits. The notice of levy must not specify that such officer intends to reach such deposits unless that officer making such levy believes:

(A) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(B) That the taxpayer is not within the jurisdiction of a U.S. court a the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau.

(b) *Enforcement of levy*—(1) *Extent of personal liability.* Any person who, upon demand of the appropriate ATF officer, fails or refuses to surrender any property or right to property subject to levy is liable in his/her own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interests. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under 26 U.S.C. 6221 from the date of the levy, or, in the case of a continuing levy on salary or wages (see 26 U.S.C. 6331(e)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in paragraph (b)(1) of this section, any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under 26 U.S.C. 6332(d)(2). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the appropriate ATF officer, surrenders the property or rights to property, or discharges the obligation, to that officer, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer with respect to the property or rights to property arising from the surrender or payment. If an insuring organization satisfies a levy with respect to a life insurance or endowment contract in accordance with § 70.164 of this part, the insuring organization is discharged from any obligation or liability to any beneficiaries of the contract arising from

the surrender or payment. Also, it is discharged from any obligation or liability to the insured or other owner. Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in 26 U.S.C. 6343(b) or may bring suit to recover the property under 26 U.S.C. 7426.

(d) *Person defined.* In addition to the definition given in § 70.11 of this part, the term ''person,'' as used in 26 U.S.C.A 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term ''person'' includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see § 70.161(a)(4)(i) of this part.

(26 U.S.C. 6332)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–450, 66 FR 29026, May 29, 2001]

§ 70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of § 70.163 of this part which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy*—(1) *In general.* A notice of levy served by a appropriate ATF officer on an insuring organization with respect to a life insurance or endowment contract issued by the organization shall constitute:

(i) A demand by the officer who made the levy for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(ii) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

It is unnecessary for the official who made the levy to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the official who made the levy that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at that person's last known address. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) *Notification of amount subject to levy*—(i) *Full payment before the 90th day.* In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the officer who filed the notice of levy will promptly give the insuring organization written notification that the levy is released.

(ii) *Notification after the 90th day.* In the event that notification is not given under paragraph (b)(2)(i) of this section, the officer who filed the notice of levy will, promptly following the 90th

day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has been any change in the status of the accounts.

(c) *Satisfaction of levy.* The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the officer who made the levy the amount which the person against whom the tax is assessed could have had advanced by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the orginzation has actual notice or knowledge, within the meaning of 26 U.S.C. 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the appropriate ATF officer by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount determined in accordance with the provisions of this section, subject to the levy, shall be paid to the appropriate ATF officer by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see 26 U.S.C. 6323(b)(9)(C) and § 70.231(i) of this part concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract. If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the appropriate ATF officer by the insuring organization in satisfaction of the levy shall be an amount computed in accordance with the provisions of this subparagraph substituting the date of termination of the policy or the date of death for the 90th day.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of the person's unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to 26 U.S.C. 6332(b), see 26 U.S.C. 6323(b)(9) and § 70.231(i) of this part.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see 26 U.S.C. 6325(b) and § 70.150(b) of this part.

(26 U.S.C. 6332)

§ 70.165 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody

or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the appropriate ATF officer who has made or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§ 70.167 Authority to release levy and return property.

(a) *Release of levy*—(1) *Authority*. An appropriate ATF officer may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (a)(2), (3) and (4) of this section. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as an appropriate ATF officer may require and if the appropriate ATF officer determines that such action will facilitate the collection of the liability.

(2) *Conditions for mandatory release*. (i) An appropriate ATF officer shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (an appropriate ATF officer is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States).

(D) An appropriate ATF officer has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the appropriate ATF officer shall provide for an expedited determination under paragraph (a)(2)(i) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release*. An appropriate ATF officer may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement*. The delinquent taxpayer offers a satisfactory arrangement, which is accepted by an appropriate ATF officer, for placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(ii) *Bond*. The delinquent taxpayer delivers an acceptable bond to an appropriate ATF officer conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and § 70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property*. There is paid to an appropriate ATF officer an amount determined by ATF to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages*. The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to an appropriate ATF officer amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with an appropriate ATF officer, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations*. The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and § 70.224 of this part.

(4) Release where value of interest of United States is insufficient to meet expenses of sale. An appropriate ATF officer may release the levy as authorized under paragraph (a)(1) of this section if that officer determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property*—(1) *General rule*. If an appropriate ATF officer determines that property has been wrongfully levied upon, the appropriate ATF officer may return:

(i) The specific property levied upon,

(ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date ATF receives the money to a date not more than 30 days before the date of return), or

(iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the appropriate ATF officer before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property*. A written request for the return of property wrongfully levied upon shall be addressed to the officer who authorized the levy. The written request shall contain the following information:

(i) The name and address of the person submitting the request,

(ii) A detailed description of the property levied upon,

(iii) A description of the claimant's basis for claiming an interest in the property levied upon, and

(iv) The name and address of the taxpayer, the originating ATF office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request*. A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the officer who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the officer who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–450, 66 FR 29026, May 29, 2001]

§ 70.168 Redemption of property.

(a) *Before sale*. Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the appropriate ATF officer at any time prior to the sale of the property. Upon such payment the appropriate ATF officer shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period*. The owner of any real estate sold as provided in 26 U.S.C. 6335, the owner's heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) *Price*. Such property or tract of property may be redeemed upon payment to the purchaser, or in case the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the appropriate ATF officer, for the use of the purchaser, the purchaser's heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record*. When any real property is redeemed, the appropriate ATF officer must cause entry of the fact to be made upon the record of sale kept in accordance with 26 U.S.C. 6340 and § 70.187 of this part, and such entry is evidence of such redemption. The party who redeems the property must notify the appropriate ATF officer of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(26 U.S.C. 6337)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–450, 66 FR 29026, May 29, 2001]

§ 70.169 Expense of levy and sale.

The appropriate ATF officer shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the appropriate ATF officer shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§ 70.170 Application of proceeds of levy.

(a) *Collection of liability*. Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale*. First, against the expenses of the proceedings or sale, including expenses allowable under 26 U.S.C. 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property*. If the property seized and sold is subject to a tax imposed by any provision of 26 U.S.C. which has not been paid, the amount remaining after applying paragraph (a)(1) of this section, shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed):

(3) *Liability of delinquent taxpayer*. The amount, if any, remaining after applying paragraphs (a)(1) and (2) of this section, shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds*. Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof

in support thereof, be credited or refunded by the appropriate ATF officer to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

(26 U.S.C. 6342)

DISPOSITION OF PROPERTY

SOURCE: Sections 70.181 through 70.188 added by T.D. ATF–301, 55 FR 47627, Nov. 14, 1990, unless otherwise noted.

§ 70.181 Disposition of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the appropriate ATF officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business, if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the appropriate ATF officer shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at the owner's usual place of abode or business if located. If the owner cannot be readily located, or has no dwelling or place of business, the notice may be mailed to the owner's last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the appropriate ATF officer may cause public notice of the sale to be given in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The appropriate ATF officer may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in paragraph (b)(1) of this section, when the appropriate ATF officer believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in 26 U.S.C. 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless 26 U.S.C. 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of sale of property seized by levy shall be as follows:

(1) *Time and place of sale*—(i) *In general.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under 26 U.S.C. 6335(b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the appropriate ATF officer under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, the appropriate ATF officer may order that the sale be held in

such other place. The sale shall be held at the time and place stated in the notice of sale.

(ii) *Right to request sale of seized property within 60 days.* The owner of any property seized by levy may request that the appropriate ATF officer sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The appropriate ATF officer shall comply with such request unless it is determined (and the owner is notified within such period) that such compliance would not be in the best interests of the United States.

(2) *Adjournment of sale.* When it appears to the appropriate ATF officer that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the appropriate ATF officer may adjourn the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* (i) Before the sale of property seized by levy, the appropriate ATF officer shall determine:

(A) A minimum price, taking into account the expenses of levy and sale, for which the property shall be sold, and

(B) Whether the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared to be sold to the highest bidder. If no person offers for such property at the sale the amount of the minimum price and the appropriate ATF officer has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price. If, at the sale, the property is not declared sold to the highest bidder or the United States, the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released to the owner under these circumstances shall remain subject to any lien imposed by 26 U.S.C. chapter 64, subchapter C.

(ii) The appropriate ATF officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property*—(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the appropriate ATF officer by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see 26 U.S.C. 6342(b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale:

(A) As separate items, or

(B) As groups of items, or

(C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The appropriate ATF officer shall select whichever of the foregoing methods of offering the property for sale as is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale ''as is'' and ''where is'' and without recourse against the

United States. No guaranty or warranty, express or implied, shall be made by the appropriate ATF officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment*. The property shall be offered for sale upon whichever of the following terms is fixed by the appropriate ATF officer in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(B) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale*. The appropriate ATF officer shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(A) *Invitation to bidders*. Bids shall be solicited through a public notice of sale.

(B) *Form for use by bidders*. A bid shall be submitted on a form which will be furnished by the appropriate ATF officer upon request. The form shall be completed in accordance with the instructions thereon.

(C) *Remittance with bid*. If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if the bid is $200 or less. If the highest alternative bid submitted is more than $200, the bidder shall remit 20 percent of the highest alternative bid or $200, whichever is greater.) Such remittance shall be by 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 by a U.S. postal, bank, express, or telegraph money order.

(D) *Time for receiving and opening bids*. Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice or sale, or at the time fixed in the announcement of the adjournment of the sale.

(E) *Consideration of bids*. The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in paragraph (c)(4)(ii) of this section. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(F) *Withdrawal of bids*. A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price*. All payments for property sold under this section shall be made by cash or by 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 by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property*. Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment*. If payment in full is required upon acceptance of the bid and is not then and there paid, the officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in 26 U.S.C. 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the appropriate ATF officer, the sale may be declared by the appropriate ATF officer to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in 26 U.S.C. 6335(b), (c), and (e) and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsover, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(26 U.S.C. 6335)

[T.D. ATF–301, 55 FR 47627, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29025, May 29, 2001]

§ 70.182 Disposition of personal property acquired by the United States.

(a) *Sale*—(1) *In general*. Any personal property (except bonds, notes, checks, and other securities) acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the appropriate ATF officer who acquired such property for the United States. United States saving bonds shall not be sold by the appropriate ATF officer, but shall be transferred to the appropriate office of the Treasury Department for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the appropriate ATF officer.

(2) *Time, place, manner and terms of sale*. The time, place, manner and terms of sale of personal property acquired for the United States shall be as follows:

(i) *Time, notice, and place of sale*. The property may be sold at any time after it has been acquired by the United States. A public notice of sale shall be

posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the appropriate ATF officer may use such other methods of advertising as such officer believes will result in obtaining the highest price for the property. Generally, the place of sale will be within the area where the property was originally acquired by the United States. However, if the appropriate ATF officer believes that a substantially higher price may be obtained, the sale may be held outside such area.

(ii) *Rejection of bids and adjournment of sale*. The officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with paragraph (a)(2)(i) of this section.

(iii) *Liquidated damages*. The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(3) *Agreement to bid*. The appropriate ATF officer may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the appropriate ATF officer may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment*. The property shall be offered for sale upon whichever of the following terms is fixed by the appropriate ATF officer in the public notice of sale:

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale*. The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(6) *Sales under sealed bids*. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders*. Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders*. A bid shall be submitted on a form which will be furnished by the appropriate ATF officer upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid*. If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by 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 by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids*. Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the officer

conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by 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 by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (a)(5) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of the purchaser's bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid is full or the sale in declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections and there shall be rendered by the appropriate ATF officer a distinct account of all charges incurred in such sale. For additional accounting rules, see 26 U.S.C. 7809.

(26 U.S.C. 7505)

[T.D. ATF–301, 55 FR 47627, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29027, May 29, 2001]

§ 70.183 Administration and disposition of real estate acquired by the United States.

(a) *Persons charged with.* The appropriate ATF officer shall have charge of all real estate which has been or shall be assigned, set off, or otherwise conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under provisions of 26 U.S.C. enforced and administered by the Bureau or which has been or shall be vested in the United States by mortgage, or other security for payment of such debts, or which has been redeemed by the United States, or which has been or shall be acquired by the United States for payment of or as security for

debts arising under provisions of 26 U.S.C. enforced and administered by the Bureau, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale*. The appropriate ATF officer may sell any real estate owned or held by the United States as aforesaid, subject to the following rules:

(1) *Property purchased at sale under levy*. If the property was acquired as a result of being declared purchased for the United States at a sale under 26 U.S.C. 6335, relating to sale of seized property, the property shall not be sold until after the expiration of 180 days after such sale under levy.

(2) *Notice of sale*. A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of sale. In addition, the appropriate ATF officer may use other methods of advertising and of giving notice of the sale if the appropriate ATF officer believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale*. The time of the sale shall be not less than 20 days from the date of giving public notice of sale under paragraph (b)(2) of this section. The place of sale shall be within the county where the property is situated. However, if the appropriate ATF officer believes a substantially better price may be obtained, the sale may be held outside such county.

(4) *Rejection of bids and adjournment of sale*. The officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with paragraph (b)(2) of this section.

(5) *Liquidated damages*. The notice shall state whether, in the cae of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(6) *Agreement to bid*. The appropriate ATF officer may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the appropriate ATF officer may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms*. The property shall be offered for sale upon whichever of the following terms is fixed by the appropriate ATF officer in the public notice of sale:

(i) Payments in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale*. The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(9) *Sales under sealed bids*. The following rules, in addition to the other rules provided in this paragraph (b), shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders*. Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders*. A bid shall be submitted on a form which will be furnished by the appropriate ATF officer upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by 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 by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bid.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by 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 by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (b)(8) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the appropriate ATF officer shall execute a quitclaim deed to the purchaser.

(c) *Lease.* Until real estate is sold, the appropriate ATF officer may lease such property.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of 1 percent per month), to the United States within 2 years from the date of the acquisition of such real estate, the appropriate ATF officer may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to the debtor's heirs or other legal representatives. If property is declared purchased by the United States under 26 U.S.C. 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.* The appropriate ATF officer shall, in accordance with 26 U.S.C. 7809, account for the proceeds of all sales or leases of the property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of appropriate ATF officer.* Notwithstanding the other paragraphs of this section, the appropriate ATF officer may, when such officer deems it advisable, take charge of, and assume responsibility for, any real estate to which this section is applicable. In such case, such officer will notify in writing the appropriate ATF officer from whom he or she is taking charge and assuming responsibility. Also, in any case where a single parcel of real estate is situated in an area in which more than one officer has jurisdiction, the appropriate ATF officer may designate in writing one officer who is to be in charge of, and responsible for, the entire property.

(26 U.S.C. 7506)

[T.D. ATF–301, 55 FR 47627, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29027, May 29, 2001]

§ 70.184 Disposition of perishable goods.

(a) *Appraisal of certain seized property.* If the appropriate ATF officer determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, the appropriate ATF officer shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the appropriate ATF officer shall give the owner written notice of the appropriate ATF officer's determination of the appraised value of the property. However, if the appropriate ATF officer determines that the circumstances require immediate action, the appropriate ATF officer may give the owner an oral notice of the determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner:

(1) Pays to the appropriate ATF officer an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by 26 U.S.C. 7101 and § 70.281 of this part. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the appropriate ATF officer determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the appropriate ATF officer shall as soon as practicable make public sale of the property in accordance with the following terms and conditions:

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to the owner. A notice of sale also shall be posted in two public places in the county which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The appropriate ATF officer may give such other notice and in such other manner as the appropriate ATF officer deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the higher bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made by cash, or by 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 by a U.S. postal, bank, express, or telegraph money order.

(26 U.S.C. 6336)

§ 70.185 Certificate of sale; deed of real property.

(a) *Certificate of sale.* In the case of property sold as provided in 26 U.S.C. 6335 (relating to sale of seized property), the appropriate ATF officer shall give to the puchaser's a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the

same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property*. In case of any real property sold as provided in 26 U.S.C. 6335 and not redeemed in the manner and within the time prescribed in 26 U.S.C. 6337, the appropriate ATF officer shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States*. If real property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335, the appropriate ATF officer shall at the proper time execute a deed therefor and shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

(26 U.S.C. 6338)

§ 70.186 Legal effect of certificate of sale of personal property and deed of real property.

(a) *Certificate of sale of property other than real property*. In all cases of sale pursuant to 26 U.S.C. 6335 of property (other than real property), the certificate of such sale.

(1) *As evidence*. Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of the officer's proceedings in making the sale; and

(2) *As conveyance*. Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock*. If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts*. If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle*. If such property consists of a motor vehicle, shall be notice, when received, to any public officer charged with the registration of title to motor vehicles, of such tranfer and shall be authority to such officer to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property*. In the case of the sale of real property pursuant to 26 U.S.C. 6335:

(1) *Deed as evidence*. The deed of sale given pursuant to 26 U.S.C. 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title*. If the proceedings of the appropriate ATF officer as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) *Effect of junior encumbrances*. A certificate of sale of personal property given or a deed to real property executed pursuant to 26 U.S.C. 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the appropriate ATF officer executes a deed to the real property to a purhcaser thereof at a sale pursuant to 26 U.S.C. 6335 following the seizure of the property by the United States. The proceeds of such a sale are distributed in accordance with priority of the liens, encumbrances, or titles. *See* 26 U.S.C. 6342(b) and 7426(a)(2) and

§§ 70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§ 70.187 Records of sale.

(a) *Requirement.* Each appropriate ATF officer shall make a record of all sales under 26 U.S.C. 6335 of real property situated within his or her jurisdiction and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The orginal record shall be retained by the appropriate ATF officer.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the appropriate ATF officer shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

[T.D. ATF–301, 55 FR 47627, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29027, May 29, 2001]

§ 70.188 Expense of levy and sale.

The appropriate ATF officer shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the appropriate ATF officer shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

JUDICIAL PROCEEDINGS

Civil Action by the United States

SOURCE: Sections 70.191 through 70.193 added by T.D. ATF–301, 55 FR 47633, Nov. 14, 1990.

§ 70.191 Authorization.

(a) *In general.* A civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) will be commenced when the appropriate ATF officer, directs that the action be commenced.

(b) *Property held by banks.* The appropriate ATF officer shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the appropriate ATF officer believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

[T.D. ATF–301, 55 FR 47633, Nov. 14, 1990, as amended by 66 FR 29027, May 29, 2001]

§ 70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.* In any case where there has been a refusal or neglect to pay any tax (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the appropriate ATF officer, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the appropriate ATF officer during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.* If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

[T.D. ATF–301, 55 FR 47633, Nov. 14, 1990, as amended by 66 FR 29027, May 29, 2001]

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties

SOURCE: Sections 70.202 through 70.213 added by T.D. ATF–301, 55 FR 47634, Nov. 14, 1990.

§ 70.202 Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or suit. The provisions of 28 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(26 U.S.C. 7424)

§ 70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.* A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 28 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 28 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings*—(1) *In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a

judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the palce provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

(26 U.S.C. 7425(a))

§ 70.204 Discharge of liens; nonjudicial sales.

(a) *In general.* Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

(1) An instrument creating a lien on the property sold.

(2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a ''nonjudicial sale.'' The term ''nonjudicial sale'' includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under 26 U.S.C. 7425(b)(1), if a notice of lien is filed in accordance with 26 U.S.C. 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale and the appropriate ATF officer is not given notice of the sale (in the manner prescribed in § 70.205 of this part), the sale shall be made subject to and without disturbing the lien or title of the United States. Under 26 U.S.C. 7425(b)(2)(C), in any case in which notice of the sale is given to the appropriate ATF officer not less than 25 days prior to the date of sale (in the manner prescribed in 26 U.S.C. 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate ATF officer. However, under the provisions of 26 U.S.C. 6325(b) and § 70.150 of this part, designated officers may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and § 70.206 of this part.

(26 U.S.C. 7425(b))

§ 70.205 Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 70.204(b) of this part), to the appropriate ATF officer. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the appropriate ATF officer, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled forclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where noitce of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the appropriate ATF officer in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the appropriate ATF officer consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the appropriate ATF officer

may, in that officer's discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the appropriate ATF officer may require. However, the appropriate ATF officer may not consent to a sale of property under this section after the date of sale, as determined under § 70.204(b) of this part. For provisions relating to releasing a lien or discharging property subject to a tax lien, *see* 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Application for consent.* Any person desiring the appropriate ATF officer's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the appropriate ATF officer a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a noitice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods*—(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the appropriate ATF officer. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last days falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the appropriate ATF officer asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the appropriate ATF officer of the postponement. For provisions relating to releasing a lien or discharging property subject to a tax lien, see 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term ''perishable goods'' means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Forfeiture of land sales contract.* For purposes of paragraph (a) of this section, a nonjudicial sale of property includes any forfeiture of a land sales contract.

(e) *Content of notice of sale*—(1) *In general.* With respect to a noitice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (ATF Form 5651.2) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:

(A) The initiating office named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold the following information:

(A) A detailed description, including location of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of proposed sale of the property, and

(C) In case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the appropriate ATF officer. If the appropriate ATF officer determines that the notice is inadequate, that officer will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the appropriate ATF officer may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the appropriate ATF officer gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the appropriate ATF officer may, in that officer's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the appropriate ATF officer that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the appropriate ATF officer with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the appropriate ATF officer. The acknowledgment by the appropriate ATF officer will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The appropriate ATF officer is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of tis section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this information should submit to the appropriate ATF officer a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

[T.D. ATF–301, 55 FR 47634, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29027, May 29, 2001]

§ 70.206 Discharge of liens; redemption by United States.

(a) *Right to redeem*—(1) *In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the appropriate

ATF officer may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under 26 U.S.C. 7425(d) even though a consent to the sale has been made under 26 U.S.C. 7425(c)(2) and § 70.205(b) of this part. For purposes of this section, the term ''nonjudicial sale'' shall have the same meaning as used in § 70.204(a) of this part.

(2) *Redemption period.* For purposes of this section, the redemption period shall be:

(i) The period beginning with the date of the sale (as determined under § 70.204(b)) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later.

Which ever period is applicable, 26 U.S.C. 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from tax lien (whether by reason of local law or the provisions of 26 U.S.C. 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Bureau is not entitled to a notice of sale under 26 U.S.C. 7425(b) and § 70.205 of this part, the United States does not have a right of redemption under 26 U.S.C. 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid*—(1) *In general.* In any case in which an appropriate ATF officer exercises the right to redeem real property under 26 U.S.C. 7425(d), the amount to be paid is the sum of the following amounts:

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under § 70.204(b) of this part) to the date of redemption;

(iii) The amount, if any, equal to the excess of the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and the purchaser's successor in interest, if any) over the income from such property realized by the purchaser (and the purchaser's successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or the purchaser's successor in interest or is rented at less than its reasonable rental value); and

(iv) The amounts, if any, of a payment made by the purchaser or the purchaser's successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by the purchaser at the sale. For purposes of this paragraph, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of:

(A) The amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and

(B) Any additional amount bid and paid at the sale.

For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by the purchaser is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentences, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due the holder, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived the holder's right to a deficiency judgment prior to the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser*. (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under paragraph (b)(3) of this section. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the appropriate ATF officer may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or the purchaser's successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or the purchaser's successor in interest furnishes the written itemized statement within 15 days after the request is made by the

appropriate ATF officer, it shall be presumed that no amount is payable for expenses in excess of income and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or the purchaser's successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the appropriate ATF officer, or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the appropriate ATF officer of a written itemized statement submitted by the purchaser or the purchaser's successor in interest or the resolution of the disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or the purchaser's successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States shall include the amount of a payment made by the purchaser or the purchaser's successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or the purchaser's successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the appropriate ATF officer shall, in any case where a redemption is contemplated, send notice to the purchaser (or the purchaser's successor in interest of record) by certified or registered mail or hand delivery of the right under paragraph (b)(4) of this section to request reimbursement (payable in the event the right to redeem under 26 U.S.C. 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the appropriate ATF officer is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of:

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the appropriate ATF officer, and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, an appropriate ATF officer may, in that official's discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or the purchaser's successor in interest on account of a payment made to a senior lienor if the right to redeem under 26 U.S.C. 7425(d) is exercised. A waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or

a request for reimbursement is withdrawn, the appropriate ATF officer shall, by certified or registered mail or hand delivery, return to the purchaser or the purchaser's successor any waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the appropriate ATF officer sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request of 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or the purchaser's successor and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in paragraph (b)(4) of this section may, in the discretion of the appropriate ATF officer, be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(c) *Certificate of redemption*—(1) *In general*. If an appropriate ATF officer exercises the right of redemption of the United States described in paragraph (a) of this section, the appropriate ATF officer shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law, or if the officer designated by local law fails to issue the necessary documents, the appropriate ATF officer is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing*. The appropriate ATF officer shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the appropriate ATF officer to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the appropriate ATF officer and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the appropriate ATF officer shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption*. A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the appropriate ATF officer redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes the title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the appropriate ATF officer shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) Application for release of right of redemption. Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in 26 U.S.C. 7425(b) and § 70.204 of this part, which real property is subject to the right of redemption of the United States described in this section, the appropriate ATF officer may, in that officer's discretion, release the

right of redemption with respect to the property. The application for the release must be submitted in writing to an appropriate ATF officer and must contain such information as the appropriate ATF officer may require. If the appropriate ATF officer determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

(26 U.S.C. 7425(d))

[T.D. ATF–301, 55 FR 47634, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29027, May 29, 2001]

§ 70.207 Civil actions by persons other than taxpayers.

(a) *Actions permitted*—(1) *Wrongful levy*. If a levy has been made on property, or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim:

(i) That the person has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(2) *Surplus proceeds*. If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon the claim that the person:

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) Is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds*. Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in 26 U.S.C. 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by 26 U.S.C. 7426(b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication*—(1) *Wrongful levy*. If the court determines that property has been wrongfully levied upon, the court may:

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date that the officer who made the levy receives the money wrongfully levied upon to the date of payment of such judgment, or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to 26 U.S.C. 6335(e) or the amount received by the United States from the resale of such property), or the fair market value of such property immediately before the levy, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date of the sale of the property to the date of payment of such judgment.

For purposes of paragraph (b)(1) of this section, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if the levy is upon property exempt from levy under 26 U.S.C. 6334, or the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under 26 U.S.C. 6323 or 6324(a)(2) or (b), or the levy or sale pursuant to

levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a senior lien upon the taxpayer's property under certain circumstances although legal rights to enforce the holder's interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of the holder's interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: The nature of the property, the number of purchasers, the value of each unit sold or to be sold, whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Surplus proceeds.* If the court determines that the interest or lien of any party to an action under 26 U.S.C. 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term ''surplus proceeds'' means property remaining after application of the provisions of 26 U.S.C. 6342(a).

(3) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in 26 U.S.C. 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(26 U.S.C. 7426)

§ 70.208 Review of jeopardy assessment or jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under 26 U.S.C. 6862 or when a levy is made less than 30 days after the notice and demand described in 26 U.S.C 6331(a), the officer who authorized the assessment or levy shall provide the taxpayer a written statement setting forth the information upon which that official relies in authorizing such assessment or levy.

(26 U.S.C. 7429(a)(1))

§ 70.209 Review of jeopardy assessment or levy procedures; administrative review.

(a) *Request for administrative review.* Any request for the review of a jeopardy assessment or levy provided for by 26 U.S.C. 7429(a)(2) shall be filed with the officer who authorized the assessment or levy, within 30 days after the statement described in § 70.208 of this part is given to the taxpayer. However, if no statement is given within the 5-day period described in § 70.208, any request for review of the jeopardy assessment shall be filed within 35 days after the date the assessment is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the reviewing officer to make the redetermination described in 26 U.S.C. 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment or levy is reasonable and the amount assessed appropriate, the reviewing officer shall take into account not only information available at the time the assessment is made but also information which subsequenbtly becomes available.

(26 U.S.C. 7429(a)(2))

§ 70.210 Review of jeopardy assessment or levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in 26 U.S.C. 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of:

(1) The date of the reviewing officer notifies the taxpayer of the determination described in 26 U.S.C. 7429(a)(3); or

(2) The 16th day after the request described in 26 U.S.C. 7429(a)(2) was made by the taxpayer; and ending on the 90th day thereafter.

(b) Extension of the period for judicial review. The U.S. Government may not seek an extension of the 20-day period described in 26 U.S.C. 7429(b)(2), but it may join with the taxpayer in seeking such an extension.

(26 U.S.C. 7429)

§ 70.213 Repayments to officers or employees.

The appropriate ATF officer is authorized to repay to any officer or employee of the Bureau the full amount of such sums of money as may be recovered against such officer or employee in any court for any taxes imposed under provisions of 26 U.S.C. enforced and administered by the Bureau collected by such officer or employee with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the Bureau in any suit brought against such officer or employee by reason of anything done in the official performance of duties under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7423)

LIMITATIONS

Limitations on Assessment and Collection

§ 70.221 Period of limitations upon assessment.

(a) The amount of any tax imposed by the Internal Revenue Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b) of the Internal Revenue Code. In the case of taxes payable by stamps, assessment shall be made at any time after the tax becomes due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) and (c) of section 6501 of the Internal Revenue Code.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

(26 U.S.C. 6501)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.222 Time return deemed filed for purposes of determining limitations.

(a) *Early Return*. Any return filed prior to the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns executed by appropriate ATF officers*. The execution of a return by an appropriate ATF officer under the authority of section 6020(b) of the Internal Revenue Code does not start the running of the statutory period of limitations on assessment and collection.

(26 U.S.C. 6501)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990; T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.223 Exceptions to general period of limitations on assessment and collection.

(a) *False return*. In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax*. In the case of a willful attempt in any manner to defeat or evade any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return*. In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun

without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.* The time prescribed by 26 U.S.C. 6501 for the assessment of any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the appropriate ATF officer. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(26 U.S.C. 6501)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47641, Nov. 14, 1990; T.D. ATF–331, 57 FR 40328, Sept. 3, 1992]

§ 70.224 Collection after assessment.

(a) *Length of period*—(1) *General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be made, within 10 years after the assessment thereof.

(2) *Extension by agreement.* (i) The 10-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the appropriate ATF officer. Whenever necessary to protect the revenue, such officer may also execute a written agreement with the taxpayer to extend the period of limitation. The extension becomes effective upon execution of the agreement by both the taxpayer and such officer.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of 26 U.S.C. 6343. An extension under this paragraph has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of paragraph (a)(1) of this section may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in 26 U.S.C. 6335(a) is given.

(26 U.S.C. 6502)

[T.D. ATF–301, 55 FR 47641, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.225 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where all or substantially all of the assets of a taxpayer are in the control or custody of the court in any proceeding before any court of the United States, or any State of the United States, or the District of Columbia, the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 is suspended with respect to the outstanding amount due on the assessment for the period such assets are in the control or custody of the court, and for 6 months thereafter.

(26 U.S.C. 6503)

[T.D. ATF–301, 55 FR 47642, Nov. 14, 1990]

§ 70.226 Suspension of running of period of limitation; taxpayer outside of United States.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to

collection after assessment) is suspended for the period during which the taxpayer is absent from the United States if such period is a continuous period of absence from the United States extending for 6 months or more. In a case where the running of the period of limitations has been suspended under the first sentence of this paragraph and at the time of the taxpayer's return to the United States the period of limitations would expire before the expiration of 6 months from the date of the taxpayer's return, the period of limitations shall not expire until after 6 months from the date of the taxpayer's return. The taxpayer will be deemed to be absent from the United States for purposes of this section if the taxpayer is generally and substantially absent from the United States, even though the taxpayer makes casual temporary visits during the period.

(26 U.S.C. 6503)

[T.D. ATF–301, 55 FR 47642, Nov. 14, 1990]

§ 70.227 Suspension of running of period of limitation; wrongful seizure of property of third party.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) shall be suspended for a period equal to a period beginning on the date property (including money) is wrongfully seized or received by an appropriate ATF officer and ending on the date 30 days after the date on which the appropriate ATF officer returns the property pursuant to 26 U.S.C. 6343(b) (relating to authority to return property) or the date 30 days after the date on which a judgment secured pursuant to 26 U.S.C. 7426 (relating to civil actions by persons other than taxpayers) with respect to such property becomes final. The running of the period of limitations on collection after assessment shall be suspended under this section only with respect to the amount of such assessment which is equal to the amount of money or the value of specific property returned.

(26 U.S.C. 6503)

[T.D. ATF–301, 55 FR 47642, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

Limitations on Liens

SOURCE: Sections 70.231 through 70.234 added by T.D. ATF–301, 55 FR 47642, Nov. 14, 1990, unless otherwise noted.

§ 70.231 Protection for certain interests even though notice filed.

(a) *Securities*. Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security (as defined in § 70.143(d) of this part) against:

(1) A purchaser (as defined in § 70.143(f) of this part) of the security who at the time of purchase did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien;

(2) A holder of a security interest (as defined in § 70.143(a) of this part) in the security who did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth (as defined in § 70.143(a) of this part); or

(3) A transferee of an interest protected under paragraph (a) (1) or (2) of this section to the same extent the lien is invalid against the transferor to the transferee. For purposes of this paragraph, no person can improve that person's position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(b) *Motor vehicles*—(1) *In general*. Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of a motor vehicle (as defined in § 70.143(c) of this part) if:

(i) At the time of purchase, the purchaser did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, the purchaser has acquired actual possession of the motor

vehicle and has not thereafter relinquished actual possession to the seller or seller's agent.

(2) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by 26 U.S.C. 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of tangible personal property purchased at a retail sale (as defined in paragraph (c)(2) of this section) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(2) *Definition of retail sale.* For purposes of paragraph (c) of this section, the term ''retail sale'' means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of household goods, personal effects, or other tangible personal property of a type described in § 70.241 of this part (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $250 (excluding interest and expenses described in § 70.147 of this part). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in § 70.144(a) of this part):

(i) Of the existence of the tax lien, or

(ii) That the sale is one of a series of sales.

For purposes of paragraph (d)(2)(ii) of this section, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of the seller's household goods, personal effects, and other tangible personal property described in § 70.241 of this part.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile mechanic the right to retain possession of an automobile the mechanic has repaired as security for payment of the repair bill and the mechanic retains continuous possession of the automobile until such lien is satisfied, a tax lien filed in accordance with 26 U.S.C 6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the mechanic undertook the work or that the mechanic knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against the holder

of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of:

(1) A tax of general application levied by any taxing authority based upon the value of the property, or

(2) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(3) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements.* Even though a notice of lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a mechanic's lienor (as defined in § 70.143(b) of this part) who holds a lien for the repair or improvement of a personal residence if:

(1) The residence is occupied by the owner and contains no more than four dwelling units, and

(2) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 70.147 of this part) is not more than $1,000. For purposes of this paragraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes the work or that the contractor knew of the lien before undertaking the work.

(h) *Attorney's liens*—(1) *In general.* Even though notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's service for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes the work or that the attorney knows of the tax lien before undertaking the work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In case of suits against the taxpayer, see § 70.150(d)(2) of this part for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to:

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with 26 U.S.C. 6402.

(i) *Certain insurance contracts.* Even though a notice of a lien imposed by 26 U.S.C. 6321 (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time:

(1) Before the insuring organization has actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the tax lien.

(2) After the insuring organization has actual notice or knowledge of the lien (as defined in § 70.144(a) of this part) with respect to advances (including contractual interest thereon as provided in § 70.147(a) of this part) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(3) After the satisfaction of a levy pursuant to 26 U.S.C. 6332(b), unless and until the appropriate ATF officer delivers to the insuring organization a notice (for example, another notice of levy, a letter, *etc.*), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in paragraph (i)(3) of this section may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(j) *Passbook loans*—(1) *In general*. Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an institution described in 26 U.S.C. 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in paragraph (j)(2) of this section) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook*. For purposes of paragraph (j) of this section, the term ''passbook'' includes:

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(26 U.S.C. 6323)

§ 70.232 Protection for commercial transactions financing agreements.

(a) *In general*. Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing.

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms ''security interest'' and ''tax lien filing,'' respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Commercial transactions financing agreement*. For purposes of this section, the term ''commercial transactions financing agreement'' means a written agreement entered into by a person in the course of such person's trade or business:

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of the taxpayer's trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary

course of the taxpayer's trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before the 46th day after the date of tax lien filing or the time when the lender or purchaser has actual notice or knowledge (as defined in § 70.144(a) of this part) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of its customers, the manufacturer is considered to engage in such financing in the course of its trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of the disbursement made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*—(1) *In general*. The term ''commercial financing security'' means:

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in paragraph (c)(2) of this section),

(iii) Mortgages on real property, and

(iv) Inventory.

For purposes of this subparagraph, the term ''paper of a kind ordinarily arising in commercial transactions'' in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in paragraph (c)(2) of this section), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term ''commercial financing security'' does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term ''commercial financing security'' does not include a mortgage when the taxpayer is the mortgagor of realty owned by the taxpayer. For purposes of this subparagraph, the term ''inventory'' includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) *Definitions*. For purposes of §§ 70.143 and 70.146 of this part, and this section:

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property*. For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before the lender received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper,

documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when the taxpayer obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to the taxpayer. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Indentifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term ''proceeds'' includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term ''identifiable proceeds'' does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(26 U.S.C. 6323)

§ 70.233 Protection for real property construction or improvement financing agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is on qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See § 70.143 (a) and (e) of this part for general definitions of the terms ''security interest'' and ''tax lien filing.'' For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term ''real property construction or improvement financing agreement'' means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

(1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;

(2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or

(3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of paragraphs (b) (1) and (2) of this section, construction or improvement may include demolition. For purposes of any agreement described in paragraph (b)(3) of this section, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term ''qualified property'' includes only:

(1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;

(2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or

(3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

(26 U.S.C. 6323)

§ 70.234 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms ''security interest'' and ''tax lien filing.'' For purposes of this section, a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Obligatory disbursement agreement.* For purposes of this section, the term ''obligatory disbursement agreement'' means a written agreement, entered into by a person in the course of the person's trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes the obligation other than in the course of the endorser's trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term ''qualified property,'' for purposes of this section, means property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term ''qualified property'' shall be treated as also including:

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(26 U.S.C. 6323)

Limitations on Levies

SOURCE: Sections 70.241 through 70.245 added by T.D. ATF–301, 55 FR 47646, Nov. 14, 1990, unless otherwise noted.

§ 70.241 Property exempt from levy.

(a) *Enumeration.* There shall be exempt from levy:

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of the taxpayer's family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of the taxpayer's family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $1,650 in value. For purposes of this provision, an individual who is the only remaining member of a family and who lives alone is not the head of a family.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $1,100 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to that individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(6) *Certain annuity and pension payments.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. chapter 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. chapter 11), special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under 10 U.S.C. chapter 73.

(7) *Workmen's compensation.* Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the day of levy, to contribute to the support of such taxpayer's minor children, so much of the taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The appropriate ATF officer is not required to release a levy until such time as that officer is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The appropriate ATF officer may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the appropriate ATF officer. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the appropriate ATF officer be allocated entirely to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income.

(9) *Minimum exemption for wages, salary, and other income.* Amounts payable to or received by the taxpayer as wages or salary for personal services, or as other income, to the extent provided in §§ 70.242 through 70.245 of this part.

(10) *Certain service-connected disability payments.* Any amount payable to an individual as a service-connected (within the meaning of 38 U.S.C. 101(16)) disability benefit under:

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in § 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.* The ATF officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

§ 70.242 Wages, salary and other income.

(a) *In general.* Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section described the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the taxpayer (paragraph (c) of this section). Section 70.243 of this part describes the sum which will be exempt from levy for each of the taxpayer's payroll periods. Payroll periods are described in § 70.244 of this part. Amounts exempt from levy are determined in part by the number of persons claimed by the taxpayer as dependents. Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the appropriate ATF officer.

(b) *Eligible taxpayer income.* Only wages, salary or other income payable to the taxpayer after the levy is made on the payor may be exempt from levy under 26 U.S.C. 6334 (a)(9). No amount of wages, salary or other income which is paid to the taxpayer before levy is made on the payor will be so exempt from levy.

(c) *Payment of exempt amounts to taxpayer*—(1) *From wages, salary or other income not subject to levy.* In the case of a taxpayer who has more than one source of wages, salary or other income, the appropriate ATF officer may elect to levy on only one or more such source while leaving other sources of salary or other income free from levy. If those wages, salary or other income which the appropriate ATF officer leaves free from levy equal or exceed the amount to which the taxpayer is entitled as an exemption from levy under 26 U.S.C. 6334(a)(9) and (d) and § 70.243 of this part (and ar not otherwise exempt), then no amount of the taxpayer's wages, salary or other income on which the appropriate ATF officer elects to levy is exempt from levy. The appropriate ATF officer shall notify the employer or other person subject to levy that no amount of the

taxpayer's wages, salary or other income is exempt from levy.

(2) *From wages, salary or other income subject to levy*. If the taxpayer's income upon which the appropriate ATF officer does not levy is less than that amount to which the taxpayer is entitled as an exemption, then an amount determined pursuant to § 70.243 of this part is to be paid to the taxpayer from those wages, salary or other income which are subject to levy. The appropriate ATF officer will designate those wages, salary or other income subject to levy from which such amount will be paid to the taxpayer. The appropriate ATF officer will generally make this designation by delivering to the employer, or other person levied upon, the form upon which the taxpayer is to claim any dependent exemption. The form will acompany the notice of levy. The person receiving the form from the appropriate ATF officer must promptly deliver it to the taxpayer. In the case of some employers having a large number of employees, however, the appropriate ATF officer will send the form upon which an employee is to claim any dependent exemption diretly to the employee. In such a case, the notice of levy will indicate that the form for claiming dependent exemptions has been sent to the taxpayer. If a notice of levy is not accompanied by the form for claiming dependent exemptions and does not indicate that the form was sent directly to the taxpayer, then the person levied upon must make payment to the appropriate ATF officer without regard to amounts prescribed by § 70.243 of this part as exempt from levy. If a notice of levy is accompanied by the form for claiming dependent exemptions or indicates that the form was sent directly to the taxpayer, then the person levied upon is to pay over to the taxpayer, amounts determined to be exempt from levy pursuant to § 70.243 and § 70.245 (b) and (c) of this part (relating to the requirement that the taxpayer submit a claim for any dependent exemption). Amounts not exempt from levy are to be paid to the appropriate ATF officer in accordance with the terms of the levy.

(26 U.S.C. 6334)

§ 70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each payroll period described in § 70.244 of this part are exempt from levy as follows:

(a) If the payroll period is weekly, an amount equal to:

(1) The sum of:

(i) The standard deduction, and

(ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by

(2) 52.

(b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

§ 70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

(a) *Regularly used calendar periods*. In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, biweekly, semimonthly, or monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis*. In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current payment becomes payable to him or her. However, in any case in which:

(1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and

(2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-time payment (*see* paragraph (c) of this section).

(c) *Nonrecurrent payments*. In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (*i.e.*, the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

§ 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the appropriate ATF officer.

(a) *General*. Unless advised by the appropriate ATF officer that no part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in § 70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status*. Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

(1) Completion of the form provided for this purpose by the Bureau, or

(2) A written statement that:

(i) Gives the taxpayer's filing status for income tax purposes,

(ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,

(iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,

(iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) *Time for submission of statement*. The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

(1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or

(2) If the appropriate ATF officer delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (see § 70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term ''day'' does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based upon the information properly verified therein, if payment to the Chief, Tax Processing Center in accordance with the levy is not thereby delayed.

(d) *Payment of amounts not exempt form levy to the appropriate ATF officer*—(1) *In General*. Wages, Salary, or other income the subject of a levy are payable to the appropriate ATF officer on the date the payor is otherwise obligated to pay the taxpayer (*see* § 70.242(c) of this part).

(2) *Delayed payment in certain cases*. If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy , are payable to the appropriate ATF officer on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this section. For purposes of this rule, the term ''day'' does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

Periods of Limitation in Judicial Proceedings

§ 70.251 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by an appropriate ATF officer, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2–year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by an appropriate officer.

(c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2–year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2–year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 monthes from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47648, Nov. 14, 1990]

§ 70.252 Periods of limitaion on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.* No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and

§ 70.207 of this part relating to civil actions by persons other than taxpayers, shall be begun after the expiration of 9 months from the date of levy or agreement under 26 U.S.C. 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed.* The 9-month period described in 26 U.S.C. 6532(c)(1) and paragraph (a) of this section shall be extended to the shorter of

(1) 12 months from the date of filing by a third party of a written request under § 70.167(b)(2) of this part for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the appropriate ATF officer to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under § 70.167(b)(3) of this part, is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(26 U.S.C. 6532)

[T.D. ATF–301, 55 FR 47648, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

Limitations on Credit or Refund

§ 70.261 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) and (c) of section 6511 of the Internal Revenue Code. For rules as to time return is deemed filed and tax considered paid, see section 6513 of the Internal Revenue Code.

(26 U.S.C. 6511)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.262 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* In the case of any tax (other than a tax payable by stamp):

(1) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If a return was filed, and a claim is filed after the 3 year period described in paragraph (b)(1) of this section, but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(3) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(4) If no claim is filed, the amount of the credit or refund allowed or made shall not exceed the amount that would have been allowable under the preceding subparagraphs if a claim had been filed on the date the credit or refund is allowed.

(c) *In the case of a tax payable by stamp.* (1) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(2) If no claim is filed, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(26 U.S.C. 6511)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47648, Nov. 14, 1990; T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.263 Special rules applicable in case of extension of time by agreement.

(a) *Scope*. If, within the period prescribed in section 6511(a) of the Internal Revenue Code for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501(c)(4) of the Internal Revenue Code, the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed*. Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501(c)(4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded*. (1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement*. The agreement referred to in this section shall become effective when signed by the taxpayer and the appropriate ATF officer.

(26 U.S.C. 6511)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.264 Time return deemed filed and tax considered paid.

For purposes of section 6511 of the Internal Revenue Code, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b) (2) and (c), payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(26 U.S.C. 6513)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.265 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 of the Internal Revenue Code for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period, suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405 of the Internal Revenue Code.

(26 U.S.C. 6514)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.266 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

(26 U.S.C. 6514)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

TRANSFEREES

§ 70.271 Procedure in the case of transferred assets.

(a) *Method of collection.* (1) The liability, at law or in equity, of a transferee of property of any person liable in respect of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of 26 U.S.C. 368(a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(2) *Applicable provisions.* The provisions of 26 U.S.C. made applicable by 26 U.S.C. 6901(a) to the liability of a transferee referred to in paragraph (a)(1) of this section, include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection; and

(iii) The prohibition of claims and suits for refund.

For detailed provisions relating to assessments, collections, and refunds, see 26 U.S.C. chapters 63, 64, and 65, respectively.

(b) *Definition of transferee.* As used in this section, the term ''transferee'' includes the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in 26 U.S.C. 368, and all other classes of distributees.

(c) *Period of limitations on assessment.* The period of limitations for assessment of the liability of a transferee is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, 1 year after the expiration of the period of limitations for assessment against the transferor.

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, 1 year after the expiration of the period of limitations for assessment against the preceding transferee, or 3 years after the expiration of the period of limitations for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in paragraph (c)(1) or (2) of this section, (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within 1 year after the return of execution in such proceeding.

(d) *Extension by agreement*—(1) *Extension of time for assessment.* The time prescribed by 26 U.S.C. 6901 for the assessment of the liability of a transferee may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee and the appropriate ATF officer. The extension shall become effective when the agreement has been executed by both parties. The period

agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of times for credit or refund.* (i) For the purposes of determining the period of limitations on credit or refund to the transferee of overpayments made by such transferee or overpayments made by the taxpayer to which such transferee may be legally entitled to credit or refund, an agreement and any extension thereof referred to in paragraph (d)(1) of this section, shall be deemed an agreement and extension thereof for purposes of 26 U.S.C. 6511(c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in 26 U.S.C. 6511(c)(2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitations for assessment against the taxpayer with reference to whom the liability of such transferee arises, the periods specified in 26 U.S.C. 6511(b)(2) shall be increased by the period from the date of such expiration to the date the agreement is executed.

(e) *Period of assessment against taxpayer.* For the purpose of determining the period of limitations for assessment against a transferee, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitations for assessment against the taxpayer shall be the period that would be in effect had the termination of existence not occurred.

(26 U.S.C. 6901)

[T.D. ATF–301, 55 FR 47648, Nov. 14, 1990]

BONDS

§ 70.281 Form of bond and security required.

(a) *In general.* Any person required to furnish a bond under the provisions of this part shall execute such bond:

(1) On the appropriate form prescribed by the Bureau and

(2) With satisfactory surety.

For provisions as to what will be considered ''satisfactory surety'', see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety*—(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in by 31 U.S.C. 9303.

(2) *Other surety.* Unless otherwise expressly provided in 26 U.S.C. or this part, a bond may, in the discretion of the appropriate ATF officer, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in paragraph (b)(1) of this section, it is:

(i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in paragraph (b)(3) of this section;

(iii) Secured by a mortgage on real or personal property;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express or telegraph money order;

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(vi) Secured by any other acceptable collateral. Collateral shall be deposited with the appropriate ATF officer or, in that officer's discretion, with a responsible financial institution acting as escrow agent.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) The surety must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(ii) The surety must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which the surety offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) The surety must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the officer with whom the bond is filed; and

(v) The surety must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of the security, executed on the appropriate form furnished by the appropriate ATF officer.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety*. No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(26 U.S.C. 7101)

[T.D. ATF–301, 55 FR 47649, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.282 Single bond in lieu of multiple bonds.

In the case of bonds required under this part, a single bond will not be accepted in lieu of two or more bonds.

(26 U.S.C. 7102)

[T.D. ATF–301, 55 FR 47650, Nov. 14, 1990]

MISCELLANEOUS PROVISIONS

SOURCE: Sections 70.301 through 70.306 added by T.D. ATF–301, 55 FR 47650, Nov. 14, 1990, unless otherwise noted.

§ 70.301 Reproduction of returns and other documents.

(a) *In general*. The appropriate ATF officer may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter required under the provisions of 26 U.S.C. enforced and administered by the Bureau, and make reproductions from such films and photoimpressions.

(b) *Safeguards*—(1) *By private contractor*. Any person entering into a contract with the Bureau for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by that person's employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or that person's responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Bureau that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Bureau by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency*. Any Federal agency entering into a contract with the Bureau for the performance of any services described in paragraph (a) of this section, shall treat as confidential

all material processed or reproduced pursuant to such contract.

(3) *Inspection*. The Bureau shall have the right to send its officers and employees into the office and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions*. For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, *see* 26 U.S.C. 7213(c).

(26 U.S.C. 7513)

§ 70.302 Fees and costs for witnesses.

(a) *Introduction*. Title 26 U.S.C. 7610 provides that the Bureau may make payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and § 70.22 of this part. Under 26 U.S.C. 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in 26 U.S.C. 7610 and definitions of other terms used in the regulations under 26 U.S.C. 7610 (a) and (b); and paragraphs (c) and (d) of this section contain rules and rates applicable to payments under 26 U.S.C. 7610.

(b) *Definitions*—(1) *Directly incurred costs*. Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost*. Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs*. Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party*. A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records*. Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs*. Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments*—(1) *Basis for payment*. Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for those costs both directly incurred and reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Bureau employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Bureau, the amount charged to the other person

must be subtracted from the amount the Bureau must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.* (A) For the total amount of personnel time required to locate records or information, $8.50 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under paragraph (c)(2)(i)(A) of this section.

(ii) *Reproduction costs.* (A) For copies of documents $.20 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under paragraph (a)(2)(i)(A) of this section.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under paragraph (c)(2)(i)(A) of this section.

(d) *Appearance fees and allowances*—(1) *In general.* Under 26 U.S.C. 7610(a)(1) and this paragraph, the Bureau shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Bureau employee before whom the person was summoned.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of $30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. An alien who has been paroled into the United States by the Attorney General, under 8 U.S.C. 1182(d)(5)(A), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under 8 U.S.C. 1252(b) to be deportable, shall be ineligible to receive the fees or allowances provided for under 26 U.S.C. 7610(a)(1).

(26 U.S.C. 7610)

§ 70.303 Rules and regulations.

(a) *Issuance.* The Director, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of provisions of 26 U.S.C. enforced and administered by

the Bureau (except where this authority is expressly given by 26 U.S.C. to any other person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to taxes within the Director's jurisdiction.

(b) *Retroactivity*. The Director, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the laws within the Director's jurisdiction shall be applied without retroactive effect. The Director may prescribe the extent, if any, to which any ruling relating to the laws within the Director's jurisdiction, issued by or pursuant to authorization from the Director, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters*. The Director, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of taxes within the Director's jurisdiction.

(26 U.S.C. 7805)

§ 70.304 Place for filing documents other than returns.

(a) If a document, other than a return, is required to be filed with an ATF office, such document may be hand delivered to such office.

(b) For purposes of this section, a return or document will be considered to be hand carried if it is brought to an ATF supervisor of the ATF office by the person required to file the return or other document, or by the person's agent. Examples of persons who will be considered to be agents, for purposes of the preceding sentence, are: Members of the taxpayer's family, an employee of the taxpayer, the taxpayer's attorney, accountant, or tax advisor, and messengers employed by the taxpayer. A return or document will not be considered to be hand carried if it is sent to the Bureau through the U.S. Mail.

(26 U.S.C. 6091)

[T.D. ATF–305, 55 FR 47650, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.305 Timely mailing treated as timely filing.

(a) *General rule*. Title 26 U.S.C. 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Title 26 U.S.C. 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined*. The term *document*, as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau.

(c) *Mailing requirements*. (1) Title 26 U.S.C. 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service, as defined by the postal regulations (39 CFR Part 2). Title 26 U.S.C. 7502 does not apply to

any document which is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of 26 U.S.C. 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see paragraph (c)(2) of this section, with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Postal Service is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document, that the delay in receiving the document was due to a delay in the transmission of the mail, and the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service shall be disregarded, and whether the envelope was mailed in accordance with this section shall be determined solely by applying the rules of paragraph (c)(1)(iii)(A) of this section.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term ''the last date, or the last day of the period, prescribed for filing the document'' includes any extension of time granted for such filing. Except as provided in 26 U.S.C. 5061 for the filing of returns and payment of a tax under 26 U.S.C. subtitle E, when the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday, shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery*. (1) Title 26 U.S.C. 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer or office.

(2) Title 26 U.S.C. 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document.

(e) *Exceptions*. This section shall not apply with respect to:

(1) The filing of a document in, or the making of a payment to, any court,

(2) Currency or other medium of payment unless actually received and accounted for, or

(3) Returns, claims, statements, or other documents, or payments, which are required under any provision of 26 U.S.C. enforced and administered by the Bureau or the regulations thereunder to be delivered by any method other than by mailing.

(26 U.S.C. 5061 and 7503)

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general*. Title 26 U.S.C. 7503 provides that when the last day prescribed under provisions of 26 U.S.C. enforced and administered by the Bureau, for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in the determining of the last day for performance of any act. Title 26 U.S.C. 7503 is not applicable to the filing of returns and payment of tax under 26 U.S.C. subtitle E. Title 26 U.S.C. 7503 is applicable only in case an act is required under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau to be performed on or before a prescribed date or within a prescribed period. Title 26 U.S.C. 7503 applies to acts to be performed by the taxpayer (such as the filing of a claim for credit or refund of tax) and acts to be performed by the appropriate ATF officer, (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax). For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco, and certain other excise taxes, see 26 U.S.C. §§ 5061 and 6302 and the regulations covering the specific commodity.

(b) *Legal holidays*. (1) For the purpose of 26 U.S.C. 7503, the term ''legal holiday'' includes the legal holidays in the District of Columbia. Such legal holidays found in 5 U.S.C. 6103(a), as enacted and made effective by the Act of November 2, 1983 (97 Stat. 917), are:

(i) January 1, New Year's Day,

(ii) Third Monday in January, Birthday of Martin Luther King, Jr.,

(iii) January 20, when such day is Inauguration Day,

(iv) Third Monday in February, Washington's Birthday,

(v) Last Monday in May, Memorial Day,

(vi) July 4, Independence Day,

(vii) First Monday in September, Labor Day,

(viii) Second Monday in October, Columbus Day,

(ix) November 11, Veterans' Day,

(x) Fourth Thursday in November, Thanksgiving Day, and

(xi) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia. For the purpose of 26 U.S.C. 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday.

(2) In the case of any statement or other document required to be filed, or any other act required under the authority of provisions of 26 U.S.C. enforced and administered by the Bureau

to be performed at any office of the Bureau or any other office or agency of the United States, located outside the District of Columbia, but within an ATF region, the term ''legal holiday'' includes, in addition to the legal holidays enumerated in paragraph (b)(1) of this section, any statewide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Bureau or any other office or agency of the United States located in a Territory or possession of the United States, the term ''legal holiday'' includes, in addition to the legal holidays described in paragraph (b)(1) of this section, any legal holiday which is recognized throughout the Territory or possession in which the office is located.

(26 U.S.C. 5061 and 7503)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–365, 60 FR 33674, June 28, 1995; T.D. ATF–450, 66 FR 29028, May 29, 2001]

GENERAL PROVISIONS RELATING TO STAMPS, MARKS OR LABELS

§ 70.311 Authority for establishment, alteration, and distribution of stamps, marks, or labels.

The appropriate ATF officer may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which relates to Subtitle E).

(26 U.S.C. 6801)

[T.D. ATF–251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

REGISTRATION

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register*. Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Internal Revenue Code is required to register with the Bureau of Alcohol, Tobacco and Firearms.

(1) Section 5081 (relating to special tax on proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses);

(2) Section 5091 (relating to special tax on brewers);

(3) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

(4) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer);

(5) Section 5276 (relating to special tax on persons holding permits to procure or use tax-free spirits, to procure, deal in, or use specially denatured spirits, or to recover specially or completely denatured spirits);

(6) Section 5731 (relating to special tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors); or

(7) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration*. The registration required of a person by reason of the person being engaged in a trade or business, in respect of which one of the special taxes listed in paragraph (a) of this section is imposed, shall be accomplished by timely executing and filing, in accordance with the instructions relating thereto, ATF Form 5630.5, Special Tax Registration and Return.

(Approved by the Office of Management and Budget under control number 1512–0472)

(26 U.S.C. 5802, 7011)

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47653, Nov. 14, 1990; T.D. ATF–379, 61 FR 31426, June 20, 1996]]

CRIMES, OTHER OFFENSES AND FORFEITURES

SOURCE: Sections 70.331 through 70.333 added by T.D. ATF–301, 55 FR 47653, Nov. 14, 1990, unless otherwise noted.

§ 70.331 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Bureau any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation) or imprisoned not more than 1 year, or both.

(26 U.S.C. 7207)

§ 70.332 Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Internal Revenue Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Director under provisions of 26 U.S.C. enforced and administered by the Bureau for the collection or payment of any tax imposed thereunder, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(26 U.S.C. 7209)

§ 70.333 Offenses by officers and employees of the United States.

Any officer or employee of the United States acting in connection with any provisions of 26 U.S.C. enforced and administered by the Bureau required to make a written report under the provisions of 26 U.S.C. 7214(a)(8) shall submit such report to the appropriate ATF officer.

(26 U.S.C. 7214)

[T.D. ATF–301, 55 FR 47653, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29028, May 29, 2001]

Subpart E—Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives

SOURCE: T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47653, Nov. 14, 1990.

PROVISIONS RELATING TO DISTILLED SPIRITS, WINES, AND BEER

§ 70.411 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine and beer. Occupational taxes are imposed upon brewers, dealers in liquors, and proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses; on industrial users of tax-free distilled spirits; on dealers, users, and recoverers of specially denatured spirits; and as a prerequisite for drawback under section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with ATF usually by filing notice or application and bond with, and procuring permit from, the appropriate ATF officer. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the ATF are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements

of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants*. Part 19 of title 27 CFR contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), and bottling (including bottling in bond) of distilled spirits. Part 19 also contains the regulations relating to distilled spirits for fuel use and the production of vinegar by the vaporizing process.

(2) *Miscellaneous liquor transactions*. Part 29 of 27 CFR contains miscellaneous regulations relative to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.

(3) [Reserved]

(4) *Gauging of distilled spirits*. Part 30 of title 27 CFR contains the regulations that. prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(5) *Rules of practice in permit proceedings*. Part 71 of title 27 CFR contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation, and annulment of such permits under sections 3 and 4 of the Federal Alcohol Acministration Act (27 U.S.C. 201 *et seq.*), and disapproval, suspension, and revocation of industrial use, operating, withdrawal, and tobacco permits under the Internal Revenue Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to oe determined on the record, after opportunity for hearing, under laws administered by the Bureau of Alcohol, Tobacco and Firearms.

(6) *Basic permit requirements under the Federal Alcohol Administration Act*. 27 CFR part 1, issued pursuant to the Federal Alcohol Administration Act, as amended, contains the requirements relative to the issuance under the Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(7) *Bulk sales and bottling of distilled spirits*. 27 CFR part 3, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(8) *Labeling and advertising of distilled spirits*. 27 CFR part 5, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(9) *American viticultural areas*. Part 9 of title 27 CFR contains the regulations that relate to American viticultural areas. The viticultural areas described in these regulations are approved for use as appellations of origin in accordance with 27 CFR part 4.

(10) *Production and removal of wine*. Part 24 of title 27 CFR contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar

treatment; removals; taxpayment; return of unmerchantable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(11) *Bottling or Packaging of taxpaid wine.* Part 24 of title 27 CFR contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under part 19 of title 27 CFR, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(12) *Nonindustrial use of distilled spirits and wine.* 27 CFR part 2, issued under the Federal Alcohol Administration Act, as amended, specifies what uses of distilled spirits and wine are considered ''nonindustrial,'' as that term is used in section 17 of the Federal Alcohol Administration Act.

(13) *Labeling and advertising of wine.* 27 CFR part 4, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(14) *Establishment and operations of breweries and experimental breweries.* Part 25 of title 27 CFR contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof, and the establishment and operations of experimental breweries.

(15) *Labeling and advertising of malt beverages.* 27 CFR part 7, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt beverages from customs custody, and the issuance of certificates of label approval.

(16) *Liquor dealers.* Part 194 of title 27 CFR contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles; sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records.

(17) *Drawback of tax on spirits used in nonbeverage products.* Part 17 of title 27 CFR contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(18) *Production of volatile fruit-flavor concentrates.* Part 18 of title 27 CFR contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(19) *Tied-House.* 27 CFR part 6, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (b) of section 5 of the Act and provides the exception to these prohibitions. This part applies only to transactions between industry members and retailers.

(20) *Exclusive outlets.* 27 CFR part 8, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (a) of section 5 of the Act. This part applies only to transactions between industry members and retailers.

(21) *Commercial bribery.* 27 CFR part 10, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (c) of section 5 of the Act.

This part applies to transactions between industry members and employees, officers, or representatives of trade buyers.

(22) *Consignment sales.* 27 CFR part 11, issued under the Federal Alcohol Administration Act, as amended, specifies sales arrangements prohibited by subsection (d) of section 5 of the Act and contains guidelines concerning the return of distilled spirits, wines, and malt beverages from a trade buyer. The regulations in this part apply to transactions between industry members and trade buyers.

(23) *Distribution and use of denatured alcohol and rum.* Part 20 of title 27 CFR contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sales, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured alcohol and rum.* Part 21 of title 27 CFR contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the use of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in part 19 of title 27 CFR, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in part 20 of title 27 CFR.

(25) *Distribution and use of tax-free alcohol.* Part 22 of title 27 CFR contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and included requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 26 of title 27 CFR contains the regulations relating to 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 and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands. Regulations respecting spirits produced in Puerto Rico or the Virgin Islands and brought into the United States and transferred from customs custody to internal revenue bond are also contained in this part.

(27) *Importation of liquors.* Part 251 of title 27 CFR contains the substantive and procedural 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, and labeling of containers and packages.

(28) *Exportation of liquors.* Part 252 of title 27 CFR contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, and transfer of distilled spirits and wine for deposit in a customs bonded warehouse, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

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§ 70.412 Excise taxes.

(a) *Collection.* Taxes on distilled spirits, wines, and beer are paid by returns. If the person responsible for paying the taxes has filed a proper bond, such person may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits,

wines, and beer during such semimonthly period. Payment must accompany the return unless required to be made by electronic fund transfer (EFT). If the taxpayer is not qualified to defer taxpayment, or has been placed on a prepayment basis, the taxpayer must prepay the tax on the distilled spirits, wines, or beer. Distilled spirits, wines, and beer tax returns are filed in accordance with the instruction on the return forms, which are furnished to industry members by ATF. Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, manufacturers of nonbeverage products, and industrial users of tax-free distilled spirits; by dealers, users, and recoverers of specially denatured spirits; and by proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses. Detailed information respecting the payment of tax on liquors and the payment of occupational taxes, including the forms to be used and procedures to be followed, is contained in the respective regulations described in § 70.411(c).

(b) *Assessment*. If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising of the basis and amount of the liability and affording the taxpayer an opportunity to submit a protest, with supporting facts, or to request a conference.

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§ 70.413 Claims.

(a) *Claims for remission*. When distilled spirits (including distilling material and denatured spirits), wine, or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, such person may file claim on Form 5620.8 for remission of tax on the quantity that was lost. The appropriate ATF officer may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the appropriate ATF officer makes a factual determination, and notifies the claimant of allowance or rejection of the claim. If the claim is rejected, and circumstances so warrant, the appropriate ATF officer will take appropriate steps to collect the tax.

(b) *Claims for abatement*. When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on ATF Form 5620.8 with the officer who made demand for the tax. Such officer may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, such officer, will initiate action to collect the tax.

(c) *Claims for refund*—(1) *Taxes illegally, erroneously, or excessively collected*. A claim for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the officer who collected the tax. Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and the taxpayer may then bring suit in the U.S. District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the

outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 for refund of tax paid on:

(i) Spirits returned to bonded premises, lost by accident or disaster, or taken as samples by the United States, or

(ii) Wine returned to bond as unmerchantable, or lost by disaster, or

(iii) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. If the claim is allowed, a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a copy of the claim giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 for allowance of loss, credit of tax, or relief from tax liability, as applicable, on

(1) Spirits returned to bonded premises, lost or destroyed on bonded premises, or in transit thereto, or lost by accident or disaster;

(2) Wine lost or destroyed on bonded premises or in transit thereto and unmerchantable domestic wine returned to bond;

(3) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God;

(4) Denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and

(5) Tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment-disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a ''major disaster'' as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

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[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47653, Nov. 14, 1990; T.D. ATF–450, 66 FR 29028, May 29, 2001]

§ 70.414 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 19 of Title 27 CFR. It is not necessary to file a claim for credit of tax on taxpaid samples taken by appropriate ATF officers from distilled spirits plants, as the appropriate ATF officer will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in part 20 of title 27 CFR.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in part 22 of title 27 CFR.

(d) *Wine spirits and wine at bonded wine cellar*. Procedural instructions in respect of claims for:

(1) Remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto,

(2) Allowance of losses of wine in bond, and

(3) Credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in part 24 of title 27 CFR.

(e) *Beer*. Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer returned to a brewery or voluntarily destroyed; or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God are contained in part 25 of title 27 CFR.

(f) *Distilled spirits, wines, or beer for export*. Procedural instructions in respect of claims for:

(1) Drawback of internal revenue tax on distilled spirits, wines, or beer for export, use as supplies on certain vessels or aircraft, or deposit in a foreign-trade zone, or deposit of distilled spirits or wine in a customs bonded warehouse, and

(2) Remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment or free of tax and lost during transportation to the port of export, customs bonded warehouse (distilled spirits and wine only), manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, as applicable, are contained in part 252 of title 27 CFR. Procedural instructions as to claims respecting export with benefit of drawback of tax on domestic distilled spirits products containing spirits from Puerto Rico or the Virgin Islands are contained in parts 19 and 252 of title 27 CFR.

(g) *Miscellaneous*. Procedural instructions are contained in 27 CFR Part 70, subparts F and G in respect of claims for—

(1) Refund or credit of tax on distilled spirits, wines or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Internal Revenue Code.

(2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959.

(h) *Special taxes*. Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in part 194 of title 27 CFR. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within 3 years from the date of payment of the tax.

(i) *Low wines at vinegar plants*. Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in part 19 of title 27 CFR.

(j) *Distilled spirits used in nonbeverage products*. Procedural instructions in respect of claims for drawback of excise tax and claims for refund of special (occupational) tax, submitted by persons using distilled spirits in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes, are contained in part 17 of title 27 CFR.

(k) *Reopening claims*. A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the officer who

originally rejected the claim for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(l) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to the rights extended to such claimant under law and regulations.

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§ 70.415 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 51 and of penalties for violation of the Federal Alcohol Administration Act, is set forth in §§ 70.482 through 70.484.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.416 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the appropriate ATF officer. Applications for such permission to take office must be prepared and filed in accordance with instructions available from the appropriate ATF officer.

[T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.417 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 70.471.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.418 Conferences.

Any person desiring a conference with ATF, relative to any matter arising in connection with such person's operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

[T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.419 Representatives.

Title 31 CFR part 8 is applicable to all representatives of the taxpayer, for any conference with ATF.

[T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.420 Forms.

For forms to be used, *see* § 70.411(c).

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

PROVISIONS RELATING TO TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

§ 70.431 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on tobacco products, and cigarette papers and tubes manufactured in or imported into the United States. Occupational taxes are imposed by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors. Subchapter D of chapter 78 of the Internal Revenue Code imposes a tax (equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture) on tobacco products, and cigarette papers and tubes of Puerto Rican and Virgin Islands manufacture brought into the United States and withdrawn for consumption or sale.

(b) *Regulations.* The procedural requirements with respect to matters relating to tobacco products, and cigarette papers and tubes are contained in the regulations listed below:

(1) Part 71 of title 27 CFR relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Internal Revenue Code.

(2) Part 40 of title 27 CFR relates to the manufacture of tobacco products, the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of tobacco products.

(3) Part 275 of title 27 CFR relates 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 cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

(4) Part 285 of title 27 CFR relates to the manufacture of cigarette papers and tubes, the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of such articles.

(5) Part 44 of title 27 CFR relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of tobacco products, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.

(6) Part 45 of title 27 CFR relates to the removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

(7) Part 46 of title 27 CFR relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:

(i) Limitations imposed by section 6423 of the Internal Revenue Code on the refund or credit of tax paid or collected on tobacco products, and cigarette papers and tubes;

(ii) Losses of tobacco products, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958; and

(iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

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§ 70.432 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by making application for a permit and filing bond and other required documents and obtaining a permit.

(b) *Manufacturers of cigarette papers and tubes.* Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by filing bond and other required documents

(c) *Puerto Rican manufacturers of tobacco products.* Every manufacturer of tobacco products in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Internal Revenue Code on tobacco products of Puerto Rican manufacture coming into the United States must file a bond with the regional director (compliance). Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations,

the full amount of tax computed on the tobacco products which are released for shipment to the United States. No bond is required if the tax is prepaid.

(d) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under part 44 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(e) *Drawback of tax.* Taxpaid tobacco products, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files a claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 70.431. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(f) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 70.431.

[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47654, Nov. 14, 1990; T.D. ATF–450, 66 FR 29029, May 29, 2001; T.D. ATF–464, 66 FR 43480, Aug. 20, 2001]

§ 70.433 Collection of taxes.

(a) *Tobacco products.* Taxes on tobacco products are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, such manufacturer may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if the manufacturer has defaulted in any way in paying the taxes, the manufacturer is required to file a prepayment return prior to removal of such products, and to continue so doing until the appropriate ATF officer finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer in accordance with instructions on the appropriate ATF form. Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the director of customs in accordance with customs procedures and regulations. Taxes on tobacco products imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the director of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on tobacco products manufactured in Puerto Rico and brought into the United States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, such manufacturer may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if such manufacturer has defaulted in any way in payment of taxes, the manufacturer must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer in accordance with instructions on the appropriate ATF form.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a semimonthly return. Such returns, with remittances, are filed in accordance with the instructions on the appropriate ATF form. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the director of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the

United States may be prepaid in Puerto Rico on the basis of a return.

(c) *Special tax.* Special (occupational) taxes are paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors on the basis of a return. Special tax stamps are issued to denote the payment of special (occupational) taxes.

(d) *General.* Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 70.431.

(Approved by the Office of Management and Budget under control number 1512–0472)

[T.D. ATF–251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF–271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47654, Nov. 14, 1990; T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.434 Assessments.

When additional or delinquent tax liability on tobacco products, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer indicating the basis for, and amount of, the liability and affording the taxpayer an opportunity to show cause, in writing, against assessment.

[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990]

§ 70.435 Claims.

(a) *General.* Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim must be filed, and any other limitations or instructions are contained in the applicable regulations referred to in § 70.431.

(b) *Abatement of assessment.* Abatement of the unpaid portion of an 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.

(c) *Allowance of tax.* Relief from the payment of tax on tobacco products, and cigarette papers and tubes may be extended to a manufacturer by approval of a claim for allowance where such articles, after removal from the factory upon determination of tax and prior to the time for 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.

(d) *Remission of tax liability.* Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to a manufacturer or 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 the manufacturer or export warehouse proprietor.

(e) *Refund of tax.* Taxes paid on tobacco products, 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 the manufacturer, importer, or export warehouse proprietor, or withdrawn from the market, may be refunded. Refunds may also be made within certain limitations for overpayments of tax on tobacco products, and cigarette papers and tubes.

(f) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed from the factory or released from customs custody, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a ''major disaster'' as determined by the President of the United States may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. Claims must be filed within 6 months from the date on which the

President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

(g) *Drawback of tax.* Drawback may be allowed to the person who paid the tax on tobacco products, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States.

(h) *Credit of tax.* Taxes paid 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 the manufacturer, or withdrawn from the market, may be credited upon approval of a claim.

(i) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the appropriate ATF officer for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(j) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to rights extended under law and regulations.

[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF–301, 55 FR 47606, 47654, Nov. 14, 1990]

§ 70.436 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 52 is set forth in §§ 70.482 through 70.484.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.437 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 70.471.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.438 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the regulations referred to in § 70.431(b).

[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47653, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29029, May 29, 2001]

PROVISIONS RELATING TO FIREARMS, SHELLS AND CARTRIDGES, AND EXPLOSIVES

§ 70.441 Applicable laws.

(a) Chapter 53 of the Internal Revenue Code (26 U.S.C. 5801–5872), the provisions of which are derived from the National Firearms Act Amendments of 1968 (82 Stat. 1227), imposes a tax on the making and transfer in the United States of machine guns, destructive devices, and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer in, such firearms. Section 1(b) (2) of the act of August 9, 1939 (52 Stat. 1291; 49 U.S.C. 781–788), makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearms with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto.

(b) Title I, State Firearms Control Assistance (18 U.S.C., Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213), as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766) and Pub. L. 99–408 (100 Stat. 920), provides for the licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms, and establishes controls for firearms and ammunition acquisitions and dispositions.

(c) Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449) and Pub. L. 99–360 (100 Stat. 766), provides that no person may ship or transport any firearms or ammunition in interstate or foreign commerce, or receive any firearms or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearms or ammunition in or affecting commerce, who (1) has been convicted of a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), (4) has been adjudicated as a mental defective or has been committed to a mental institution, (5) is an alien illegally or unlawfully in the United States, (6) has been discharged from the Armed Forces under dishonorable conditions, or (7) having been a citizen of the United States, has renounced citizenship.

(d) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and part 47 of this chapter are applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war. The Secretary of the Treasury is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the import of articles enumerated on the U.S. Munitions Import List.

(e) Title XI, Regulation of Explosives (18 U.S.C. chapter 40) of the Organized Crime Control Act of 1970 (84 Stat. 922) provides for the licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives in interstate or foreign commerce, and for issuance of permits for users who buy or transport explosives in interstate or foreign commerce.

(f) Chapter 32 of the Internal Revenue Code (26 U.S.C. 4181), imposes a tax upon the sale by the manufacturer, producer, or importer of pistols, revolvers, firearms (other than pistols and revolvers), and shells and cartridges.

[T.D. ATF–251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF–301, 55 FR 47653, Nov. 14, 1990, as amended by T.D. ATF–331, 57 FR 40328, Sept. 3, 1992]

§ 70.442 Taxes relating to machine guns, destructive devices, and certain other firearms.

Part 179 of title 27 CFR contains the regulations relative to the:

(a) Payment of special (occupational) taxes by manufacturers and importers of and dealers in, machine guns, destructive devices, and certain other types of firearms,

(b) Payment of the tax on the making or transfer of such firearms,

(c) Registration, identification, importation, and exportation of such firearms,

(d) Keeping of books and records and rendering of returns, and

(e) The forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

§ 70.443 Firearms and ammunition.

(a) *Commerce in firearms and ammunition.* (1) 27 CFR part 178 contains the regulations relative to:

(i) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,

(ii) The identification of firearms,

(iii) The acquisition and disposition of firearms and ammunition,

(iv) The records required to be kept by licensees, and

(v) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of the Gun Control Act of 1968, as amended, and also

(vi) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

(b) *Firearms and ammunition excise taxes.* (1) 27 CFR part 53 contains the regulations relative to:

(i) Payment of excise tax on the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges,

(ii) Establishing constructive sales price,

(iii) Registration for tax free sales,

(iv) Keeping of records and rendering of returns, and

(v) The exportation or use in further manufacture of tax-paid articles.

[T.D. ATF–331, 57 FR 40328, Sept. 3, 1992]

§ 70.444 Importation of arms, ammunition, and implements of war.

Part 47 of title 27 CFR implements Executive Order 11958 and supplements the import provisions contained in parts 178 and 179 of title 27 CFR. Part 47 establishes the U.S. Munitions Import List and contains the regulations relative to:

(a) The registration of importers in arms, ammunition, and implements of war,

(b) Import permit requirements,

(c) Import certification and verification,

(d) Import restrictions applicable to certain countries, and

(e) The forfeiture of seized arms, ammunition, and implements of war under the Arms Export Control Act.

§ 70.445 Commerce in explosives.

Part 55 of title 27 CFR contains the regulations relative to:

(a) Licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives,

(b) Permits for users who buy or transport explosives in interstate or foreign commerce,

(c) Construction of different types of storage facilities for three classes of explosive material,

(d) The identification of explosives,

(e) The acquisition and disposition of explosives,

(f) The records required to be kept by licensees and permittees,

(g) The forfeiture and disposition of seized explosive material, under the provision of Title XI of the Organized Crime Control Act of 1970,

(h) Operations by licensees or permittees and hearings procedure after denial or revocation of license or permit, and also

(i) Restrictions regarding the receipt, possession, or transportation of explosives by certain persons under the provisions of Title XI of the Organized Crime Control Act of 1970.

§ 70.446 Rulings.

The procedure for rulings in the firearms and explosives area is set forth in § 70.471.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.447 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the appropriate ATF officer will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the appropriate ATF officer.

[T.D. ATF–301, 55 FR 47654, Nov. 14, 1990]

§ 70.448 Claims.

(a) The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(1) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of ''National Firearms Act'' stamps, are prepared and filed in accordance with the procedures set forth in 27 CFR part 179.

(2) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in § 70.413(b).

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

(b) The procedures applicable to the filing of claims relating to the tax imposed by section 4181 of the Internal Revenue Code are set forth below:

(1) Claims for credit or refund of manufacturers taxes, whether paid pursuant to assessment of voluntarily paid, are prepared and filed in accordance with the procedures set forth in § 70.123 and 27 CFR 53.171 through 53.186. For regulations under section 6416 of the Internal Revenue Code, relating to conditions to allowance and other procedural requirements, see 27 CFR 53.172 through 53.186.

(2) Claims for abatement of manufacturers taxes are to be prepared and filed in accordance with § 70.125.

(3) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

[T.D. ATF–331, 57 FR 40328, Sept. 3, 1992]

§ 70.449 Offers in compromise.

The procedures in the case of offers in compromise of liabilities under 26 U.S.C. 4181 and chapter 53 are set forth in §§ 70.482 and 70.484.

[T.D. ATF–331, 57 FR 40329, Sept. 3, 1992]

SEIZED PROPERTY

§ 70.450 Seizure and forfeiture of personal property.

Part 72 of title 27 CFR contains the regulations relative to the personal property seized by officers of the Bureau of Alcohol, Tobacco and Firearms as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeiture; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National Firearms Act and firearms and ammunition seized under Title I of the Gun Control Act of 1968, as amended. For disposal of firearms under the National Firearms Act, see 26 U.S.C. 5872(b). For disposal of firearms and ammunition under Title I of the Gun Control Act of 1968, see 18 U.S.C. 924(d). For disposal of explosives under Title XI of Organized Crime Control Act of 1970, see 18 U.S.C. 844(c).

POSSESSIONS

§ 70.461 Shipments to the United States.

For regulations under 26 U.S.C. 7652, see 27 CFR part 26 relating to liquors and articles from Puerto Rico and the Virgin Islands; and 27 CFR part 275 relating to cigars, cigarettes, and cigarette papers and tubes.

(68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990, as amended by T.D. ATF–459, 66 FR 38550, July 25, 2001]

§ 70.462 Shipments from the United States.

For regulations under 26 U.S.C. 7653, see 27 CFR part 196 relating to stills; 27 CFR part 252 relating to exportation of liquors; and 27 CFR part 44, relating to exportation of cigars, cigarettes, and cigarette papers and tubes.

(68A Stat. 908, as amended; (26 U.S.C. 7653))

[T.D. ATF–6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF–249, 52 FR 5961, Feb. 27, 1987. Redesignated by T.D. ATF–301, 55 FR 47606, Nov. 14, 1990; T.D. ATF–464, 66 FR 43480, Aug. 20, 2001]

RULINGS

§ 70.471 Rulings.

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with:

(1) Operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act;

(2) Operations or transactions in the tobacco tax area; or

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturer of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976; and the taxes relating to pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges imposed by chapter 32 of the Internal Revenue Code, may request a ruling thereon by addressing a letter to the appropriate ATF official. A ruling can be issued only from Bureau Headquarters unless the issues involved are clearly covered by currently effective rulings or come

within the plain intent of the statutes or regulations.

(b) *Routine requests for information.* Routine requests for information should be addressed to the appropriate ATF officer.

[T.D. ATF–450, 66 FR 29029, May 29, 2001]

ADMINISTRATIVE REMEDIES

§ 70.481 Agreements for payment of liability in installments.

(a) *Authorization of agreements.* The appropriate ATF officer, is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the appropriate ATF officer determines that such agreement will facilitate collection of such liability.

(b) *Extent to which agreements remain in effect*—(1) *In general.* Except as otherwise provided in this paragraph (b), any agreement under paragraph (a) of this section shall remain in effect for the term of the agreement.

(2) *Inadequate information or jeopardy.* The officer who entered into an installment agreement under paragraph (a) of this section may terminate such agreement if:

(i) Information which the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete, or

(ii) The appropriate ATF officer believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) *Subsequent change in financial conditions*—(i) *In general.* If the officer who entered into an installment agreement under paragraph (a) of this section makes a determination that the financial condition of the taxpayer has significantly changed, the officer may alter, modify, or terminate such agreement.

(ii) *Notice.* Action may be taken by the appropriate ATF officer under paragraph (b)(3)(i) of this section only if:

(A) Notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

(B) Such notice includes the reasons why the officer believes a significant change in the financial condition of the taxpayer has occurred.

(4) *Failure to pay an installment or any other tax liability when due or to provide requested financial information.* The officer who entered into an installment agreement under paragraph (a) of this section may alter, modify, or terminate such agreement in the case of the failure of the taxpayer:

(i) To pay an installment at the time such installment payment is due under such agreement,

(ii) To pay any other tax liability at the time such liability is due, or

(iii) To provide a financial condition update as requested by the appropriate ATF officer.

(26 U.S.C. 6159)

[T.D. ATF–301, 55 FR 47655, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C.

(a) *In general.* The appropriate ATF officer may compromise any civil or criminal liability arising under the provisions of 26 U.S.C. enforced and administered by ATF prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. (For compromise of forfeiture liability, see § 70.484 of this part.) Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of 26 U.S.C., or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the

entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* (i) Offers in compromise under this section shall be submitted on ATF Form 5640.1, along with any additional information required by the officer authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such officer.

(ii) The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the proponent is notified of the acceptance or rejection of the offer.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States will not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must 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 any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.* Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of counsel for the Bureau with respect to such compromise, with the reason therefor, and including a statement of:

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the offer in compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty is less than $50,000. However, such compromise shall be subject to continuing quality review by the Secretary.

(f) *Requirement with respect to statute of limitations.* No offer in compromise shall be accepted unless the taxpayer

waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) *Inspection with respect to accepted offers in compromise.* For provisions relating to the inspection of returns and accepted offers in compromise, *see* 26 U.S.C. 6103(k)(l).

(26 U.S.C. 7122)

(Approved by the Office of Management and Budget under control number 1512–0472)

[T.D. ATF–301, 55 FR 47655, Nov. 14, 1990, as amended by T.D. ATF–331, 57 FR 40329, Sept. 3, 1992; T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.483 Offers in compromise of violations of Federal Alcohol Administration Act.

The Federal Alcohol Administration Act provides penalties for violations of its provisions. The appropriate ATF officer is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

[T.D. ATF–450, 66 FR 29029, May 29, 2001]

§ 70.484 Offers in compromise of forfeiture liabilities.

The appropriate ATF officer is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656–E to the appropriate ATF officer. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

[T.D. ATF–301, 55 FR 47655, Nov. 14, 1990, as amended by T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.485 Closing agreements.

(a) *In general.* The appropriate ATF officer may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom the person acts) in respect of any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the appropriate ATF officer that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement*—(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods which ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of

fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements*—(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed with a court of the United States. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Director in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

(26 U.S.C. 7121)

[T.D. ATF–301, 55 FR 47655, Nov. 14, 1990]

§ 70.486 Managerial review.

If at any step in the collection process a taxpayer does not agree with an ATF employee under the authority of the appropriate ATF officer, the taxpayer has the right to discuss the matter with the employee's immediate supervisor. The ATF employee will give the taxpayer the name and telephone number of the person to be contacted.

[T.D. ATF–301, 55 FR 47655, Nov. 14, 1990]

Subpart F—Application of Section 6423, Internal Revenue Code of 1954, as Amended, to Refund or Credit of Tax on Distilled Spirits, Wines, and Beer

SOURCE: T.D. ATF–376, 61 FR 31031, June 19, 1996, unless otherwise noted.

GENERAL

§ 70.501 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.

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.

I.R.C. Internal Revenue Code of 1986, as amended.

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.

Tax. Any tax imposed by 26 U.S.C. 5001–5066, 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 any such sections, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an extraction denominated a ''tax'', and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

§ 70.502 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, or 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.

§ 70.503 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) The claimant or owner 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 the claimant or owner has neither sold nor contracted to sell the articles involved in such claim, such claimant or owner agrees that there will be no such relief or shifting.

§ 70.504 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 such claimant is otherwise legally entitled to credit or refund of the amount claimed, establishes:

(a) That the claimant bore the ultimate burden of the amount claimed, or

(b) That the claimant 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 the claimant the amount claimed for payment of the tax;

(2) The claimant has filed with the appropriate ATF officer 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.

§ 70.505 Requirements on 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 § 70.506, and

(b) Comply with any other provisions of law or regulations which may apply to the claim.

CLAIM PROCEDURE

§ 70.506 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with the instructions on the form. (For provisions relating to handcarried documents, see 27 CFR 70.304). Claims for credit or refund of taxes collected by district directors of customs, to which the provisions of section 6423, I.R.C., are applicable and which Customs regulations (19 CFR Part 24—Customs Financial and Accounting Procedure) require to be filed with the appropriate ATF officer, must be executed and filed in accordance with applicable Customs regulations and this subpart. The claim must set forth each ground upon which the claim is made in sufficient detail to apprise the appropriate ATF officer 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 part of the claim the supporting data required by § 70.507. All evidence relied upon in support of such

claim shall be clearly set forth and submitted with the claim.

[T.D.ATF–376, 61 FR 31031, June 19, 1996, as amended by T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.507 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 70.506 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 the allowance of the refund or credit to the claimant (where the owner of the article in respect of which the tax was paid furnished the claimant the amount claimed for the purpose of paying the tax).

(d) If the claimant (or 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 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 to allowance set forth in § 70.504.

(g) The appropriate ATF officer may require the claimant to furnish as a part of the claim such additional information as may be deemed necessary.

§ 70.508 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.

PENALTIES

§ 70.509 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 G—Losses Resulting From Disaster, Vandalism, or Malicious Mischief

DEFINITIONS

SOURCE: T.D. ATF–376, 61 FR 31033, June 19, 1996, unless otherwise noted.

§ 70.601 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, and 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.

Alcoholic liquors or liquors. Distilled spirits, wines, and beer lost, made unmarketable, or condemned, as provided in this subpart.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake, or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and if imported, on which duties have been paid.

Claimant. The person who held the liquors for sale at the time of the disaster or other specified cause of loss and who files a claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, DC.

Distilled spirits, or spirits. Ethyl alcohol and other distillates such as whisky, brandy, rum, gin, vodka, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), on which the internal revenue tax has been paid or determined and, if imported, on which duties have been paid.

Duly authorized official. Any Federal, State or local government official who is authorized to condemn liquors on which a claim is filed under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Major Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe defined as a ''major disaster'' under the Disaster Relief Act (42 U.S.C. 5122(2)), which occurs in any part of the United States and which the President has determined causes sufficient damage to warrant ''major disaster'' assistance under that Act.

Tax. (1) With respect to distilled spirits, ''tax'' means the internal revenue tax that is paid or determined on spirits.

(2) With respect to wines, ''tax'' means the internal revenue tax that is paid or determined on the wine.

(3) With respect to beer, ''tax'' means the internal revenue tax that is paid or determined on the beer.

United States. When used in a geographical sense includes only the States and the District of Columbia.

Wines. All still wines, effervescent wines, and flavored wines, on which internal revenue wine tax has been paid or determined, and if imported, on which duty has been paid.

[T.D. ATF–376, 61 FR 31033, June 19, 1996, as amended by T.D. ATF–450, 66 FR 29030, May 29, 2001]

PAYMENTS

§ 70.602 Circumstances under which payment may be made.

(a) *Major disasters*. The appropriate ATF officer shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as the result of a major disaster (as defined in § 70.601).

(b) *Other causes of loss*—(1) *Payment*. The appropriate ATF officer shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as a result of:

(i) Fire, flood, casualty, or other disaster; or

(ii) Breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief.

(2) *Minimum claim*. No claim of less than $250 will be allowed for losses resulting from any disaster or damage described in paragraph (b)(1) of this section.

(c) *General*. Payment under this section may be made only if:

(1) The disaster or other specified cause of loss occurred in the United States;

(2) At the time of the disaster or other specified cause of loss, the liquors were being held for sale by the claimant;

(3) Refund or credit of the amount claimed, or any part of the amount claimed, has not or will not be claimed for the same liquors under any other law or regulations; and

(4) The claimant was not indemnified by any valid claim of insurance or otherwise for the tax and/or duty on the liquors covered by the claim.

CLAIMS PROCEDURES

§ 70.603 Execution and filing of claim.

(a) *General.* (1) Claims under this subpart must be filed on Form 2635 (5620.8).

(2) The claim shall include all the facts on which the claim is based, and be accompanied by a record of inventory of the liquors lost, made unmarketable, or condemned. (See § 70.604.)

(3) The claim shall contain a statement that no other claim for refund or credit of the amount claimed, or for any part of the amount claimed, has been or will be filed under any other law or regulations.

(b) *Major disasters.* Claims for refund of tax and/or duty on liquors which were lost, became unmarketable, or were condemned as a result of a major disaster must be filed not later than 6 months from the day on which the President determines that a major disaster has occurred.

(c) *Other causes of loss.* (1) Claims for amounts of $250 or more for refund of tax and/or duty on liquors which were lost, became unmarketable, or were condemned as the result of:

(i) Fire, flood, casualty, or other disaster; or

(ii) Damage (excluding theft) resulting from vandalism or malicious mischief, must be filed within 6 months after the date on which the disaster or damage occurred.

(2) Claims for amounts less than $250 will not be allowed.

[T.D. ATF–376, 61 FR 31033, June 19, 1996, as amended by T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.604 Record of inventory to support claims.

(a) *Claims relating to distilled spirits.* The record of inventory of distilled spirits lost, made unmarketable, or condemned, which is required to support claims filed under § 70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the spirits were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of spirits.

(4) Brand name.

(5) For full cases, show:

(i) Number of cases;

(ii) Serial numbers;

(iii) Bottles per case;

(iv) Size of bottles;

(v) Wine gallons per case;

(vi) Proof; and

(vii) Proof gallons.

(6) For bottles not in cases, show:

(i) Total number;

(ii) Size of bottles;

(iii) Wine gallons;

(iv) Proof; and

(v) Total proof gallons.

(7) Total proof gallons for all items.

(b) *Claims relating to wines.* The record of inventory of wines lost, made unmarketable, or condemned, which is required to support claims filed under § 70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the wines were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of wine.

(4) Percent of alcohol by volume.

(5) Number of barrels or kegs.

(6) Kind and number of other bulk containers.

(7) Number of full cases and bottles per case.

(8) Size of bottles.

(9) Number of bottles not in cases and wine gallons.

(10) Total wine gallons.

(c) *Claims relating to beer.* The record of inventory of beer lost, made unmarketable, or condemned, which is required to support claims filed under § 70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the beer was lost, became unmarketable, or was condemned, if different from the business address.

(3) Number and size of barrels.

(4) *For full cases, show:*

(i) Number of cases;

(ii) Bottles or cans per case; and

(iii) Size (in ounces) of bottles or cans.

(5) Number and size of bottles and cans not in cases.

(6) Quantity in terms of 31-gallon barrels.

(7) Total quantity.

(d) *Special instructions.* (1) Inventories of domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands shall be reported separately.

(2) Liquors manufactured in Puerto Rico may not be included in claims filed under this subpart. Claims for losses of Puerto Rican liquors shall be filed with the Secretary of the Treasury of Puerto Rico under the laws of Puerto Rico.

§ 70.605 Claims relating to imported, domestic, and Virgin Islands liquors.

(a) Claims involving taxes on domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands must show the quantities of each separately in the claim.

(b) A separate claim on Form 2635 (5620.8) must be filed for customs duties.

§ 70.606 Claimant to furnish proof.

The claimant shall furnish proof to the satisfaction of the appropriate ATF officer regarding the following:

(a) That the tax on the liquors, or the tax and duty if imported, was fully paid; or the tax, if not paid, was fully determined.

(b) That the liquors were lost, made unmarketable, or condemned by a duly authorized official, by reason of damage sustained as a result of a disaster or other cause of loss specified in this subpart.

(c) The type and date of occurrence of the disaster or other specified cause of loss, and the location of the liquors at the time.

(d) That the claimant was not indemnified by a valid claim of insurance or otherwise for the tax, or tax and duty, on the liquors covered by the claim.

(e) That the claimant is entitled to payment under this subpart.

§ 70.607 Supporting evidence.

(a) The claimant shall support the claim with any evidence (such as inventories, statements, invoices, bills, records, labels, formulas, stamps) that is available to submit, relating to the quantities and identities of the liquors, on which duty has been paid or tax has been paid or determined, that were on hand at the time of the disaster or other specified cause of loss and alleged to have been lost, made unmarketable, or condemned as a result of it.

(b) If the claim is for refund of duty, the claimant shall furnish, if possible:

(1) The customs number;

(2) The date of entry; and

(3) The name of the port of entry.

§ 70.608 Action on claims.

The appropriate ATF officer shall date stamp and examine each claim filed under this subpart and will determine the validity of the claim. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the appropriate ATF officer regarding his or her findings.

Destruction of Liquors

§ 70.609 Supervision.

When allowance has been made under this subpart for the tax and/or duty on liquors condemned by a duly authorized official or made unmarketable, the liquors shall be destroyed by suitable means under supervision satisfactory to the appropriate ATF officer, unless the liquors were previously destroyed under supervision satisfactory to the appropriate ATF officer. The Commissioner of Customs will notify the appropriate ATF officer as to allowance under this subpart of claims for duty on unmarketable or condemned liquors.

Penalties

§ 70.610 Penalties.

(a) Penalties are provided in 26 U.S.C. 7206 for making any false or fraudulent statement under the penalties of perjury in support of any claim.

(b) Penalties are provided in 26 U.S.C. 7207 for filing any false or fraudulent document under this subpart.

(c) All laws and regulations, including penalties, which apply to internal revenue taxes on liquors shall, when appropriate, apply to payments made under this subpart the same as if the payments were actual refunds of internal taxes on liquors.

Subpart H—Rules, Regulations and Forms

§ 70.701 Rules and regulations.

(a) *Formulation*. (1) Alcohol, tobacco, firearms, and explosives rules take various forms. The most important rules are issued as Treasury decisions, prescribed by the Director, and approved by the Secretary. Other rules may be issued over the signature of the Director or the signature of any appropriate ATF officer. The channeling of rules varies with the circumstances. Treasury decisions are prepared within the appropriate ATF offices. After approval by the Director, Treasury decisions are forwarded to the Secretary for further consideration and final approval.

(2) Where required by 5 U.S.C. 553, the Director publishes in the FEDERAL REGISTER general notice of proposed rules unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. Notice may also be published in the FEDERAL REGISTER in such other instances as may be desirable. This notice includes (i) a statement of the time, place, and nature of public rulemaking proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Interested persons may participate in the rulemaking by submitting written data, views, or arguments. Persons may also submit requests for a public hearing. However, the Bureau reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

(3) If the Bureau determines that the public good will be served thereby, it may hold a public hearing for discussion of the issues raised by the proposed regulations. Such a hearing is announced by a notice in the FEDERAL REGISTER, stating the time and place where the hearing is to be held. The following rules govern the conduct of the public hearing only if incorporated by reference in the notice announcing the hearing:

(i) A person wishing to make oral comments at a public hearing shall submit, within the time prescribed in the notice of hearing, an outline of the topics he wishes to discuss, and the time he wishes to devote to each topic. Ordinarily, a period of 10 minutes is the time allotted to each person for making his oral comments.

(ii) A person making oral comments should be prepared to answer questions not only on the topics listed in his outline but also on matters relating to any written comments which he has submitted.

(iii) At the conclusion of the presentation of comments of persons listed in the agenda, to the extent time permits, other comments will be received.

(iv) Written comments submitted prior to the hearing shall be available at the hearing for inspection. Any request for copies of such written comments is treated as a request for records under 27 CFR 70.802(g).

(v) To the extent resources permit, the public hearings to which this paragraph applies may be transcribed.

(vi) In unusual circumstances or for good cause shown, the application of rules contained in this paragraph may be waived.

(b) *Comments on proposed rules*. Interested persons may submit data, views, or arguments with respect to a notice of proposed rulemaking published pursuant to 5 U.S.C. 553. Procedures are provided in § 70.802(g) for members of the public to inspect and obtain copies of written comments submitted in response to proposed rules. All such comments are open in their entirety to public inspection. Therefore, the Bureau does not recognize any designation of material in comments as confidential or not to be disclosed, and any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in his comments. The name of any person submitting comments or requesting a public hearing, the issues which may be discussed at the hearing, and outlines relating to the hearing are open to public disclosure. (See paragraph (a)(3) of this section for rules relating to hearing outlines.)

(c) *Petition to change rules*. Interested persons may petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule shall identify the section or sections of law

involved; and a petition for the amendment or repeal of a rule shall set forth the section or sections of the regulations involved. The petition shall set forth the reasons for the requested action. Such petitions shall be given careful consideration, and the petitioner shall be advised of the action taken thereon. Petitions must be addressed to the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

(d) *Publication of rules and regulations*—(1) *General*. All Bureau of Alcohol, Tobacco and Firearms regulations and amendments thereto are published as Treasury Decisions which appear in the FEDERAL REGISTER, the Code of Federal Regulations, and the quarterly Alcohol, Tobacco and Firearms (ATF) Bulletin. The ATF Bulletin is the authoritative instrument of the Bureau for announcing Treasury decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record. It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). Procedures relating solely to matters of internal management are not published; however, regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published. Rulings and procedures reported in the Bulletin do not have the force and effect of Department of the Treasury Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. The Bulletin is published quarterly and may be obtained, on a subscription basis, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) *Objectives and standards for publication of ATF Rulings and ATF Procedures in the Alcohol, Tobacco and Firearms Bulletin*. (i)(A) An ''ATF Ruling'' is an official interpretation by the Bureau that has been published in the Bulletin for the information and guidance of taxpayers, Bureau officers, and others concerned. ATF Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

(B) An ''ATF Procedure'' is a statement of procedure that affects the rights or duties of taxpayers or other members of the public under law and regulations administered by the Bureau or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge. ATF Procedures establish methods for performing operations in compliance with the requirements of law and regulations. It is Bureau practice to publish as much of the internal management document or communication as is necessary for an understanding of the procedure. ATF Procedures may also be based on internal management documents which should be a matter of public knowledge even though not necessarily affecting the rights or duties of the public.

(ii) It is the policy of the Bureau to publish in the Bulletin all rulings and other communications to members of the public or to Bureau field offices involving substantive law, procedures affecting taxpayer's rights or duties, or industry regulations, except those involving:

(A) Issues specifically and clearly covered by statute or regulations;

(B) Issues specifically covered by rulings, procedures, opinions, or court decisions previously published in the Bulletin;

(C) Issues not likely to arise again because of unique or specific facts;

(D) Determinations of fact rather than interpretations of law;

(E) Acceptability under the law and regulations of containers, labels, and advertising involving alcoholic beverages;

(F) Tobacco operations, such as the disposition of abandoned, seized, or condemned tobacco products;

(G) Informers and informers' rewards; or

(H) Disclosure of secret formulas, processes, business practices, and other similar information.

(iii)(A) It is the practice of the Bureau to publish as much of the ruling or communication as is necessary for an understanding of the position stated. However, in order to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as 18 U.S.C. 1905 and 26 U.S.C 6103 and 7213, dealing with disclosure of information obtained from members of the public, identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted from the ruling.

(B) ATF Rulings published in the Bulletin do not have the force and effect of Department of the Treasury Regulations (including amendatory Treasury decisions) but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision may be relied on, used, or cited by any officer or employee of the Bureau as a precedent in the disposition of other cases.

(C) Concerned persons generally may rely upon ATF Rulings published in the Bulletin in determining the Bureau treatment of their own transactions and need not request specific rulings applying the principles of a published ATF Ruling to the facts of their particular cases. However, since each ATF Ruling represents the conclusion of the Bureau as to the application of the law to the entire state of facts involved, taxpayers, Bureau personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions and ATF Rulings.

(D) Comments and suggestions from taxpayers or other concerned persons on ATF Rulings being prepared for publication in the Bulletin may be solicited, if justified by special circumstances. Conferences on ATF Rulings being prepared for publication will not be granted except where the Bureau determines that such action is justified by special circumstances.

(iv)(A) The appropriate ATF officer is responsible for administering the program for the publication of ATF Rulings and ATF Procedures in the Bulletin including the standards for style and format.

(B) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, each appropriate ATF officer is responsible for the preparation and appropriate referral for publication of ATF Rulings reflecting interpretations of substantive law made by his office and communicated in writing to members of the public or field offices. In this connection, the Chief Counsel is responsible for the referral to the appropriate appropriate ATF officer, for consideration for publication as ATF rulings, of interpretations of substantive law made by his office.

(C) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, the appropriate ATF officers and the Chief Counsel are responsible for determining whether procedures established by an office under their jurisdiction should be published as ATF Procedures and for the initiation, content, and appropriate referral for publication of such ATF Procedures.

[T.D. ATF–47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF–201, 50 FR 12533, Mar. 29, 1985; T.D. ATF–249, 52 FR 5962, Feb. 27, 1987; Redesignated and amended by T.D. ATF–378, 61 FR 29955, June 13, 1996; T.D. ATF–432, 65 FR 69253, Nov. 16, 2000; T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.702 Forms and instructions.

(a) *Tax return forms and instructions.* Tax forms and instructions are developed by the Bureau to explain the requirements of Chapters 32, 51, 52, and 53 of Title 26 of the United States Code or

regulations issued thereunder, and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under such laws and regulations. The tax return forms are the instruments through which taxes are collected.

(b) *Other forms and instructions.* The Bureau provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the laws and regulations administered by the Bureau. The material contained in the forms and instructions, and the arrangement thereof, is carefully considered and is designed to lead the preparer step-by-step through an orderly accumulation of data to an accurate report of the information required.

(c) *Procurement of forms and instructions.* Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

[T.D. ATF–47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF–92, 46 FR 46914, Sept. 23, 1981; T.D. ATF–249, 52 FR 5962, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996. Redesignated and amended by T.D. ATF–378, 61 FR 29955, June 13, 1996]

Subpart I—Disclosure

§ 70.801 Publicity of information.

For information relating to the disclosure of records that is not contained in this Subpart I, see 31 CFR Part 1 and the Appendix of that Part relating to the Bureau of Alcohol, Tobacco and Firearms. Direct further questions to the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 927–8480.

[T.D. ATF–378, 61 FR 29955, June 13, 1996, as amended by T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.802 Rules for disclosure of certain specified matters.

(a) *Accepted offers in compromise.* For each offer in compromise submitted and accepted pursuant to 26 U.S.C. 7122 in any case arising under Chapter 32 (relating to firearms and ammunition excise taxes) and Subtitle E (relating to alcohol, tobacco, and certain other excise taxes) of Title 26 of the United States Code, under section 107 of the Federal Alcohol Administration Act (27 U.S.C. 207) in any case arising under that Act, or in connection with property seized under Title I of the Gun Control Act of 1968 (18 U.S.C., Chapter 44) or title XI of the Organized Crime Control Act of 1970 (18 U.S.C., Chapter 40), a copy of the abstract and statement relating to the offer shall be kept available for public inspection, for a period of 1 year from the date of acceptance, with the appropriate ATF officer, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Information may not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter within the prohibition of 18 U.S.C. 1905. ''Return information'' (defined at 26 U.S.C. 6103 (b)) may not be disclosed except as provided by 26 U.S.C. 6103 (k) (1).

(b) *Information regarding liquor permits*—(1) *Applications for permits.* Information with respect to the handling of applications for basic permits under the Federal Alcohol Administration Act (27 U.S.C. 204) is maintained for public inspection until the expiration of 1 year following final action on these applications. See §1.59 of this chapter for more details.

(c) *List of plants and permittees.* Upon request, the appropriate ATF official shall furnish a list of any type of qualified proprietor or permittee if the disclosure is not prohibited by law.

(d) *Information relating to certificates of label approval for distilled spirits, wine, and malt beverages.* Upon written request, the appropriate ATF officer, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, shall furnish information as to the issuance, pursuant to section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) and Part 4, 5, or 7 of this chapter, of certificates of label approval, or of exemption from label approval, for distilled spirits, wine, or malt beverages. The request must identify the class and type and brand name of the product and the name and address of the bottler or importer thereof or of the person to whom the certificate was issued. The person making the request may obtain reproductions or certified

copies of such certificates upon payment of the established fees prescribed by 31 CFR 1.7. Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 18 U.S.C. 1905 or 26 U.S.C. 6103.

(e) *True identity of companies authorized to use trade names.* Information regarding the true identity (name and address) of companies authorized to use trade names is available from the appropriate ATF officer, for disclosure upon request to any member of the public.

(f) *Information relating to the tax classification of a roll of tobacco wrapped in reconstituted tobacco.* Upon written request, the appropriate ATF officer Programs), Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, shall furnish information as to a Bureau determination of the tax classification of a roll of tobacco wrapped in reconstituted tobacco. The request must identify the brand name of the product and the name and address of the manufacturer or importer. Information may not be disclosed, however, concerning any trade secrets, processes, operations, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 26 U.S.C. 6103 or 18 U.S.C. 1905.

(g) *Comments received in response to a notice of proposed rulemaking.* Written comments received in response to a notice of proposed rulemaking may be inspected by any person upon compliance with the provisions of this paragraph. Comments may be inspected in the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments. Copies of comments (or portions thereof) may be obtained by a written request addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. The person making the request for copies should allow a reasonable time for processing the request. The provisions of 31 CFR 1.7, relating to fees, apply with respect to requests made in accordance with this paragraph.

(27 U.S.C. 205; 22 U.S.C. 2778; 26 U.S.C. 7602; 5 U.S.C. 301)

[T.D. ATF–47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF–57, 44 FR 20794, May 9, 1979; T.D. ATF–201, 50 FR 12533, Mar. 29, 1985; T.D. ATF–249, 52 FR 5961, Feb. 27, 1987. Redesignated and amended by T.D. ATF–378, 61 FR 29955, 29956, June 13, 1996; T.D. ATF–450, 66 FR 29030, May 29, 2001]

§ 70.803 Requests or demands for disclosure in testimony and in related matters.

(a) *Authority.* The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of Reorganization Plan No. 26 of 1950 (64 Stat. 1280); 12 U.S.C. 3412; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Administration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 7213, 7803 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 5274, 6103, 7213, 7803 and 7805).

(b) *Definitions.* The following definitions apply whenever the defined terms appear in this section.

(1) *ATF officer or employee.* The terms *ATF officer* and *ATF employee* mean all officers and employees of the United States, engaged in the administration and enforcement of laws administered by the Bureau of Alcohol, Tobacco and Firearms, and appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(2) *ATF records or information.* The terms *ATF records* and *ATF information* mean any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any ATF officer or employee while acting in his official capacity, or because of his official status, with respect to the administration of laws administered by or concerning the Bureau of Alcohol, Tobacco and Firearms.

(3) *Demand.* The term *demand* means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any

court, administrative agency, or other authority.

(c) *Disclosure of ATF records or information prohibited without prior approval of the appropriate ATF officer*. The disclosure, including the production, of ATF records or information to any person outside the Department of the Treasury or to any court, administrative agency, or other authority, in response to any request or demand for the disclosure of such records or information shall be made only with the prior approval of the appropriate ATF officer. However, nothing in this section restricts the disclosure of ATF records or information for which the appropriate ATF officer has determined that the disclosure is authorized under any provision of statute, Executive order, or regulations, or for which a procedure has been established by the Director. For example, this section does not restrict the disclosure of ATF records or information under § 71.22, nor does it restrict the disclosure of ATF records or information which is requested by U.S. attorneys or attorneys of the Department of Justice for use in cases which arise under the laws administered by or concerning the Bureau of Alcohol, Tobacco and Firearms and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(d) *Delegation of authority to determine disclosure and establish procedures*. The appropriate ATF officer is hereby authorized to determine whether or not ATF officers and employees will be permitted to disclose ATF records or information in response to:

(1) A request by any court, administrative agency, or other authority, or by any person, for the disclosure of such records or information; or

(2) A demand for the disclosure of such records or information.

(3) The Director is also authorized to establish such other procedures as he or she may deem necessary with respect to the disclosure of ATF records or information by ATF officers and employees. Any determination by the appropriate ATF officer as to whether ATF records or information will be disclosed, or any procedure established by the Director in connection therewith, must be made in accordance with applicable statutes, Executive orders, regulations, and any instructions that may be issued by the Secretary. Notwithstanding the preceding provisions of this paragraph, the appropriate ATF officer shall, where either the Secretary or such officer deems it appropriate, refer the opposing of a request or demand for disclosure of ATF records or information to the Secretary.

(e) *Procedure in the event of a request or demand for ATF records or information*—(1) *Request procedure*. Any ATF officer or employee who receives a request for ATF records or information, the disposition of which is not covered by a procedure established by the Director, must promptly communicate the contents of the request to the appropriate ATF officer. The officer or employee must await instructions from the appropriate ATF officer concerning the response to the request.

(2) *Demand procedure*. Any ATF officer or employee who is served with a demand for ATF records or information, the disposition of which is not covered by a procedure established by the Director, must promptly, and without awaiting appearance before the court, administrative agency, or other authority, communicate the contents of the demand to the appropriate ATF officer. The ATF officer or employee must await instructions from the appropriate ATF officer concerning the response to the demand. If it is determined by the appropriate ATF officer that the demand should be opposed, the U.S. attorney, his or her assistant, or other appropriate legal representative shall be requested to respectfully inform the court, administrative agency, or other authority that the appropriate ATF officer has instructed the ATF officer or employee to refuse to disclose the ATF records or information sought. If instructions have not been received from the appropriate ATF officer at the time when the ATF officer or employee is required to appear before the court, administrative agency, or other authority in response to the demand, the U.S. attorney, his or her assistant, or other appropriate legal representative must be requested to appear with the ATF officer or employee

upon whom the demand has been served and request additional time in which to receive such instructions. In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the records or information pursuant to the instructions of the appropriate ATF officer, or declines to defer a ruling until instructions from the appropriate ATF officer have been received, the ATF officer or employee upon whom the demand has been served must, pursuant to this section, respectfully decline to disclose the ATF records or information sought.

(3) *Affidavit required for testimony*. If testimony of an ATF officer or employee is sought by a request or demand on behalf of a party other than a State in any case or matter in which the United States is not a party, an affidavit, or if that is not feasible, a statement shall be submitted. The affidavit or statement shall be prepared by the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The appropriate ATF officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand*. The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), must be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the appropriate ATF officer has adequate time to consider whether to grant the request or demand. The appropriate ATF officer may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted*. The appropriate ATF officer must consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the ATF officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the appropriate ATF officer determines that the administration of justice requires disclosure;

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which ATF has no interest, records or other official information.

(f) *State cases*. The appropriate ATF officer, may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, or explosives cases in which the State is a party or on behalf of the State in any criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a criminal case requests or demands testimony or the production of ATF records or information, authorization from the appropriate ATF officer is required. Production or testimony may not divulge information contrary to 26 U.S.C. 6103 and 7213, or 12 U.S.C. 3412. See also 18 U.S.C. 1905.

(g) *Penalties*. Any ATF officer or employee who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

[T.D ATF–57, 44 FR 27094, May 9, 1979, as amended by T.D. ATF–302, 55 FR 47325, Nov. 13, 1990. Redesignated by T.D. ATF–378, 61 FR 29955, June 13, 1996, as amended by T.D. ATF–446a, 66 FR 19089, Apr. 13, 2001; T.D. ATF–450, 66 FR 29030, May 29, 2001]

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

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AUTHORITY: 26 U.S.C. 5271, 5181, 5713, 7805, 27 U.S.C. 204.

SOURCE: 21 FR 1441, Mar. 6, 1956, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975 and further redesignated by T.D. ATF–463, 66 FR 42734, Aug. 15, 2001.

EDITORIAL NOTE: Nomenclature changes to part 71 appear by T.D. ATF–414, 64 FR 49084, Sept. 10, 1999 and by T.D. ATF–463, 66 FR 42734, 42735, Aug. 15, 2001.

Subpart A—Scope and Construction of Regulations

§ 71.1 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 § 71.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 71.2 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]

§ 71.3 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

§ 71.5 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

§ 71.25 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]

§ 71.26 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]

§ 71.27 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

§ 71.28 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.

§ 71.29 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

§ 71.30 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.

§ 71.31 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

§ 71.35 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

§ 71.36 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]

§ 71.37 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 §§ 71.55 and 71.56.

[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]

§ 71.38 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 § 71.35, he may restrict settlement to that provided in § 71.71.

[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

§ 71.45 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]

§ 71.46 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]

§ 71.48 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]

§ 71.49 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]

§ 71.49a 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]

§ 71.49b 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 40.61; 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; T.D. ATF–460, 66 FR 39093, July 27, 2001]

Subpart F—Hearing Procedure

CITATIONS

§ 71.55 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]

§ 71.56 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 § 71.56, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 71.57 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]

§ 71.58 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

§ 71.59 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]

§ 71.60 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]

§ 71.61 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

§ 71.62 Application.

In the case of an application, if the applicant does not request a hearing within the time specified in § 71.59, 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]

§ 71.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 71.60, and does not file an answer as required in § 71.64, the district director shall make the initial decision in the case in accordance with § 71.79.

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

ANSWERS

§ 71.64 When required.

(a) Where the respondent requests a hearing in accordance with § 71.60, 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]

§ 71.65 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]

§ 71.66 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

§ 71.67 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]

§ 71.68 [Reserved]

§ 71.69 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

§ 71.70 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]

§ 71.71 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

§ 71.72 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]

§ 71.73 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

§ 71.74 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 § 71.2.

§ 71.75 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]

§ 71.76 At hearing.

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

HEARING

§ 71.77 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]

§ 71.78 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 § 71.107. 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]

§ 71.79 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

§ 71.80 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]

§ 71.81 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

§ 71.82 Stipulations at hearing.

If there has been no prehearing conference under § 71.66, 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.

§ 71.83 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 § 71.81, 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.

§ 71.84 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.

§ 71.85 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

§ 71.86 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.

§ 71.87 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

§ 71.95 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]

§ 71.96 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 § 71.115, 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.

§ 71.97 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]

§ 71.98 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]

§ 71.99 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]

§ 71.100 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

§ 71.105 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]

§ 71.106 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

§ 71.107 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]

§ 71.107a Director of Industry Operations' decision.

(a) When the director of industry operations issues an initial decision in accordance with § 71.79, 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]

§ 71.108 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 § 71.115. 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 § 71.79, 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]

§ 71.109 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]

§ 71.110 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 § 71.108.

[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

§ 71.115 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]

§ 71.116 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]

§ 71.117 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]

§ 71.118 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]

§ 71.119 [Reserved]

Subpart J—Miscellaneous

§ 71.125 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.

§ 71.126 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]

§ 71.127 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

§ 71.128 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.

§ 71.129 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 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

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72.81 Authority for disposal.

AUTHORITY: 18 U.S.C. 921, 1261; 19 U.S.C. 1607, 1610, 1612, 1613, 1618; 26 U.S.C. 7101, 7322–7325, 7326, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 40 U.S.C. 304(k); 49 U.S.C. 784, 788.

SOURCE: T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, unless otherwise noted.

Subpart A—Scope of Regulations

§ 72.1 Procedures relating to personal property and carriers.

Regulations in this part shall relate to personal property and carriers seized by alcohol, tobacco and firearms officers as subject to forfeiture as being involved, used, or intended to be used, as the case may be, in any violation of Federal laws.

§ 72.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, or necessary for its administration. 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) ''Public Use Forms'' (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

[T.D. ATF–92, 46 FR 46914, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5962, Feb. 27, 1987]

Subpart B—Definitions

§ 72.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meanings 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.

Appraised value. The value placed upon seized property or carriers by the appraiser or appraisers designated for the purpose of determining whether the property or carriers may be forfeited administratively.

Carrier. A vessel, vehicle, or aircraft seized under 49 U.S.C. Chapter 11 for having been used to transport, carry, or conceal a contraband firearm or contraband cigarettes. Vessels, vehicles, or aircraft seized under other provisions of applicable laws shall be considered personal property.

Commercial crimes. Any of the following types of crimes (Federal or State): Offenses against the revenue laws; burglary; counterfeiting; forgery; kidnapping; larceny; robbery; illegal sale or possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or compounding any of the foregoing crimes. Addiction to narcotic drugs and use of marihuana will be treated as if such were commercial crime.

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 any person who is:

(1) Holding a permit issued under 26 U.S.C. Chapter 52 as a manufacturer of tobacco products or as an export warehouse proprietor;

(2) Operating a customs bonded warehouse under 19 U.S.C. 1311 or 1555;

(3) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(4) 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;

(5) Licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to the license or authorization with respect to the cigarettes involved; or

(6) 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.

(7) Operating within a foreign-trade zone, established under 19 U.S.C. 81b, when the cigarettes involved have been entered into the foreign-trade zone under zone-restricted status or when foreign cigarettes have been admitted into the foreign-trade zone but have not been entered into the United States.

Contraband firearm. A firearm with respect to which there has been committed a violation of the National Firearms Act (26 U.S.C., Chapter 53) or any regulation issued thereunder.

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

Equity. As used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such interest shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

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

Re-appraisal. An up-to-date statutory appraisal to determine the present value of the property or carrier involved in a petition for remission or mitigation of forfeiture made in the same manner as the original appraisal, and performed at the written request of the petitioner whose petition in regard to the property or carrier has been allowed and who, for reasonable cause, is not satisfied that the original appraisal represents the present value of the property or carrier.

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

U.S.C. The United States Code.

[T.D. ATF–48, 43 FR 13535, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979, as amended by T.D. ATF–65, 45 FR 8593, Feb. 8, 1980; T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

Subpart C—Seizures and Forfeitures

§ 72.21 Personal property and carriers subject to seizure.

(a) Personal property may be seized by duly authorized ATF officers for forfeiture to the United States when involved, used, or intended to be used, in violation of the laws of the United States which ATF officers are empowered to enforce, including Title 18 U.S.C. Chapters 40 (explosives), 44 (firearms), 59 (liquor traffic), 114 (contraband cigarettes), 229 (liquor); Title 26 U.S.C. Chapters 51 (distilled spirits), 52 (tobacco), 53 (firearms); and Title 27 U.S.C. 206 (liquor). Carriers, as defined in § 72.11, similarly may be seized when used in violation of Title 49 U.S.C. App., Chapter 11 (transportation, et cetera) of contraband firearms or contraband cigarettes.

(b) Any action or proceeding for the forfeiture of firearms or ammunition seized under 18 U.S.C. Chapter 44 shall be commenced within 120 days of such seizure.

(c) Upon acquittal of the owner or possessor, or the dismissal of the criminal charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which such person is subject, firearms or ammunition seized or relinquished under 18 U.S.C. Chapter 44 shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law.

[T.D. ATF–270, 53 FR 10489, Mar. 31, 1988, as amended by T.D. ATF–363, 60 FR 17449, Apr. 6, 1995]

§ 72.22 Forfeiture of seized personal property and carriers.

(a) *Administrative forfeiture.* (1) Personal property seized as subject to forfeiture under Title 26 U.S.C. which has an appraised value of $100,000.00 or less, and any carrier appraised by the seizing officer at $100,000.00 or less under the customs laws, shall be forfeited to the United States in administrative or summary forfeiture proceedings.

(2) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. which, in the opinion of the seizing officer, has an appraised value of $100,000.00 or less, such officer shall cause a list containing a particular description of the seized property to be prepared and an appraisement thereof to be made by three sworn appraisers, selected by the seizing officer, who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested to by the seizing officer and such appraisers.

(3) In respect of personal property seized as subject to forfeiture under title 26 U.S.C. and found by the appraisers to have a value of $100,000.00 or less, the Director or his delegate shall publish a notice once a week for three consecutive weeks, in some newspaper of the judicial district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to make such claim within 30 days from the date of the first publication of such notice.

(4) In respect of carriers seized as subject to forfeiture under the customs laws which, in the opinion of the seizing officer, have an appraised value of $100,000.00 or less, such officer shall cause a list containing a particular description of the seized carriers to be prepared and the seizing officer shall make the appraisement thereof. Such list and appraisement shall be properly attested to by the seizing officer.

(5) In respect of carriers seized as subject to forfeiture under the customs laws and appraised by the seizing officer as having a value of $100,000.00 or less, the Director or his delegate shall publish a notice of seizure in the same manner as required by paragraph (a)(3) of this section; provided that the time for making claim shall be within 20 days from the date of first publication. (19 U.S.C. 1608).

(6) Any person claiming the personal property or carrier so seized, within the time specified in the notice, may file with the Director a claim stating the interest in the articles or carrier seized, and may execute a bond to the United States, conditioned that, in case of condemnation of the articles or carrier so seized, the obligators shall pay all the costs and expenses of the proceedings to obtain such condemnation. The amount of the cost bond is $2,500.00, unless the seized property is a vehicle, vessel, or aircraft seized for a violation of 49 U.S.C. App., Chapter 11, in which case the cost bond shall be in the amount of $2,500 or ten percent of the value of the claimed property, whichever is lower, but not less than $250.00. Both the claim and the cost bond shall be executed in quadruplicate.

(b) *Judicial condemnation.* The Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, shall authorize institution of forfeiture proceedings in those instances where the appraised value of the seized personal property or

carrier exceeds $100,000.00 or where a claim and cost bond are filed.

(Sec. 111, Pub. L. 95–410, 92 Stat. 897, as amended (19 U.S.C. 1607, 1610, 1612))

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–65, 45 FR 8593, Feb. 8, 1980; T.D. ATF–183, 49 FR 37061, Sept. 21, 1984; T.D. ATF–241, 51 FR 39613, Oct. 29, 1986; T.D. ATF–270, 53 FR 10489, Mar. 31, 1988]

§ 72.23 Type and conditions of cost bond.

The cost bond delivered by a claimant to effect removal of the forfeiture status of the property or carrier claimed to the jurisdiction of the Federal court for adjudication shall be a corporate surety bond: *Provided, however*, That upon a showing to the satisfaction of the Director or his delegate that the claimant is unable to furnish a corporate surety bond such claimant may deliver a cost bond with individual sureties acceptable to the Director or his delegate: *Provided further*, That in lieu of a cost bond with corporate or individual sureties the claimant may deposit collateral as provided in § 72.25. The cost bond shall be conditioned that in the case of the condemnation of the property the obligators shall pay all costs and expenses of the proceedings to obtain such condemnation.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.24 Corporate surety bonds.

(a) Corporate surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendments as may be issued from time to time.

(b) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER yearly 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); Aug. 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

[T.D. ATF–92, 46 FR 46914, Sept. 23, 1981]

§ 72.25 Deposit of collateral.

(a) 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 claimants as collateral security in lieu of corporate sureties 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). Alternatively, cash, postal money orders, and certified or cashiers' or treasurers' checks may be furnished by claimants as collateral security in lieu of corporate sureties.

(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.

(July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); Aug. 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

[T.D. ATF–92, 46 FR 46914, Sept. 23, 1981]

§ 72.26 Bond for return of seized perishable goods.

The proceedings to enforce forfeiture of perishable goods shall be in the nature of a proceeding in rem in the district court of the United States for the district wherein such seizure is made. Whenever such property is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the Director or his delegate shall advise the owner, when known, of the seizure thereof. The owner may apply to the Director or his delegate to have the property examined any time prior to referral of the property to the U.S. Marshal for disposition, and if in the

opinion of the Director or his delegate it shall be necessary to sell such property to prevent waste or expense, the Director or his delegate shall cause the property to be appraised. Thereupon the owner shall have the property returned to him upon giving a corporate surety bond (see § 72.24) in an amount equal to the appraised value of the property, which bond shall be conditioned to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of the appraised value to the Director or his delegate, the U.S. Marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Director or his delegate officer with the U.S. Attorney for the district in which the proceedings may be commenced. If the owner of such property neglects or refuses to give such bond within a reasonable time considering the condition of the property the Director or his delegate shall request the U.S. Marshal to proceed to sell the property at public sale as soon as practicable and to pay the proceeds of sale, less reasonable costs of the seizure and sale, to the court to abide its final order, decree, or judgment.

(68A Stat. 869, 870, as amended; 26 U.S.C. 7322, 7323, 7324)

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.27 Summary destruction of explosives subject to forfeiture.

(a) Notwithstanding the provisions of § 55.166 of this Title, in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness.

(b) Within 60 days after any destruction made pursuant to paragraph (a) of this section, the owner of the property and any other persons having an interest in the property so destroyed may make application to the Director for reimbursement of the value of the property in accordance with the instructions contained in ATF Publication 1850.1 (9–93), Information to Claimants. ATF P 1850.1 is available at no cost upon request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950. The Director shall make an allowance to the claimant not exceeding the value of the property destroyed, if the claimant establishes to the satisfaction of the Director that—

(1) The property has not been used or involved in a violation of law; or

(2) Any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness.

[T.D. ATF–363, 60 FR 17449, Apr. 6, 1995]

Subpart D—Remission or Mitigation of Forfeitures

§ 72.31 Laws applicable.

Remission or mitigation of forfeitures shall be governed by the applicable customs laws.

(Sec. 613, 618, 46 Stat. 756, as amended, 757, as amended, sec. 4, 53 Stat. 1292, sec. 7327, 68A Stat. 871; 19 U.S.C. 1613, 1618, 49 U.S.C. 784, 26 U.S.C. 7327)

§ 72.32 Interest claimed.

Any person claiming an interest in property, including carriers, seized by alcohol, tobacco and firearms officers as subject to administrative forfeiture may file a petition addressed to the Director, for remission or mitigation of the forfeiture of such property.

§ 72.33 Form of the petition.

There is no set or standardized form provided or required by the Department for use in filing a petition for remission or mitigation of forfeiture. However, it is preferable that the petition be typewritten on legal size paper; and it is necessary that the petition be executed under oath, prepared in triplicate and addressed to the Director, and that all copies of original documents submitted as exhibits in support of allegations of the petition be certified as true and accurate copies of originals. Each copy of the petition

must contain a complete set of exhibits.

§ 72.34 Contents of the petition.

(a) *Description of the property*. The petition should contain such a description of the property or carrier and such facts of the seizure as will enable the alcohol, tobacco and firearms officers concerned to identify the property or carrier.

(b) *Statement regarding knowledge of seizure*. In the event the petition is filed for the restoration of the proceeds derived from sale of the property or carrier pursuant to summary forfeiture, it should also contain, or be supported by, satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in such circumstances as prevented him from knowing of the same. (See also § 72.35.)

(c) *Interest of petitioner*. The petitioner should state in clear and concise terms the nature and amount of the present interest of the petitioner in the property or carrier, and the facts relied upon to show that the forfeiture was incurred without willful negligence or without any intention upon the part of the petitioner to defraud the revenue or to violate the law, or such other mitigating circumstances as, in the opinion of the petitioner, would justify the remission or mitigation of the forfeiture.

(d) *Petitioner innocent party*. If the petitioner is not the one who in person committed the act which caused the seizure the petition should state how the property or carrier came into the possession of such other person, and that the petitioner had no knowledge or reason to believe, if such be the fact, that the property or carrier would be used in violation of law. If known to the petitioner, at the time the petition is filed, that such other person had either a record or a reputation, or both, as a violator in the field of commercial crime, the petition should state whether the petitioner had actual knowledge of such record or reputation, or both, before the petitioner acquired his interest in the property or carrier, before such other person acquired his right in the property or carrier, whichever occurred later. When personal property is seized for violation of the liquor laws, the determining factor will be whether the person dealt with by the petitioner had either a record or a reputation, or both, as a violator of the liquor laws.

(e) *Documents supporting claim*. The petition should also be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other papers or documents that would tend to support the claims made in the petition.

(f) *Costs*. The petition should also contain an undertaking to pay the costs, if costs are assessed as a condition of allowance of the petition. Costs shall include all the expenses incurred in seizing and storing the property or carrier; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property or carrier to which the petition relates; the penalty, if any, asserted by the Director; and, if the property or carrier has been sold, or is in the course of being sold, the expenses so incurred.

§ 72.35 Time of filing petition.

A petition may be filed at any time prior to the sale or other disposition of the property or carrier involved pursuant to administrative forfeiture, but a petition in regard to property or a carrier which has already been sold or otherwise disposed of pursuant to administrative forfeiture must be filed within three months from the date of sale, and must contain the proof defined in § 72.34(b). Acquisition for official use is equivalent to sale so far as remission or mitigation of any forfeiture is concerned.

(Sec. 306, 49 Stat. 880; 40 U.S.C. 304k)

§ 72.36 Place of filing.

The petition should be filed in triplicate with the Director or his delegate for the region in which the seizure was made.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.37 Discontinuance of administrative proceedings.

If the petition is filed prior to administrative sale or retention for official use, proceedings to effect such sale or retention will be discontinued.

§ 72.38 Return of defective petition.

If the petition is defective in some correctable respect, the original of the petition will be returned by letter to the petitioner for his submission of a corrected petition, in triplicate, within a reasonable time.

§ 72.39 Final action.

(a) *Petitions for remission or mitigation of forfeiture.* (1) The Director shall take final action on any petition filed pursuant to these regulations. Such final action shall consist either of the allowance or denial of the petition. In the case of allowance, the Director shall state the conditions of the allowance.

(2) In the case of an allowed petition, the Director may order the property or carrier returned to the petitioner, sold for the account of the petitioner, or, pursuant to agreement, acquired for official use.

(3) The Director or his delegate shall notify the petitioner of the allowance or denial of the petition and, in the case of allowance, the terms and conditions under which the Director allowed the petition.

(b) *Offers in compromise of liability to forfeiture.* The Director or his delegate shall take final action on any offer in compromise of the liability to forfeiture of personal property, including carriers, seized as provided in § 72.21. Such action shall consist either of the acceptance or rejection of the offer.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.40 Acquisition for official use and sale for account of petitioner in allowed petitions.

(a) *Acquisition for official use.* The property or carrier may be purchased by the United States pursuant to agreement and retained for official use. Where the petitioner is the owner, the purchase price is the appraised value of the property or carrier less all costs. Where the petitioner is a creditor, the purchase price is whichever one of these amounts is the smaller: (1) The petitioner's equity, or (2) the appraised value of the property or carrier less the amount of all costs incident to the seizure and forfeiture.

(b) *Sale for account of petitioner.* The petitioner may elect not to comply with the condition on which the property or carrier may be returned. In this event, the Director or his delegate is authorized to sell it. Where the petitioner is the owner of the property or carrier, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the Director or his delegate pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any. Where the petitioner is a creditor, there is deducted from the proceeds of the sale all costs incident to the seizure, forfeiture, and sale, and the Director or his delegate pays to the petitioner, out of the proper appropriation, an amount equal to the balance, if any, of the selling price after deduction of all costs incident to the seizure, forfeiture, or sale: *Provided,* That if the amount of such balance exceeds the amount of the equity of the petitioner, only the latter amount is paid to the petitioner.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.41 Re-appraisal of property involved in an allowed petition.

In determining the nature and extent of the relief to be afforded a petitioner pursuant to allowance of his petition, the value of the property or carrier involved in the allowed petition shall be considered to mean the value placed on said property or carrier pursuant to official appraisal thereof immediately following seizure: *Provided, however,* That if the petitioner desires an up-to-date re-appraisal made of the property or carrier, after notification as to the terms of allowance of the petition, and makes written request therefor, undertaking in said request to pay, or to be liable for, the total costs of such re-appraisal, the property or carrier shall be re-appraised officially in the same manner in which the original appraisal

was made, and the terms and conditions of allowance shall stand modified to the extent required by such re-appraisal.

Subpart E—Appraiser's Fees

§ 72.51 Rate of compensation.

Each appraiser selected under § 72.22(a)(2) shall receive compensation at a reasonable fee not to exceed $15.00 per hour or portion thereof for the performance of his or her duties in appraising property seized as subject to forfeiture under Title 26 U.S.C.

(Act of Aug. 16, 1954, Ch. 736, 68A Stat. 870, as amended; 26 U.S.C. 7325)

[T.D. ATF–8, 46 FR 18536, Mar. 25, 1981]

Subpart F—Administrative Sale or Disposition of Personal Property

§ 72.61 Alternative methods of sale.

(a) *Sale by auction or competitive bid.* When personal property or a carrier. When personal property or a carrier forfeited administratively may be sold, the Director or his delegate shall cause a notice of sale to be placed in a newspaper of general circulation published in the judicial district wherein the seizure was made. The sale shall not occur in less than 10 days from the date of the publication of the notice. At the discretion of the Director or his delegate based upon which method in his sound judgment is most advantageous to the best interests of the United States, the forfeited personal property or carrier may be advertised for sale, and sold, at public auction to the highest bidder on open, competitive bids, or to the highest bidder on sealed, competitive bids.

(b) *Sale by General Services Administration.* When a vessel, vehicle, or aircraft seized under 49 U.S.C. App., Chapter 11 is forfeited administratively, the Director may authorize the General Services Administration to conduct the sale pursuant to such conditions as the Director deems proper.

(68A Stat. 870, as amended; 26 U.S.C. 7325)

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984; T.D. ATF–241, 51 FR 39613, Oct. 29, 1986; T.D. ATF–270, 53 FR 10489, Mar. 31, 1988]

§ 72.62 All bids on unit basis.

All competitive bids, whether sealed or otherwise, shall be on a unit basis, i.e. if a number of forfeited automobiles are advertised for sale at the same date, hour and place, whether or not in the same notice of sale, there shall be a separate, individual bid required as to each automobile, and it shall not be permissible to accept one blanket bid to cover the entire group of cars offered for sale.

§ 72.63 Conditions of sale.

(a) *No recourse.* All personal property and carriers to be sold shall be offered for sale ''as is'' and without recourse against the United States.

(b) *No guarantee.* No guarantee or warranty, expressed or implied, shall be given or understood in respect of any forfeited property or carrier offered for sale.

(c) *No sale.* (1) The United States reserves the right to reject any and all bids received at public auction and in sealed, competitive bid sales.

(2) When ''no sale'' is declared for property other than cigars, cigarettes, and cigarette papers and tubes, the Director or his delegate shall re-advertise the property for sale.

(3) When ''no sale'' is declared for cigars, cigarettes, or cigarette papers or tubes, such property shall be destroyed or, if fit for human consumption, be given to a Federal or State hospital or institution.

(d) *One bid.* When only one bid is received for a single unit of property or a carrier offered at public auction or in a sealed, competitive bid sale, such bid shall be considered to be and treated as the highest bid received for that property or carrier.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.64 Terms of sale.

The terms of sale shall be cash, cashier's check, certified check, or postal money order, in the amount of the accepted bid.

§ 72.65 Sale of forfeited tobacco products and cigarette papers and tubes.

All tobacco products and cigarette papers and tubes forfeited under the internal revenue laws shall be sold at a price which will include the tax due and payable on those forfeited articles. Written, timely notice shall be given by the Director or his delegate to the manufacturer of any such forfeited articles offered for sale.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–65, 45 FR 8593, Feb. 8, 1980; T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.66 Purchaser entitled to bill of sale.

Each purchaser of administratively forfeited property, including carriers, shall be entitled to receive a suitable and authentic bill of sale on a form to be provided for the purpose.

§ 72.67 Sale on open, competitive bids.

If the personal property or carrier is to be sold at public auction to the highest bidder on open, competitive bids, the notice of sale shall so specify, and state the date, hour, and place of sale.

§ 72.68 Sale on sealed, competitive bids.

If the property or carrier is to be sold to the highest bidder on sealed, competitive bids, the notice of sale shall so specify, and shall state the date, hour, and place of sale, and the date, hour, and place before the sale when and where the property, including carriers, may be viewed by prospective sealed bidders, and necessary information obtained. All sealed bids must be filed with the Director or his delegate before the sale. No bids will be accepted after the sale starts. At the appointed date, hour, and place of sale, all sealed bids timely filed shall be opened in the presence of all bidders attending the sale, who shall have the privilege of inspecting the bids if they so desire.

[T.D. ATF–9, 39 FR 9954, Mar. 15, 1974, as amended by T.D. ATF–183, 49 FR 37061, Sept. 21, 1984]

§ 72.69 Alternative disposition of seized carriers.

(a) *State or local proceedings*. The Director may discontinue forfeiture proceedings instituted under the Customs laws for seizures of carriers under 49 U.S.C. App., Chapter 11 in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. If such forfeiture proceedings are discontinued or dismissed, the Director may transfer the seized property to the appropriate State or local official, and notice of discontinuance or dismissal shall be provided to all known interested parties.

(b) *Transfer to State or local law enforcement agency*. Any carrier forfeited under the Customs laws for seizures under 49 U.S.C. App., Chapter 11 may be transferred by the Director to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

(19 U.S.C. 1616)

[T.D. ATF–270, 53 FR 10489, Mar. 31, 1988]

Subpart G—Disposal of Forfeited Firearms, Ammunition, Explosive Materials, or Contraband Cigarettes

§ 72.81 Authority for disposal.

Forfeited firearms, aummunition, explosive materials, or contraband cigarettes, not the subject of an allowed petition, may only be disposed of in accordance with the provisions of 26 U.S.C. 5872(b).

[T.D. ATF–65, 45 FR 8593, Feb. 8, 1980]

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178.171 Exportation.

AUTHORITY: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

SOURCE: 33 FR 18555, Dec. 14, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

EDITORIAL NOTE: Nomenclature changes to part 178 appear by T.D. ATF–411, 64 FR 17291, Apr. 9, 1999.

Subpart A—Introduction

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), Pub. L. 104–208 (110 Stat. 3009), and Pub. L. 105–277 (112 Stat. 2681).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in firearms and ammunition;

(2) The licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms;

(3) The conduct of business or activity by licensees;

(4) The importation of firearms and ammunition;

(5) The records and reports required of licensees;

(6) Relief from disabilities under this part;

(7) Exempt interstate and foreign commerce in firearms and ammunition; and

(8) Restrictions on armor piercing ammunition.

[T.D. ATF–270, 53 FR 10490, Mar. 31, 1988, as amended by T.D. ATF–354, 59 FR 7112, Feb. 14, 1994; T.D. ATF–363, 60 FR 17450, Apr. 6, 1995; T.D. ATF–401, 63 FR 35522, June 30, 1998; T.D. ATF–471, 67 FR 5425, Feb. 5, 2002]

§ 178.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in firearms or ammunition. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 47 of this chapter. For statutes applicable to nonmailable firearms, see 18 U.S.C. 1715 and regulations thereunder.

[T.D. ATF–270, 53 FR 10490, Mar. 31, 1988]

Subpart B—Definitions

§ 178.11 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 meanings 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 other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. 18 U.S.C. Chapter 44.

Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others; or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

(1) A finding of insanity by a court in a criminal case; and

(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Admitted to the United States for lawful hunting or sporting purposes. (a) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or

(b) Is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms.

Alien. Any person not a citizen or national of the United States.

Alien illegally or unlawfully in the United States. Aliens who are unlawfully in the United States are not in valid immigrant, nonimmigrant or parole status. The term includes any alien—

(a) Who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA);

(b) Who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted;

(c) Paroled under INA section 212(d)(5) whose authorized period of parole has expired or whose parole status has been terminated; or

(d) Under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States.

Ammunition. Ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any

firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer.

Antique firearm. (a) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and (b) any replica of any firearm described in paragraph (a) of this definition if such replica (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Armor piercing ammunition. Projectiles or projectile cores which may be used in a handgun and which are constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or full jacketed projectiles larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, projectiles which the Director finds are primarily intended to be used for sporting purposes, or any other projectiles or projectile cores which the Director finds are intended to be used for industrial purposes, including charges used in oil and gas well perforating devices.

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.

Business premises. The property on which the manufacturing or importing of firearms or ammunition or the dealing in firearms is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term.

Chief, National Licensing Center. The ATF official responsible for the issuance and renewal of licenses under this part.

Collector. Any person who acquires, holds, or disposes of firearms as curios or relics.

Collection premises. The premises described on the license of a collector as the location at which he maintains his collection of curios and relics.

Commerce. Travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

Crime punishable by imprisonment for a term exceeding 1 year. Any Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust

violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Curios or relics. Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

(a) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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.

Dealer. Any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term shall include any person who engages in such business or occupation on a part-time basis.

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signalling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

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

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

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a general court-martial. The term does not include any separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge.

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

Engaged in the business—(a) *Manufacturer of firearms*. A person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(b) *Manufacturer of ammunition*. A person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(c) *Dealer in firearms other than a gunsmith or a pawnbroker*. A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(d) *Gunsmith*. A person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(e) *Importer of firearms*. A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and,

(f) *Importer of ammunition*. A person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return 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, application, request, certificate), 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.''

Federal Firearms Act. 15 U.S.C. Chapter 18.

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics.

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Firearm muffler or firearm silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Friendly foreign government. Any government with whom the United States has diplomatic relations and whom the

United States has not identified as a State sponsor of terrorism.

Fugitive from justice. Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Handgun. (a) Any firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(b) Any combination of parts from which a firearm described in paragraph (a) can be assembled.

Hunting license or permit lawfully issued in the United States. A license or permit issued by a State for hunting which is valid and unexpired.

Identification document. A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi- governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Importation. The bringing of a firearm or ammunition into the United States; except that the bringing of a firearm or ammunition from outside the United States into a foreign-trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, shall not be deemed importation.

Importer. Any person engaged in the business of importing or bringing firearms or ammunition into the United States. The term shall include any person who engages in such business on a part-time basis.

Indictment. Includes an indictment or information in any court, under which a crime punishable by imprisonment for a term exceeding 1 year (as defined in this section) may be prosecuted, or in military cases to any offense punishable by imprisonment for a term exceeding 1 year which has been referred to a general court-martial. An information is a formal accusation of a crime, differing from an indictment in that it is made by a prosecuting attorney and not a grand jury.

Interstate or foreign commerce. Includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia. The term shall not include commerce between places within the same State but through any place outside of that State.

Intimate partner. With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

Large capacity ammunition feeding device. A magazine, belt, drum, feed strip, or similar device for a firearm manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

Licensed collector. A collector of curios and relics only and licensed under the provisions of this part.

Licensed dealer. A dealer licensed under the provisions of this part.

Licensed importer. An importer licensed under the provisions of this part.

Licensed manufacturer. A manufacturer licensed under the provisions of this part.

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such

weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Manufacturer. Any person engaged in the business of manufacturing firearms or ammunition. The term shall include any person who engages in such business on a part-time basis.

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Misdemeanor crime of domestic violence. (a) Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a ''misdemeanor'' or as a ''misdemeanor crime of domestic violence.'' The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a ''common law'' marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

(b) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(i) The case was tried by a jury, or

(ii) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(c) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

National Firearms Act. 26 U.S.C. Chapter 53.

NICS. The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

Nonimmigrant alien. An alien in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. The term shall include any person who engages in such business on a part-time basis.

Permanently inoperable. A firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a

firing condition. An acceptable method of rendering most firearms permanently inoperable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearm permanently inoperable. Contact ATF for instructions.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Pistol. A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

Principal objective of livelihood and profit. The intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents such as improving or liquidating a personal firearms collection: *Provided,* That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this part, the term ''terrorism'' means activity, directed against United States persons, which—

(a) Is committed by an individual who is not a national or permanent resident alien of the United States;

(b) Involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(c) Is intended—

(1) To intimidate or coerce a civilian population;

(2) To influence the policy of a government by intimidation or coercion; or

(3) To affect the conduct of a government by assassination or kidnapping.

Published ordinance. A published law of any political subdivision of a State which the Director determines to be relevant to the enforcement of this part and which is contained on a list compiled by the Director, which list is incorporated by reference in the FEDERAL REGISTER, revised annually, and furnished to licensees under this part.

Renounced U.S. citizenship. (a) A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

(1) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or

(2) Before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).

(b) The term shall not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

Revolver. A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

Rifle. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

Semiautomatic assault weapon. (a) Any of the firearms, or copies or duplicates of the firearms in any caliber, known as:

(1) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

(2) Action Arms Israeli Military Industries UZI and Galil,

(3) Beretta Ar70 (SC–70),

(4) Colt AR–15,

(5) Fabrique National FN/FAL, FN/LAR, and FNC,

(6) SWD M–10, M–11, M–11/9, and M–12,

(7) Steyr AUG,

(8) INTRATEC TEC–9, TEC–DC9 and TEC–22, and

(9) Revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(b) A semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A bayonet mount,

(4) A flash suppressor or threaded barrel designed to accommodate a flash suppressor, and

(5) A grenade launcher;

(c) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(1) An ammunition magazine that attaches to the pistol outside of the pistol grip,

(2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer,

(3) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned,

(4) A manufactured weight of 50 ounces or more when the pistol is unloaded, and

(5) A semiautomatic version of an automatic firearm; and

(d) A semiautomatic shotgun that has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A fixed magazine capacity in excess of 5 rounds, and

(4) An ability to accept a detachable magazine.

Semiautomatic pistol. Any repeating pistol which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Semiautomatic rifle. Any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Semiautomatic shotgun. Any repeating shotgun which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Short-barreled rifle. A rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

Short-barreled shotgun. A shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches.

Shotgun. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

State. A State of the United States. The term shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence. The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is on active duty as a member of the Armed Forces, the individual's State of residence is the State in which his or her permanent duty station is located. An alien who is legally in the United States shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the date of sale or delivery of a firearm. The following are examples that illustrate this definition:

Example 1. A maintains a home in State X. A travels to State Y on a hunting, fishing, business, or other type of trip. A does not become a resident of State Y by reason of such trip.

Example 2. A is a U.S. citizen and maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that A actually resides in State Y, A is a resident of State Y.

Example 3. A, an alien, travels on vacation or on a business trip to State X. Regardless of the length of time A spends in State X, A does not have a State of residence in State X. This is because A does not have a home in State X at which he has resided for at least 90 days.

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

Unserviceable firearm. A firearm which is incapable of discharging a shot by means of an explosive and is incapable of being readily restored to a firing condition.

U.S.C. The United States Code.

(5 U.S.C. 552(a), 80 Stat. 383, as amended; 18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–48, 43 FR 13536, Mar. 31 1978; 44 FR 55842, Sept. 28, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §178.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart C—Administrative and Miscellaneous Provisions

§ 178.21 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.

(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 46915, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5962, Feb. 27, 1987; T.D. ATF–270, 53 FR 10492, Mar. 31, 1988; T.D. 372, 61 FR 20724, May 8, 1996]

§ 178.22 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The licensee, on specific approval by the Director as provided in this paragraph, 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 it is found that:

(1) Good cause is 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 that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; 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. Where the licensee desires to

employ an alternate method or procedure, a written application shall be submitted to the appropriate Director of Industry Operations, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it. Alternate methods or procedures may not be employed until the application is approved by the Director. The licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation from the specified requirements are necessary and the proposed variations (1) will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph 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 the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the licensee 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 effective administration of this part is hindered by the continuation of the variation. Where the licensee desires to employ an emergency variation, a written application shall be submitted to the appropriate Director of Industry Operations for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The licensee shall retain, as part of the licensee's records, available for examination by ATF officers, any application approved by the Director under this section.

[T.D. ATF–270, 53 FR 10492, Mar. 31, 1988]

§ 178.23 Right of entry and examination.

(a) Except as provided in paragraph (b), any ATF officer, when there is reasonable cause to believe a violation of the Act has occurred and that evidence of the violation may be found on the premises of any licensed manufacturer, licensed importer, licensed dealer, or licensed collector, may, upon demonstrating such cause before a Federal magistrate and obtaining from the magistrate a warrant authorizing entry, enter during business hours (or, in the case of a licensed collector, the hours of operation) the premises, including places of storage, of any such licensee for the purpose of inspecting or examining:

(1) Any records or documents required to be kept by such licensee under this part and

(2) Any inventory of firearms or ammunition kept or stored by any licensed manufacturer, licensed importer, or licensed dealer at such premises or any firearms curios or relics or ammunition kept or stored by any licensed collector at such premises.

(b) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during business hours the premises, including places of storage, of any licensed manufacturer, licensed importer, or licensed dealer for the purpose of inspecting or examining the records, documents, ammunition and firearms referred to in paragraph (a) of this section:

(1) In the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee,

(2) For insuring compliance with the recordkeeping requirements of this part:

(i) Not more than once during any 12-month period, or

(ii) At any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee, or

(3) When such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(c) Any ATF officer, without having reasonable cause to believe a violation of the Act has occurred or that evidence of the violation may be found and without demonstrating such cause before a Federal magistrate or obtaining from the magistrate a warrant authorizing entry, may enter during hours of operation the premises, including places of storage, of any licensed collector for the purpose of inspecting or examining the records, documents, firearms, and ammunition referred to in paragraph (a) of this section (1) for ensuring compliance with the recordkeeping requirements of this part not more than once during any 12-month period or (2) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation. At the election of the licensed collector, the annual inspection permitted by this paragraph shall be performed at the ATF office responsible for conducting such inspection in closest proximity to the collectors premises.

(d) The inspections and examinations provided by this section do not authorize an ATF officer to seize any records or documents other than those records or documents constituting material evidence of a violation of law. If an ATF officer seizes such records or documents, copies shall be provided the licensee within a reasonable time.

[T.D. ATF–270, 53 FR 10492, Mar. 31, 1988; as amended by T.D. ATF–363, 60 FR 17450, Apr. 6, 1995]

§ 178.24 Compilation of State laws and published ordinances.

(a) The Director shall annually revise and furnish Federal firearms licensees with a compilation of State laws and published ordinances which are relevant to the enforcement of this part. The Director annually revises the compilation and publishes it as ''State Laws and Published Ordinances—Firearms'' which is furnished free of charge to licensees under this part. Where the compilation has previously been furnished to licensees, the Director need only furnish amendments of the relevant laws and ordinances to such licensees.

(b) ''State Laws and Published Ordinances—Firearms'' is incorporated by reference in this part. It is ATF Publication 5300.5, revised yearly. The current edition is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register.

[T.D. ATF–270, 53 FR 10493, Mar. 31, 1988]

§ 178.25 Disclosure of information.

The Director of Industry Operations may make available to any Federal, State or local law enforcement agency any information which is obtained by reason of the provisions of the Act with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition. Upon the request of any Federal, State or local law enforcement agency, the Director of Industry Operations may provide such agency any information contained in the records required to be maintained by the Act or this part.

[T.D. ATF–270, 53 FR 10493, Mar. 31, 1988]

§ 178.25a Responses to requests for information.

Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by an ATF officer at the National

Tracing Center for information contained in the records required to be kept by this part for determining the disposition of one or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally to the ATF officer within the 24-hour period. Verification of the identity and employment of National Tracing Center personnel requesting information may be established at the time the requested information is provided by telephoning the toll-free number 1–800–788–7132 or using the toll-free facsimile (FAX) number 1–800–578–7223.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–363, 60 FR 17451, Apr. 6, 1996, as amended by T.D. ATF–396, 63 FR 12646, Mar. 16, 1998]

§ 178.26 Curio and relic determination.

Any person who desires to obtain a determination whether a particular firearm is a curio or relic shall submit a written request, in duplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require the submission of the firearm for examination and evaluation. If the submission of the firearm is impractical, the person requesting the determination shall so advise the Director and designate the place where the firearm will be available for examination and evaluation.

[T.D. ATF–270, 53 FR 10493, Mar. 31, 1988]

§ 178.27 Destructive device determination.

The Director shall determine in accordance with 18 U.S.C. 921(a)(4) whether a device is excluded from the definition of a destructive device. A person who desires to obtain a determination under that provision of law for any device which he believes is not likely to be used as a weapon shall submit a written request, in triplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer thereof, the purpose of and use for which it is intended, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make his determination. The Director may require the submission to him, of a sample of such device for examination and evaluation. If the submission of such device is impracticable, the person requesting the ruling shall so advise the Director and designate the place where the device will be available for examination and evaluation.

§ 178.28 Transportation of destructive devices and certain firearms.

(a) The Director may authorize a person to transport in interstate or foreign commerce any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, if he finds that such transportation is reasonably necessary and is consistent with public safety and applicable State and local law. A person who desires to transport in interstate or foreign commerce any such device or weapon shall submit a written request so to do, in duplicate, to the Director. The request shall contain:

(1) A complete description and identification of the device or weapon to be transported;

(2) A statement whether such transportation involves a transfer of title;

(3) The need for such transportation;

(4) The approximate date such transportation is to take place;

(5) The present location of such device or weapon and the place to which it is to be transported;

(6) The mode of transportation to be used (including, if by common or contract carrier, the name and address of such carrier); and

(7) Evidence that the transportation or possession of such device or weapon is not inconsistent with the laws at the place of destination.

(b) No person shall transport any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle in interstate or foreign commerce under the provisions of this section

until he has received specific authorization so to do from the Director. Authorization granted under this section does not carry or import relief from any other statutory or regulatory provision relating to firearms.

(c) This section shall not be construed as requiring licensees to obtain authorization to transport destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles in interstate or foreign commerce: *Provided,* That in the case of a licensed importer, licensed manufacturer, or licensed dealer, such a licensee is qualified under the National Firearms Act (see also Part 179 of this chapter) and this part to engage in the business with respect to the device or weapon to be transported, and that in the case of a licensed collector, the device or weapon to be transported is a curio or relic.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16385, Apr. 15, 1975, and amended by T.D. ATF–138, 48 FR 35399, Aug. 4, 1983]

§ 178.29 Out-of-State acquisition of firearms by nonlicensees.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, shall transport into or receive in the State where the person resides (or if a corporation or other business entity, where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State: *Provided*, That the provisions of this section:

(a) Shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State,

(b) Shall not apply to the transportation or receipt of a rifle or shotgun obtained from a licensed manufacturer, licensed importer, licensed dealer, or licensed collector in a State other than the transferee's State of residence in an over-the-counter transaction at the licensee's premises obtained in conformity with the provisions of § 178.96(c) and

(c) Shall not apply to the transportation or receipt of a firearm obtained in conformity with the provisions of §§ 178.30 and 178.97.

[T.D. ATF–270, 53 FR 10493, Mar. 31, 1988]

§ 178.29a Acquisition of firearms by nonresidents.

No person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State shall receive any firearms unless such receipt is for lawful sporting purposes.

[T.D. ATF–363, 60 FR 17451, Apr. 6, 1995]

§ 178.30 Out-of-State disposition of firearms by nonlicensees.

No nonlicensee shall transfer, sell, trade, give, transport, or deliver any firearm to any other nonlicensee, who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides: *Provided*, That the provisions of this section:

(a) shall not apply to the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or any acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence; and

(b) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes.

[T.D. ATF–313, 56 FR 32508, July 17, 1991; 57 FR 1205, Jan. 10, 1992]

§ 178.31 Delivery by common or contract carrier.

(a) No person shall knowingly deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped: *Provided,* That any passenger who owns or legally possesses a firearm or ammunition being transported aboard any

common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of that trip without violating any provision of this part.

(b) No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container indicating that such package, luggage, or other container contains a firearm.

(c) No common or contract carrier shall transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of any provision of this part: *Provided, however,* That the provisions of this paragraph shall not apply in respect to the transportation of firearms or ammunition in in-bond shipment under Customs laws and regulations.

(d) No common or contract carrier shall knowingly deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm: *Provided,* That this paragraph shall not apply with respect to the return of a firearm to a passenger who places firearms in the carrier's custody for the duration of the trip.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16385, Apr. 15, 1975, and amended by T.D. ATF–354, 59 FR 7112, Feb. 14, 1994; T.D. ATF–361, 60 FR 10786, Feb. 27, 1995]

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) No person may ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802),

(4) Has been adjudicated as a mental defective or has been committed to a mental institution,

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (a)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

(6) Has been discharged from the Armed Forces under dishonorable conditions,

(7) Having been a citizen of the United States, has renounced citizenship,

(8) Is subject to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(ii) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(iii)(A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or

(9) Has been convicted of a misdemeanor crime of domestic violence.

(b) No person who is under indictment for a crime punishable by imprisonment for a term exceeding one year may ship or transport any firearm or ammunition in interstate or foreign commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(c) Any individual, who to that individual's knowledge and while being employed by any person described in paragraph (a) of this section, may not in the course of such employment receive, possess, or transport any firearm or ammunition in commerce or affecting commerce or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(d) No person may sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year,

(2) Is a fugitive from justice,

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802),

(4) Has been adjudicated as a mental defective or has been committed to a mental institution,

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (d)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

(6) Has been discharged from the Armed Forces under dishonorable conditions,

(7) Having been a citizen of the United States, has renounced citizenship,

(8) Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child: *Provided,* That the provisions of this

paragraph shall only apply to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii)(A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or

(9) Has been convicted of a misdemeanor crime of domestic violence.

(e) The actual notice required by paragraphs (a)(8)(i) and (d)(8)(i) of this section is notice expressly and actually given, and brought home to the party directly, including service of process personally served on the party and service by mail. Actual notice also includes proof of facts and circumstances that raise the inference that the party received notice including, but not limited to, proof that notice was left at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. It does not include notice published in a newspaper.

(f) Pursuant to 18 U.S.C. 922(y)(3), any nonimmigrant alien may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section, if the Attorney General approves a petition for the waiver.

[T.D. ATF–270, 53 FR 10493, Mar. 31, 1988, as amended by T.D. ATF–363, 60 FR 17451, Apr. 6, 1995; T.D. ATF–391, 62 FR 34639, June 27, 1997; T.D. ATF–401, 63 FR 35522, June 30, 1998; T.D. ATF–471, 67 FR 5425, Feb. 5, 2002]

§ 178.33 Stolen firearms and ammunition.

No person shall transport or ship in interstate or foreign commerce any stolen firearm or stolen ammunition knowing or having reasonable cause to believe that the firearm or ammunition was stolen, and no person shall receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

[T.D. ATF–363, 60 FR 17451, Apr. 6, 1995]

§ 178.33a Theft of firearms.

No person shall steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[T.D. ATF–354, 59 FR 7112, Feb. 14, 1994]

§ 178.34 Removed, obliterated, or altered serial number.

No person shall knowingly transport, ship, or receive in interstate or foreign commerce any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered, or possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

[T.D. ATF–313, 56 FR 32508, July 17, 1991]

§ 178.35 Skeet, trap, target, and similar shooting activities.

Licensing and recordkeeping requirements, including permissible alternate records, for skeet, trap, target, and similar organized activities shall be determined by the Director of Industry Operations on a case by case basis.

§ 178.36 Transfer or possession of machine guns.

No person shall transfer or possess a machine gun except:

(a) A transfer to or by, or possession by or under the authority of, the United States, or any department or agency thereof, or a State, or a department, agency, or political subdivision

thereof. (See Part 179 of this chapter); or

(b) Any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986 (See Part 179 of this chapter).

[T.D. ATF–270, 53 FR 10494, Mar. 31, 1988]

§ 178.37 Manufacture, importation and sale of armor piercing ammunition.

No person shall manufacture or import, and no manufacturer or importer shall sell or deliver, armor piercing ammunition, except:

(a) The manufacture or importation, or the sale or delivery by any manufacturer or importer, of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department, agency or political subdivision thereof;

(b) The manufacture, or the sale or delivery by a manufacturer or importer, of armor piercing ammunition for the purpose of exportation; or

(c) The sale or delivery by a manufacturer or importer of armor piercing ammunition for the purposes of testing or experimentation as authorized by the Director under the provisions of § 178.149.

[T.D. ATF–270, 53 FR 10494, Mar. 31, 1988]

§ 178.38 Transportation of firearms.

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where such person may lawfully possess and carry such firearm to any other place where such person may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided,* That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

[T.D. ATF–270, 53 FR 10494, Mar. 31, 1988]

§ 178.39 Assembly of semiautomatic rifles or shotguns.

(a) No person shall assemble a semiautomatic rifle or any shotgun using more than 10 of the imported parts listed in paragraph (c) of this section if the assembled firearm is prohibited from importation under section 925(d)(3) as not being particularly suitable for or readily adaptable to sporting purposes.

(b) The provisions of this section shall not apply to:

(1) The assembly of such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) The assembly of such rifle or shotgun for the purposes of testing or experimentation authorized by the Director under the provisions of § 178.151; or

(3) The repair of any rifle or shotgun which had been imported into or assembled in the United States prior to November 30, 1990, or the replacement of any part of such firearm.

(c) For purposes of this section, the term *imported parts* are:

(1) Frames, receivers, receiver castings, forgings or stampings
(2) Barrels
(3) Barrel extensions
(4) Mounting blocks (trunions)
(5) Muzzle attachments
(6) Bolts
(7) Bolt carriers
(8) Operating rods
(9) Gas pistons
(10) Trigger housings
(11) Triggers
(12) Hammers
(13) Sears
(14) Disconnectors
(15) Buttstocks
(16) Pistol grips
(17) Forearms, handguards
(18) Magazine bodies
(19) Followers
(20) Floorplates

[T.D. ATF–346, 58 FR 40589, July 29, 1993]

§ 178.39a Reporting theft or loss of firearms.

Each licensee shall report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector, within 48 hours after the theft or loss is discovered. Licensees shall report thefts or losses by telephoning 1–800–800–3855 (nationwide toll free number) and by preparing ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report, in accordance with the instructions on the form. The original of the report shall be forwarded to the office specified thereon, and Copy 1 shall be retained by the licensee as part of the licensee's permanent records. Theft or loss of any firearm shall also be reported to the appropriate local authorities.

(Approved by the Office of Management and Budget under control number 1512–0524)

[T.D. ATF–363, 60 FR 17451, Apr. 6, 1995]

§ 178.40 Manufacture, transfer, and possession of semiautomatic assault weapons.

(a) *Prohibition.* No person shall manufacture, transfer, or possess a semiautomatic assault weapon.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply to:

(1) The possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed in the United States under Federal law on September 13, 1994;

(2) Any of the firearms, or replicas or duplicates of the firearms, specified in 18 U.S.C. 922, Appendix A, as such firearms existed on October 1, 1993;

(3) Any firearm that—

(i) Is manually operated by bolt, pump, lever, or slide action;

(ii) Has been rendered permanently inoperable; or

(iii) Is an antique firearm;

(4) Any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition;

(5) Any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine;

(6) The manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement;

(7) The transfer to a licensee under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(8) The possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement;

(9) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation as authorized by the Director under the provisions of § 178.153; or

(10) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer for the purpose of exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778).

(c) *Manufacture and dealing in semiautomatic assault weapons.* Subject to compliance with the provisions of this part, licensed manufacturers and licensed dealers in semiautomatic assault weapons may manufacture and deal in such weapons manufactured after September 13, 1994: *Provided,* The licensee obtains evidence that the weapons will be disposed of in accordance with paragraph (b) of this section. Examples of acceptable evidence include the following:

(1) Contracts between the manufacturer and dealers stating that the

weapons may only be sold to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section;

(2) Copies of purchase orders submitted to the manufacturer or dealer by law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(3) Copies of letters submitted to the manufacturer or dealer by government agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section expressing an interest in purchasing the semiautomatic assault weapons;

(4) Letters from dealers to the manufacturer stating that sales will only be made to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section; and

(5) Letters from law enforcement officers purchasing in accordance with paragraph (b)(6) of this section and § 178.132.

(Paragraph (c) approved by the Office of Management and Budget under control number 1512–0526)

[T.D. ATF–363, 60 FR 17451, Apr. 6, 1995]

§ 178.40a Transfer and possession of large capacity ammunition feeding devices.

(a) *Prohibition*. No person shall transfer or possess a large capacity ammunition feeding device.

(b) *Exceptions*. The provisions of paragraph (a) of this section shall not apply to:

(1) The possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on September 13, 1994;

(2) The manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement;

(3) The transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(4) The possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement;

(5) The manufacture, transfer, or possession of any large capacity ammunition feeding device by a manufacturer or importer for the purposes of testing or experimentation in accordance with § 178.153; or

(6) The manufacture, transfer, or possession of any large capacity ammunition feeding device by a manufacturer or importer for the purpose of exportation in accordance with the Arms Export Control Act (22 U.S.C. 2778).

(c) *Importation, manufacture, and dealing in large capacity ammunition feeding devices*. Possession and transfer of large capacity ammunition feeding devices by persons who manufacture, import, or deal in such devices will be presumed to be lawful if such persons maintain evidence establishing that the devices are possessed and transferred for sale to purchasers specified in paragraph (b) of this section. Examples of acceptable evidence include the following:

(1) Contracts between persons who import or manufacture such devices and persons who deal in such devices stating that the devices may only be sold to law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(2) Copies of purchase orders submitted to persons who manufacture, import, or deal in such devices by law enforcement agencies or other purchasers specified in paragraph (b) of this section;

(3) Copies of letters submitted to persons who manufacture, import, or deal in such devices by government agencies or other purchasers specified in paragraph (b) of this section expressing an interest in purchasing the devices;

(4) Letters from persons who deal in such devices to persons who import or

manufacture such devices stating that sales will only be made to law enforcement agencies or other purchasers specified in paragraph (b) of this section; and

(5) Letters from law enforcement officers purchasing in accordance with paragraph (b)(2) of this section and § 178.132.

(Paragraph (c) approved by the Office of Management and Budget under control number 1512–0526)

[T.D. ATF–363, 60 FR 17452, Apr. 6, 1995, as amended by T.D. ATF–383, 61 FR 39321, July 29, 1996]

Subpart D—Licenses

§ 178.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of firearms or ammunition, or a dealer in firearms shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who desires to obtain a license as a collector of curios or relics may obtain such a license under the provisions of this subpart.

(b) Each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application, with the required fee (see § 178.42), with ATF in accordance with the instructions on the form (see § 178.44), and, pursuant to § 178.47, receive the license required for such business from the Chief, National Licensing Center. Except as provided in § 178.50, a license must be obtained for each business and each place at which the applicant is to do business. A license as an importer or manufacturer of firearms or ammunition, or a dealer in firearms shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce and to engage in the business specified by the license, at the location described on the license, and for the period stated on the license. However, it shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer's license in order to engage in business on the licensed premises as a dealer in the same type of firearms authorized by the license to be imported or manufactured. Payment of the license fee as an importer or manufacturer of destructive devices, ammunition for destructive devices or armor piercing ammunition or as a dealer in destructive devices includes the privilege of importing or manufacturing firearms other than destructive devices and ammunition for other than destructive devices or ammunition other than armor piercing ammunition, or dealing in firearms other than destructive devices, as the case may be, by such a licensee at the licensed premises.

(c) Each person seeking the privileges of a collector licensed under this part shall file an application, with the required fee (see § 178.42), with ATF in accordance with the instructions on the form (see § 178.44), and pursuant to § 178.47, receive from the Chief, National Licensing Center, the license covering the collection of curios and relics. A separate license may be obtained for each collection premises, and such license shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, receive, and acquire curios and relics in interstate or foreign commerce, and to make disposition of curios and relics in interstate or foreign commerce, to any other person licensed under the provisions of this part, for the period stated on the license.

(d) The collector license provided by this part shall apply only to transactions related to a collector's activity in acquiring, holding or disposing of curios and relics. A collector's license does not authorize the collector to engage in a business required to be licensed under the Act or this part. Therefore, if the acquisitions and dispositions of curios and relics by a collector bring the collector within the definition of a manufacturer, importer,

or dealer under this part, he shall qualify as such. (See also § 178.93 of this part.)

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–270, 53 FR 10494, Mar. 31, 1988; T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 178.42 License fees.

Each applicant shall pay a fee for obtaining a firearms license or ammunition license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

(a) For a manufacturer:

(1) Of destructive devices, ammunition for destructive devices or armor piercing ammunition—$1,000 per year.

(2) Of firearms other than destructive devices—$50 per year.

(3) Of ammunition for firearms other than ammunition for destructive devices or armor piercing ammunition—$10 per year.

(b) For an importer:

(1) Of destructive devices, ammunition for destructive devices or armor piercing ammunition—$1,000 per year.

(2) Of firearms other than destructive devices or ammunition for firearms other than destructive devices or ammunition other than armor piercing ammunition—$50 per year.

(c) For a dealer:

(1) In destructive devices—$1,000 per year.

(2) Who is not a dealer in destructive devices—$200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.

(d) For a collector of curios and relics—$10 per year.

[T.D. ATF–270, 53 FR 10494, Mar. 31, 1988, as amended by T.D. ATF–354, 59 FR 7112, Feb. 14, 1994]

§ 178.43 License fee not refundable.

No refund of any part of the amount paid as a license fee shall be made where the operations of the licensee are, for any reason, discontinued during the period of an issued license. However, the license fee submitted with an application for a license shall be refunded if that application is denied or withdrawn by the applicant prior to being acted upon.

[T.D. ATF–270, 53 FR 10494, Mar. 31, 1988]

§ 178.44 Original license.

(a)(1) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, must file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924;

(ii) Include a photograph and fingerprints as required in the instructions on the form;

(iii) If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver);

(iv) Be accompanied by a completed ATF Form 5300.37 (Certification of Compliance with State and Local Law) and ATF Form 5300.36 (Notification of Intent to Apply for a Federal Firearms License); and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(2) ATF Forms 7 (Firearms), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(b) Any person who desires to obtain a license as a collector under the Act and this part, or who has not timely submitted an application for renewal of the previous license issued under this

part, shall file an application, ATF Form 7CR (Curios and Relics), with ATF in accordance with the instructions on the form. If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924. The application shall be accompanied by a completed ATF Form 5300.37 and ATF Form 5300.36 and shall include the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms. ATF Forms 7CR (Curios and Relics), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(Paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1512–0570)

[T.D. ATF–363, 60 FR 17453, Apr. 6, 1995, as amended by T.D. ATF–471, 67 FR 5425, Feb. 5, 2002]

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, the licensee shall, unless otherwise notified in writing by the Chief, National Licensing Center, execute and file with ATF prior to the expiration of the license an application for a license renewal, ATF Form 8 Part II, accompanied by a completed ATF Form 5300.37 and ATF Form 5300.36, in accordance with the instructions on the forms, and the required fee. If the applicant is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). The Chief, National Licensing Center, may, in writing, require the applicant for license renewal to also file completed ATF Form 7 or ATF Form 7CR in the manner required by § 178.44. In the event the licensee does not timely file an ATF Form 8 Part II, the licensee must file an ATF Form 7 or ATF Form 7CR as required by § 178.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 Part II is not timely received through the mails, the licensee should so notify the Chief, National Licensing Center.

(Approved by the Office of Management and Budget under control number 1512–0570)

[T.D. ATF–363, 60 FR 17453, Apr. 6, 1995, as amended by T.D. ATF–471, 67 FR 5426, Feb. 5, 2002]

§ 178.46 Insufficient fee.

If an application is filed with an insufficient fee, the application and any fee submitted will be returned to the applicant.

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF–200, 50 FR 10498, Mar. 15, 1985]

§ 178.47 Issuance of license.

(a) Upon receipt of a properly executed application for a license on ATF Form 7, ATF Form 7CR, or ATF Form 8 Part II, the Chief, National Licensing Center, shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is qualified, issue the appropriate license. Each license shall bear a serial number and such number may be assigned to the licensee to whom issued for so long as the licensee maintains continuity of renewal in the same location (State).

(b) The Chief, National Licensing Center, shall approve a properly executed application for license on ATF Form 7, ATF Form 7CR, or ATF Form 8 Part II, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing,

directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited under the provisions of the Act from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition, or from receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce;

(3) The applicant has not willfully violated any of the provisions of the Act or this part;

(4) The applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(5) The applicant has in a State (i) premises from which he conducts business subject to license under the Act or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under the Act or from which he intends to conduct such collecting within a reasonable period of time; and

(6) The applicant has filed an ATF Form 5300.37 (Certification of Compliance with State and Local Law) with ATF in accordance with the instructions on the form certifying under the penalties of perjury that—

(i) The business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises are located;

(ii) Within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of business;

(iii) The business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iv) The applicant has completed and sent or delivered ATF F 5300.36 (Notification of Intent to Apply for a Federal Firearms License) to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license. For purposes of this paragraph, the ''chief law enforcement officer'' is the chief of police, the sheriff, or an equivalent officer.

(c) The Chief, National Licensing Center, shall approve or the Director of Industry Operations shall deny an application for a license within the 60-day period beginning on the date the properly executed application was received: *Provided*, That when an applicant for license renewal is a person who is, pursuant to the provisions of § 178.78, § 178.143, or § 178.144, conducting business or collecting activity under a previously issued license, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or license application, final determination of the applicant's criminal case, or final action by the Director on an application for relief submitted pursuant to § 178.144, as the case may be.

(d) When the Director of Industry Operations or the Chief, National Licensing Center fails to act on an application for a license within the 60-day period prescribed by paragraph (c) of this section, the applicant may file an action under section 1361 of title 28, United States Code, to compel ATF to act upon the application.

(Paragraph (b)(6) approved by the Office of Management and Budget under control numbers 1512–0522 and 1512–0523)

(18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–135, 48 FR 24068, May 31, 1983; T.D. ATF–241, 51 FR 39619, Oct. 29, 1986; T.D. ATF–270, 53 FR 10495, Mar. 31, 1988; T.D. ATF–290, 54 FR 53054, Dec. 27, 1989; T.D. ATF–363, 60 FR 17453, Apr. 6, 1995]

§ 178.48 Correction of error on license.

(a) Upon receipt of a license issued under the provisions of this part, each licensee shall examine same to ensure that the information contained thereon is accurate. If the license is incorrect, the licensee shall return the license to the Chief, National Licensing Center, with a statement showing the nature of the error. The Chief, National Licensing Center, shall correct the error, if

the error was made in his office, and return the license. However, if the error resulted from information contained in the licensee's application for the license, the Chief, National Licensing Center, shall require the licensee to file an amended application setting forth the correct information and a statement explaining the error contained in the application. Upon receipt of the amended application and a satisfactory explanation of the error, the Chief, National Licensing Center, shall make the correction on the license and return same to the licensee.

(b) When the Chief, National Licensing Center, finds through any means other than notice from the licensee that an incorrect license has been issued, the Chief, National Licensing Center, may require the holder of the incorrect license to (1) return the license for correction, and (2) if the error resulted from information contained in the licensee's application for the license, the Chief, National Licensing Center, shall require the licensee to file an amended application setting forth the correct information, and a statement explaining the error contained in the application. The Chief, National Licensing Center, then shall make the correction on the license and return same to the licensee.

[33 FR 18555, Dec. 14, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 178.49 Duration of license.

The license entitles the person to whom issued to engage in the business or activity specified on the license, within the limitations of the Act and the regulations contained in this part, for a three year period, unless terminated sooner.

[T.D. ATF–270, 53 FR 10495, Mar. 31, 1988]

§ 178.50 Locations covered by license.

The license covers the class of business or the activity specified in the license at the address specified therein. A separate license must be obtained for each location at which a firearms or ammunition business or activity requiring a license under this part is conducted except:

(a) No license is required to cover a separate warehouse used by the licensee solely for storage of firearms or ammunition if the records required by this part are maintained at the licensed premises served by such warehouse;

(b) A licensed collector may acquire curios and relics at any location, and dispose of curios or relics to any licensee or to other persons who are residents of the State where the collector's license is held and the disposition is made;

(c) A licensee may conduct business at a gun show pursuant to the provision of § 178.100; or

(d) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location pursuant to the provisions of § 178.100.

[T.D. ATF–191, 49 FR 46890, Nov. 29, 1984, as amended by T.D. ATF–401, 63 FR 35523, June 30, 1998]

§ 178.51 License not transferable.

Licenses issued under this part are not transferable. In the event of the lease, sale, or other transfer of the operations authorized by the license, the successor must obtain the license required by this part prior to commencing such operations. However, for rules on right of succession, see § 178.56.

§ 178.52 Change of address.

(a) Licensees may during the term of their current license remove their business or activity to a new location at which they intend regularly to carry on such business or activity by filing an Application for an Amended Federal Firearms License, ATF Form 5300.38, in duplicate, not less than 30 days prior to such removal with the Chief, National Licensing Center. The ATF Form 5300.38 shall be completed in accordance with the instructions on the form. The application must be executed under the penalties of perjury and penalties imposed by 18 U.S.C. 924. The application shall be accompanied by the licensee's original license. The Chief, National Licensing Center, may, in writing, require the applicant for an amended license to also file completed

ATF Form 7 or ATF Form 7CR, or portions thereof, in the manner required by § 178.44.

(b) Upon receipt of a properly executed application for an amended license, the Chief, National Licensing Center, shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is qualified at the new location, issue the amended license, and return it to the applicant. The license shall be valid for the remainder of the term of the original license. The Chief, National Licensing Center, shall, if the applicant is not qualified, refer the application for amended license to the Director of Industry Operations for denial in accordance with § 178.71.

(Approved by the Office of Management and Budget under control number 1512–0525)

[T.D. ATF–363, 60 FR 17453, Apr. 6, 1995]

§ 178.53 Change in trade name.

A licensee continuing to conduct business at the location shown on his license is not required to obtain a new license by reason of a mere change in trade name under which he conducts his business: *Provided,* That such licensee furnishes his license for endorsement of such change to the Chief, National Licensing Center within 30 days from the date the licensee begins his business under the new trade name.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–290, 54 FR 53055, Dec. 27, 1989]

§ 178.54 Change of control.

In the case of a corporation or association holding a license under this part, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of change in stock ownership or control (in the licensed corporation or in any other corporation), by operations of law, or in any other manner, the licensee shall, within 30 days of such change, give written notification thereof, executed under the penalties of perjury, to the Chief, National Licensing Center. Upon expiration of the license, the corporation or association must file a Form 7 (Firearms) as required by § 178.44.

[33 FR 18555, Dec. 14, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

§ 178.55 Continuing partnerships.

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the business under the license of the partnership. If such surviving partner acquires the business on completion of the settlement of the partnership, he shall obtain a license in his own name from the date of acquisition, as provided in § 178.44. The rule set forth in this section shall also apply where there is more than one surviving partner.

§ 178.56 Right of succession by certain persons.

(a) Certain persons other than the licensee may secure the right to carry on the same firearms or ammunition business at the same address shown on, and for the remainder of the term of, a current license. Such persons are:

(1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee; and

(2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.

(b) In order to secure the right provided by this section, the person or persons continuing the business shall furnish the license for that business for endorsement of such succession to the Chief, National Licensing Center, within 30 days from the date on which the successor begins to carry on the business.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–290, 54 FR 53055, Dec. 27, 1989]

§ 178.57 Discontinuance of business.

(a) Where a firearm or ammunition business is either discontinued or succeeded by a new owner, the owner of the business discontinued or succeeded shall within 30 days thereof furnish to the Chief, National Licensing Center notification of the discontinuance or succession. (See also § 178.127.)

(b) Since section 922(v), Title 18, U.S.C., makes it unlawful to transfer or possess a semiautomatic assault weapon, except as provided in the law, any licensed manufacturer, licensed importer, or licensed dealer intending to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any semiautomatic assault weapon manufactured or imported after September 13, 1994, to a person specified in § 178.40(b), or, subject to the provisions of §§ 178.40(c) and 178.132, a licensed manufacturer, a licensed importer, or a licensed dealer.

(c) Since section 922(w), Title 18, U.S.C., makes it unlawful to transfer or possess a large capacity ammunition feeding device, except as provided in the law, any person who manufactures, imports, or deals in such devices and who intends to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any large capacity ammunition feeding device manufactured after September 13, 1994, to a person specified in § 178.40a(b), or, subject to the provisions of §§ 178.40a(c) and 178.132, a person who manufactures, imports, or deals in such devices.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–290, 54 FR 53055, Dec. 27, 1989; T.D. ATF–363, 60 FR 17453, Apr. 6, 1995; T.D. ATF–383, 61 FR 39321, July 29, 1996]

§ 178.58 State or other law.

A license issued under this part confers no right or privilege to conduct business or activity contrary to State or other law. The holder of such a license is not by reason of the rights and privileges granted by that license immune from punishment for operating a firearm or ammunition business or activity in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

§ 178.59 Abandoned application.

Upon receipt of an incomplete or improperly executed application on ATF form 7 (5310.12), or ATF Form 8 (5310.11) Part II, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned and the license fee returned.

[T.D. ATF–135, 48 FR 24068, May 31, 1983]

§ 178.60 Certain continuances of business.

A licensee who furnishes his license to the Chief, National Licensing Center for correction or endorsement in compliance with the provisions contained in this subpart may continue his operations while awaiting its return.

[33 FR 18555, Dec. 14, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–290, 54 FR 53054, Dec. 27, 1989]

Subpart E—License Proceedings

§ 178.71 Denial of an application for license.

Whenever the Director of Industry Operations has reason to believe that an applicant is not qualified to receive a license under the provisions of § 178.47, he may issue a notice of denial, on Form 4498, to the applicant. The notice shall set forth the matters of fact and law relied upon in determining that the application should be denied, and shall afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within such time, the application shall be disapproved and a copy, so marked, shall be returned to the applicant.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–270, 53 FR 10495, Mar. 31, 1988]

§ 178.72 Hearing after application denial.

If the applicant for an original or renewal license desires a hearing to review the denial of his application, he shall file a request therefor, in duplicate, with the Director of Industry Operations within 15 days after receipt of the notice of denial. The request should include a statement of the reasons therefor. On receipt of the request, the Director of Industry Operations shall, as expeditiously as possible, make the necessary arrangements for the hearing and advise the applicant of the date, time, location, and the name of the officer before whom the hearing will be held. Such notification shall be made not less than 10 days in advance of the date set for the hearing. On conclusion of the hearing and consideration of all relevant facts and circumstances presented by the applicant or his representative, the Director of Industry Operations shall render his decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a certified copy of the Director of Industry Operations findings and conclusions shall be furnished to the applicant with a final notice of denial, Form 4501. A copy of the application, marked ''Disapproved,'' will be returned to the applicant. If the decision is that the license applied for should be issued, the applicant shall be so notified, in writing, and the license shall be issued as provided by § 178.47.

§ 178.73 Notice of revocation, suspension, or imposition of civil fine.

(a) *Basis for action.* Whenever the Director of Industry Operations has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director of Industry Operations has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. 922(g) or 922(n) or State law.

(b) *Issuance of notice.* The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The Director of Industry Operations shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to suspension or revocation of the license, or imposition of a civil fine. If the licensee does not file a timely request for a hearing, the Director of Industry Operations shall issue a final notice of suspension or revocation and/or imposition of a civil fine on ATF Form 4501, as provided in § 178.74.

[T.D. ATF–415, 63 FR 58278, Oct. 29, 1998]

§ 178.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

If a licensee desires a hearing after receipt of a notice of suspension or revocation of a license, or imposition of a civil fine, the licensee shall file a request, in duplicate, with the Director of Industry Operations within 15 days after receipt of the notice of suspension or revocation of a license, or imposition of a civil fine. On receipt of such request, the Director of Industry Operations shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held. Such notification shall be made no less than 10 days in advance of the date set for the hearing. On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the Director of Industry Operations shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked, or, in actions under 18 U.S.C. 922(t)(5), that the license should be revoked or suspended, and/or that a civil fine should be imposed, a certified copy of the summary

shall be furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee shall be notified in writing.

[T.D. ATF–415, 63 FR 58278, Oct. 29, 1998]

§ 178.75 Service on applicant or licensee.

All notices and other documents required to be served on an applicant or licensee under this subpart shall be served by certified mail or by personal delivery. Where service is by certified mail, a signed duplicate original copy of the formal document shall be mailed, with return receipt requested, to the applicant or licensee at the address stated in his application or license, or at his last known address. Where service is by personal delivery, a signed duplicate original copy of the formal document shall be delivered to the applicant or licensee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. ATF–241, 51 FR 39619, Oct. 29, 1986; T.D. ATF–270, 53 FR 10496, Mar. 31, 1988]]

§ 178.76 Representation at a hearing.

An applicant or licensee may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms), if he has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities) of this chapter. The Director of Industry Operations may be represented in proceedings by an attorney in the office of the Assistant Chief Counsel or Division Counsel who is authorized 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.''

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–92, 46 FR 46916, Sept. 23, 1981. Further redesignated by T.D. ATF–241, 51 FR 39619, Oct. 29, 1986; T.D. ATF–270, 53 FR 10496, Mar. 31, 1988]

§ 178.77 Designated place of hearing.

The designated place of the hearing shall be a location convenient to the aggrieved party.

[T.D. ATF–270, 53 FR 10496, Mar. 31, 1988]

§ 178.78 Operations by licensee after notice.

In any case where denial, suspension, or revocation proceedings are pending before the Bureau of Alcohol, Tobacco and Firearms, or notice of denial, suspension, or revocation has been served on the licensee and he has filed timely request for a hearing, the license in the possession of the licensee shall remain in effect even though such license has expired, or the suspension or revocation date specified in the notice of revocation on Form 4500 served on the licensee has passed: *Provided*, That with respect to a license that has expired, the licensee has timely filed an application for the renewal of his license. If a licensee is dissatisfied with a posthearing decision revoking or suspending the license or denying the application or imposing a civil fine, as the case may be, he may, pursuant to 18 U.S.C. 923(f)(3), within 60 days after receipt of the final notice denying the application or revoking or suspending the license or imposing a civil fine, file a petition for judicial review of such action. Such petition should be filed with the U.S. district court for the district in which the applicant or licensee resides or has his principal place of business. In such case, when the Director of Industry Operations finds that justice so requires, he may postpone the effective date of suspension or revocation of a license or authorize continued operations under the expired license, as applicable, pending judicial review.

[T.D. ATF–415, 63 FR 58278, Oct. 29, 1998]

Subpart F—Conduct of Business

§ 178.91 Posting of license.

Any license issued under this part shall be kept posted and kept available for inspection on the premises covered by the license.

§ 178.92 How must licensed manufacturers and licensed importers identify firearms, armor piercing ammunition, and large capacity ammunition feeding devices?

(a)(1) *Firearms.* You, as a licensed manufacturer or licensed importer of firearms, must legibly identify each firearm manufactured or imported as follows:

(i) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(ii) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

(A) The model, if such designation has been made;

(B) The caliber or gauge;

(C) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer;

(D) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business; and

(E) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(2) *Firearm frames or receivers.* A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(3) *Special markings for semiautomatic assault weapons, effective July 5, 1995.* In the case of any semiautomatic assault weapon manufactured after September 13, 1994, you must mark the frame or receiver ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' or, in the case of weapons manufactured for export, ''FOR EXPORT ONLY,'' in a manner not susceptible of being readily obliterated, altered, or removed. For weapons manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the special markings prescribed in this paragraph (a)(3) must be to a minimum depth of .003 inch.

(4) *Exceptions.* (i) *Alternate means of identification.* The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(iii) *Machine guns, silencers, and parts.* Any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you, must be identified as required

by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(5) *Measurement of height and depth of markings*. The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1)(i) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(b) *Armor piercing ammunition*—(1) *Marking of ammunition*. Each licensed manufacturer or licensed importer of armor piercing ammunition shall identify such ammunition by means of painting, staining or dying the exterior of the projectile with an opaque black coloring. This coloring must completely cover the point of the projectile and at least 50 percent of that portion of the projectile which is visible when the projectile is loaded into a cartridge case.

(2) *Labeling of packages*. Each licensed manufacturer or licensed importer of armor piercing ammunition shall clearly and conspicuously label each package in which armor piercing ammunition is contained, e.g., each box, carton, case, or other container. The label shall include the words ''ARMOR PIERCING'' in block letters at least ¼ inch in height. The lettering shall be located on the exterior surface of the package which contains information concerning the caliber or gauge of the ammunition. There shall also be placed on the same surface of the package in block lettering at least ⅛ inch in height the words ''FOR GOVERNMENTAL ENTITIES OR EXPORTATION ONLY.'' The statements required by this subparagraph shall be on a contrasting background.

(c) *Large capacity ammunition feeding devices manufactured after September 13, 1994*. (1) Each person who manufactures or imports any large capacity ammunition feeding device manufactured after September 13, 1994, shall legibly identify each such device with a serial number. Such person may use the same serial number for all large capacity ammunition feeding devices produced.

(i) Additionally, in the case of a domestically made large capacity ammunition feeding device, such device shall be marked with the name, city and State (or recognized abbreviation thereof) of the manufacturer;

(ii) And in the case of an imported large capacity ammunition feeding device, such device shall be marked:

(A) With the name of the manufacturer, country of origin, and,

(B) Effective July 5, 1995, the name, city and State (or recognized abbreviation thereof) of the importer.

(iii) Further, large capacity ammunition feeding devices manufactured after September 13, 1994, shall be marked ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' or, in the case of devices manufactured or imported for export, effective July 5, 1995, ''FOR EXPORT ONLY.''

(2) All markings required by this paragraph (c) shall be cast, stamped, or engraved on the exterior of the device. In the case of a magazine, the markings shall be placed on the magazine body.

(3) *Exceptions*—(i) *Metallic links*. Persons who manufacture or import metallic links for use in the assembly of belted ammunition are only required to place the identification marks prescribed in paragraph (c)(1) of this section on the containers used for the packaging of the links.

(ii) *Alternate means of identification*. The Director may authorize other means of identifying large capacity ammunition feeding devices upon receipt of a letter application, in duplicate, from the manufacturer or importer showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Approved by the Office of Management and Budget under control number 1512–0550)

[T.D. ATF–270, 53 FR 10496, Mar. 31, 1988, as amended by T.D. ATF–363, 60 FR 17454, Apr. 6, 1995; T.D. ATF–383, 61 FR 39321, July 29, 1996; T.D. ATF–396, 63 FR 12646, Mar. 16, 1998; T.D. ATF–461, 66 FR 40600, Aug. 3, 2001]

§ 178.93 Authorized operations by a licensed collector.

The license issued to a collector of curios or relics under the provisions of this part shall cover only transactions by the licensed collector in curios and relics. The collector's license is of no force or effect and a licensed collector is of the same status under the Act and this part as a nonlicensee with respect to (a) any acquisition or disposition of firearms other than curios or relics, or any transportation, shipment, or receipt of firearms other than curios or relics in interstate or foreign commerce, and (b) any transaction with a nonlicensee involving any firearm other than a curio or relic. (See also § 178.50.) A collectors license is not necessary to receive or dispose of ammunition, and a licensed collector is not precluded by law from receiving or disposing of armor piercing ammunition. However, a licensed collector may not dispose of any ammunition to a person prohibited from receiving or possessing ammunition (see § 178.99(c)). Any licensed collector who disposes of armor piercing ammunition must record the disposition as required by § 178.125 (a) and (b).

[T.D. ATF–270, 53 FR 10496, Mar. 31, 1988]

§ 178.94 Sales or deliveries between licensees.

A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise disposing of firearms, and a licensed collector selling or otherwise disposing of curios or relics, to another licensee shall verify the identity and licensed status of the transferee prior to making the transaction. Verification shall be established by the transferee furnishing to the transferor a certified copy of the transferee's license and by such other means as the transferor deems necessary: *Provided,* That it shall not be required (a) for a transferee who has furnished a certified copy of its license to a transferor to again furnish such certified copy to that transferor during the term of the transferee's current license, (b) for a licensee to furnish a certified copy of its license to another licensee if a firearm is being returned either directly or through another licensee to such licensee and (c) for licensees of multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization: *Provided further,* That a multilicensed business organization may furnish to a transferor, in lieu of a certified copy of each license, a list, certified to be true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the transferor may sell or otherwise dispose of firearms as provided by this section to any licensee appearing on such list without requiring a certified copy of a license therefrom. A transferor licensee who has the certified information required by this section may sell or dispose of firearms to a licensee for not more than 45 days following the expiration date of the transferee's license.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–270, 53 FR 10496, Mar. 31, 1988]

§ 178.95 Certified copy of license.

The license furnished to each person licensed under the provisions of this part contains a purchasing certification statement. This original license may be reproduced and the reproduction then certified by the licensee for use pursuant to § 178.94. If the licensee desires an additional copy of the license for certification (instead of making a reproduction of the original license), the licensee may submit a request, in writing, for a certified copy or copies of the license to the Chief, National Licensing Center. The request must set forth the name, trade name (if any) and address of the licensee, and the number of license copies desired. There is a charge of $1 for each copy. The fee paid for copies of the license must accompany the request for copies. The fee may be paid by (a) cash, or (b) money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–270, 53 FR 10497, Mar. 31, 1988, as amended by T.D. ATF–290, 54 FR 53055, Dec. 27, 1989]

§ 178.96 Out-of-State and mail order sales.

(a) The provisions of this section shall apply when a firearm is purchased by or delivered to a person not otherwise prohibited by the Act from purchasing or receiving it.

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. The nonlicensee shall attach to such record a true copy of any permit or other information required pursuant to any statute of the State and published ordinance applicable to the locality in which he resides. The licensee shall prior to shipment or delivery of the firearm, forward by registered or certified mail (return receipt requested) a copy of the record, Form 4473, to the chief law enforcement officer named on such record, and delay shipment or delivery of the firearm for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the record to such chief law enforcement officer, or the return of the copy of the record to him due to the refusal of such chief law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the chief law enforcement officer shall be retained by the licensee as a part of the records required of him to be kept under the provisions of subpart H of this part.

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun that is a curio or relic to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if—

(i) The purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale, and delivery of the rifle or shotgun;

(ii) The licensed importer, licensed manufacturer, or licensed dealer complies with the provisions of § 178.102;

(iii) The purchaser furnishes to the licensed importer, licensed manufacturer, or licensed dealer the firearms transaction record, Form 4473, required by § 178.124; and

(iv) The sale, delivery, and receipt of the rifle or shotgun fully comply with the legal conditions of sale in both such States.

(2) For purposes of paragraph (c) of this section, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

(Approved by the Office of Management and Budget under control number 1512–0130)

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–241, 51 FR 39620, Oct. 29, 1986; T.D. ATF–270, 53 FR 10497, Mar. 31, 1988; T.D. ATF–354, 59 FR 7112, Feb. 14, 1994; T.D. ATF–415, 63 FR 58278, Oct. 29, 1998]

§ 178.97 Loan or rental of firearms.

(a) A licensee may lend or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: *Provided*, That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), the licensee complies with the requirements of § 178.102, and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part.

(b) A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this

temporary furnishing of firearms for use on premises on which such an activity is conducted.

[T.D. ATF–415, 63 FR 58278, Oct. 29, 1998]

§ 178.98 Sales or deliveries of destructive devices and certain firearms.

The sale or delivery by a licensee of any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, to any person other than another licensee who is licensed under this part to deal in such device or firearm, is prohibited unless the person to receive such device or firearm furnishes to the licensee a sworn statement setting forth

(a) The reasons why there is a reasonable necessity for such person to purchase or otherwise acquire the device or weapon; and

(b) That such person's receipt or possession of the device or weapon would be consistent with public safety. Such sworn statement shall be made on the application to transfer and register the firearm required by Part 179 of this chapter. The sale or delivery of the device or weapon shall not be made until the application for transfer is approved by the Director and returned to the licensee (transferor) as provided in Part 179 of this chapter.

[T.D. ATF–270, 53 FR 10497, Mar. 31, 1988]

§ 178.99 Certain prohibited sales or deliveries.

(a) *Interstate sales or deliveries.* A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver any firearm to any person not licensed under this part and who the licensee knows or has reasonable cause to believe does not reside in (or if a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business or activity is located: *Provided,* That the foregoing provisions of this paragraph (1) shall not apply to the sale or delivery of a rifle or shotgun (curio or relic, in the case of a licensed collector) to a resident of a State other than the State in which the licensee's place of business or collection premises is located if the requirements of § 178.96(c) are fully met, and (2) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes (see § 178.97).

(b) *Sales or deliveries to underaged persons.* A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver (1) any firearm or ammunition to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm, or ammunition, is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age, or (2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery, or other disposition, unless the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance.

(c) *Sales or deliveries to prohibited categories of persons.* A licensed manufacturer, licensed importer, licensed dealer, or licensed collector shall not sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

(1) Is, except as provided by § 178.143, under indictment for, or, except as provided by § 178.144, has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act, 21 U.S.C. 802);

(4) Has been adjudicated as a mental defective or has been committed to any mental institution;

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 178.32(f), is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (c)(5) do not apply to

any nonimmigrant alien if that alien is—

(i) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(ii) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(iii) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(iv) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Who, having been a citizen of the United States, has renounced citizenship;

(8) Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(i) Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii)(A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or

(9) Has been convicted of a misdemeanor crime of domestic violence.

(d) *Manufacture, importation, and sale of armor piercing ammunition by licensed importers and licensed manufacturers.* A licensed importer or licensed manufacturer shall not import or manufacture armor piercing ammunition or sell or deliver such ammunition, except:

(1) For use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(2) For the purpose of exportation; or

(3) For the purpose of testing or experimentation authorized by the Director under the provisions of § 178.149.

(e) *Transfer of armor piercing ammunition by licensed dealers.* A licensed dealer shall not willfully transfer armor piercing ammunition: *Provided,* That armor piercing ammunition received and maintained by the licensed dealer as business inventory prior to August 28, 1986, may be transferred to any department or agency of the United States or any State or political subdivision thereof if a record of such ammunition is maintained in the form and manner prescribed by § 178.125(c). Any licensed dealer who violates this paragraph is subject to license revocation. See subpart E of this part. For purposes of this paragraph, the Director shall furnish each licensed dealer information defining which projectiles are considered armor piercing. Such information may not be all-inclusive for purposes of the prohibition on manufacture, importation, or sale or delivery by a manufacturer or importer of such ammunition or 18 U.S.C. 929 relating to criminal misuse of such ammunition.

[T.D. ATF–270, 53 FR 10497, Mar. 31, 1988, as amended by T.D. ATF–363, 60 FR 17454, Apr. 6, 1995; T.D. ATF–401, 63 FR 35523, June 30, 1998; T.D. ATF–471, 67 FR 5426, Feb. 5, 2002]

§ 178.100 Conduct of business away from licensed premises.

(a)(1) A licensee may conduct business temporarily at a gun show or event as defined in paragraph (b) if the gun show or event is located in the

same State specified on the license: *Provided*, That such business shall not be conducted from any motorized or towed vehicle. The premises of the gun show or event at which the licensee conducts business shall be considered part of the licensed premises. Accordingly, no separate fee or license is required for the gun show or event locations. However, licensees shall comply with the provisions of § 178.91 relating to posting of licenses (or a copy thereof) while conducting business at the gun show or event.

(2) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location.

(b) A gun show or an event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(c) Licensees conducting business at locations other than the premises specified on their license under the provisions of paragraph (a) of this section shall maintain firearms records in the form and manner prescribed by subpart H of this part. In addition, records of firearms transactions conducted at such locations shall include the location of the sale or other disposition, be entered in the acquisition and disposition records of the licensee, and retained on the premises specified on the license.

[T.D. ATF–270, 53 FR 10498, Mar. 31, 1988, as amended by T.D. ATF–401, 63 FR 35523, June 30, 1998]

§ 178.101 Record of transactions.

Every licensee shall maintain firearms and armor piercing ammunition records in such form and manner as is prescribed by subpart H of this part.

[T.D. ATF–270, 53 FR 10498, Mar. 31, 1988]

§ 178.102 Sales or deliveries of firearms on and after November 30, 1998.

(a) *Background check*. Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer (the licensee) shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless the licensee meets the following requirements:

(1) Before the completion of the transfer, the licensee has contacted NICS;

(2)(i) NICS informs the licensee that it has no information that receipt of the firearm by the transferee would be in violation of Federal or State law and provides the licensee with a unique identification number; or

(ii) Three business days (meaning days on which State offices are open) have elapsed from the date the licensee contacted NICS and NICS has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

(3) The licensee verifies the identity of the transferee by examining the identification document presented in accordance with the provisions of § 178.124(c).

Example for paragraph (a). A licensee contacts NICS on Thursday, and gets a ''delayed'' response. The licensee does not get a further response from NICS. If State offices are not open on Saturday and Sunday, 3 business days would have elapsed on the following Tuesday. The licensee may transfer the firearm on the next day, Wednesday.

(b) *Transaction number*. In any transaction for which a licensee receives a transaction number from NICS (which shall include either a NICS transaction number or, in States where the State is recognized as a point of contact for NICS checks, a State transaction number), such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

(c) *Time limitation on NICS checks*. A NICS check conducted in accordance with paragraph (a) of this section may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not

completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.

Example 1 for paragraph (c). A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However, the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

Example 2 for paragraph (c). A purchaser completes the Form 4473 on January 25, 1999, and arranges for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee executes the Form 4473, and the firearm is transferred, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

Example 3 for paragraph (c). A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date, the Form 4473 is executed by the licensee, and the firearm is transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

(d) *Exceptions to NICS check*. The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a valid permit or license that—

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law: *Provided*, That on and after November 30, 1998, the information available to such official includes the NICS;

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR part 179; or

(3) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) The document referred to in paragraph (d)(1) of this section (or a copy thereof) shall be retained or the required information from the document shall be recorded on the firearms transaction record in accordance with the provisions of § 178.131.

(Approved by the Office of Management and Budget under control number 1512–0544)

[T.D. ATF–415, 63 FR 58279, Oct. 29, 1998]

§ 178.103 Posting of signs and written notification to purchasers of handguns.

(a) Each licensed importer, manufacturer, dealer, or collector who delivers a handgun to a nonlicensee shall provide such nonlicensee with written notification as described in paragraph (b) of this section.

(b) The written notification (ATF I 5300.2) required by paragraph (a) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

FEDERAL LAW

The Gun Control Act of 1968, 18 U.S.C. Chapter 44, provides in pertinent part as follows:

18 U.S.C. 922(x)

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i) a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term ''juvenile'' means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

18 U.S.C. 924(a)(6)

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable

cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(c) This written notification shall be delivered to the nonlicensee on ATF I 5300.2, or in the alternative, the same written notification may be delivered to the nonlicensee on another type of written notification, such as a manufacturer's or importer's brochure accompanying the handgun; a manufacturer's or importer's operational manual accompanying the handgun; or a sales receipt or invoice applied to the handgun package or container delivered to a nonlicensee. Any written notification delivered to a nonlicensee other than on ATF I 5300.2 shall include the language set forth in paragraph (b) of this section in its entirety. Any written notification other than ATF I 5300.2 shall be legible, clear, and conspicuous, and the required language shall appear in type size no smaller than 10-point type.

(d) Except as provided in paragraph (f) of this section, each licensed importer, manufacturer, or dealer who delivers a handgun to a nonlicensee shall display at its licensed premises (including temporary business locations at gun shows) a sign as described in paragraph (e) of this section. The sign shall be displayed where customers can readily see it. Licensed importers, manufacturers, and dealers will be provided with such signs by ATF. Replacement signs may be requested from the ATF Distribution Center.

(e) The sign (ATF I 5300.1) required by paragraph (d) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

NOTE: ATF I 5300.2 provides the complete language of the statutory prohibitions and exceptions provided in 18 U.S.C. 922(x) and the penalty provisions of 18 U.S.C. 924(a)(6). The Federal firearms licensee posting this sign will provide you with a copy of this publication upon request. Requests for additional copies of ATF I 5300.2 should be mailed to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.

(f) The sign required by paragraph (d) of this section need not be posted on the premises of any licensed importer, manufacturer, or dealer whose only dispositions of handguns to nonlicensees are to nonlicensees who do not appear at the licensed premises and the dispositions otherwise comply with the provisions of this part.

[T.D. ATF–402, 63 FR 37742, July 13, 1998]

Subpart G—Importation

§ 178.111 General.

(a) Section 922(a)(3) of the Act makes it unlawful, with certain exceptions not pertinent here, for any person other than a licensee to transport into or receive in the State where the person resides any firearm purchased or otherwise obtained by the person outside of that State. However, section 925(a)(4) provides a limited exception for the transportation, shipment, receipt or importation of certain firearms and ammunition by certain members of the United States Armed Forces. Section 922(1) of the Act makes it unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition except as provided by section 925(d) of the Act, which section provides standards for importing or bringing firearms or ammunition into the United States. Section 925(d) also provides standards for importing or bringing firearm barrels into the United States. Accordingly, no firearm, firearm barrel, or ammunition may be imported or brought into the United States except as provided by this part.

(b) Where a firearm, firearm barrel, or ammunition is imported and the authorization for importation required by this subpart has not been obtained by

the person importing same, such person shall:

(1) Store, at the person's expense, such firearm, firearm barrel, or ammunition at a facility designated by U.S Customs or the Director of Industry Operations to await the issuance of the required authorization or other disposition; or

(2) Abandon such firearm, firearm barrel, or ammunition to the U.S. Government; or

(3) Export such firearm, firearm barrel, or ammunition.

(c) Any inquiry relative to the provisions or procedures under this subpart, other than that pertaining to the payment of customs duties or the release from Customs custody of firearms, firearm barrels, or ammunition authorized by the Director to be imported, shall be directed to the Director of Industry Operations for reply.

[T.D. ATF–270, 53 FR 10498, Mar. 31, 1988]

§ 178.112 Importation by a licensed importer.

(a) No firearm, firearm barrel, or ammunition shall be imported or brought into the United States by a licensed importer (as defined in § 178.11) unless the Director has authorized the importation of the firearm, firearm barrel, or ammunition.

(b)(1) An application for a permit, ATF Form 6—Part I, to import or bring a firearm, firearm barrel, or ammunition into the United States or a possession thereof under this section must be filed, in triplicate, with the Director. The application must be signed and dated and must contain the information requested on the form, including:

(i) The name, address, telephone number, and license number (including expiration date) of the importer;

(ii) The country from which the firearm, firearm barrel, or ammunition is to be imported;

(iii) The name and address of the foreign seller and foreign shipper;

(iv) A description of the firearm, firearm barrel, or ammunition to be imported, including:

(A) The name and address of the manufacturer;

(B) The type (*e.g.*, rifle, shotgun, pistol, revolver and, in the case of ammunition only, ball, wadcutter, shot, etc.);

(C) The caliber, gauge, or size;

(D) The model;

(E) The barrel length, if a firearm or firearm barrel (in inches);

(F) The overall length, if a firearm (in inches);

(G) The serial number, if known;

(H) Whether the firearm is new or used;

(I) The quantity;

(J) The unit cost of the firearm, firearm barrel, or ammunition to be imported;

(v) The specific purpose of importation, including final recipient information if different from the importer;

(vi) Verification that if a firearm, it will be identified as required by this part; and

(vii)(A) If a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purpose; or

(B) If a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use; or

(C) If an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece; or

(D) If a firearm other than a surplus military firearm, of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986, and is for sporting purposes, an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or

(E) If ammunition being imported for sporting purposes, a statement why the ammunition is particularly suitable for or readily adaptable to sporting purposes; or

(F) If a firearm barrel for a handgun, an explanation why the handgun is generally recognized as particularly suitable for or readily adaptable to sporting purposes.(2)(i) If the Director approves the application, such approved application will serve as the permit to import the firearm, firearm barrel, or ammunition described therein, and importation of such firearms, firearm barrels, or ammunition may

continue to be made by the licensed importer under the approved application (permit) during the period specified thereon. The Director will furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use.

(ii) If the Director disapproves the application, the licensed importer will be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States or a possession thereof under the provisions of this section by a licensed importer may be released from Customs custody to the licensed importer upon showing that the importer has obtained a permit from the Director for the importation of the firearm, firearm barrel, or ammunition to be released. The importer will also submit to Customs a copy of the export license authorizing the export of the firearm, firearm barrel, or ammunition from the exporting country. If the exporting country does not require issuance of an export license, the importer must submit a certification, under penalty of perjury, to that effect.

(1) In obtaining the release from Customs custody of a firearm, firearm barrel, or ammunition authorized by this section to be imported through the use of a permit, the licensed importer will prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer will, after certification, forward the ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name, address, and license number of the importer;

(ii) The name of the manufacturer of the firearm, firearm barrel, or ammunition;

(iii) The country of manufacture;

(iv) The type;

(v) The model;

(vi) The caliber, gauge, or size;

(vii) The serial number in the case of firearms, if known; and

(viii) The number of firearms, firearm barrels, or rounds of ammunition released.

(d) Within 15 days of the date of release from Customs custody, the licensed importer must:

(1) Forward to the address specified on the form a copy of ATF Form 6A on which must be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs and serial numbers if not previously provided on ATF Form 6A;

(2) Pursuant to §178.92, place all required identification data on each imported firearm if same did not bear such identification data at the time of its release from Customs custody; and

(3) Post in the records required to be maintained by the importer under subpart H of this part all required information regarding the importation.

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0017; paragraphs (c) and (d) approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–270, 53 FR 10498, Mar. 31, 1988, as amended by T.D. ATF–426, 65 FR 38198, June 20, 2000]

§ 178.113 Importation by other licensees.

(a) No person other than a licensed importer (as defined in §178.11) shall engage in the business of importing firearms or ammunition. Therefore, no firearm or ammunition shall be imported or brought into the United States or a possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm or ammunition. No barrel for a handgun not generally recognized as particularly suitable for or readily adaptable to sporting purposes shall be imported or brought into the United States or a possession thereof by any person. Therefore, no firearm barrel shall be imported or brought into the United States or possession thereof by any licensee other than a licensed importer unless the Director issues a permit authorizing the importation of the firearm barrel.

(b)(1) An application for a permit, ATF Form 6—Part I, to import or bring a firearm, firearm barrel, or ammunition into the United States or a possession thereof by a licensee, other than a licensed importer, must be filed, in

triplicate, with the Director. The application must be signed and dated and must contain the information requested on the form, including:

(i) The name, address, telephone number, and license number (including expiration date) of the applicant;

(ii) The country from which the firearm, firearm barrel, or ammunition is to be imported;

(iii) The name and address of the foreign seller and foreign shipper;

(iv) A description of the firearm, firearm barrel, or ammunition to be imported, including:

(A) The name and address of the manufacturer;

(B) The type (e.g., rifle, shotgun, pistol, revolver and, in the case of ammunition only, ball, wadcutter, shot, etc.);

(C) The caliber, gauge, or size;

(D) The model;

(E) The barrel length, if a firearm or firearm barrel (in inches);

(F) The overall length, if a firearm (in inches);

(G) The serial number, if known;

(H) Whether the firearm is new or used;

(I) The quantity;

(J) The unit cost of the firearm, firearm barrel, or ammunition to be imported;

(v) The specific purpose of importation, including final recipient information if different from the applicant; and

(vi)(A) If a firearm or ammunition imported or brought in for scientific or research purposes, a statement describing such purpose; or

(B) If a firearm or ammunition for use in connection with competition or training pursuant to Chapter 401 of Title 10, U.S.C., a statement describing such intended use; or

(C) If an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, a description of how it was rendered unserviceable and an explanation of why it is a curio or museum piece; or

(D) If a firearm other than a surplus military firearm, of a type that does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986, and is for sporting purposes, an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or

(E) If ammunition being imported for sporting purposes, a statement why the ammunition is particularly suitable for or readily adaptable to sporting purposes; or

(F) If a firearm barrel for a handgun, an explanation why the handgun is generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(2)(i) If the Director approves the application, such approved application will serve as the permit to import the firearm, firearm barrel, or ammunition described therein, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the applicant under the approved application (permit) during the period specified thereon. The Director will furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use.

(ii) If the Director disapproves the application, the applicant will be notified of the basis for the disapproval.

(c) A firearm, firearm barrel, or ammunition imported or brought into the United States or a possession thereof under the provisions of this section may be released from Customs custody to the licensee upon showing that the licensee has obtained a permit from the Director for the importation of the firearm, firearm barrel, or ammunition to be released.

(1) In obtaining the release from Customs custody of a firearm, firearm barrel, or ammunition authorized by this section to be imported through the use of a permit, the licensee will prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the firearm, firearm barrel, or ammunition. The Customs officer will, after certification, forward the ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name, address, and license number of the licensee;

(ii) The name of the manufacturer of the firearm, firearm barrel, or ammunition;

(iii) The country of manufacture;

(iv) The type;

(v) The model;

(vi) The caliber, gauge, or size;

(vii) The serial number in the case of firearms; and

(viii) The number of firearms, firearm barrels, or rounds of ammunition released.

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0017; paragraph (c) approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–270, 53 FR 10499, Mar. 31, 1988, as amended by T.D. ATF–426, 65 FR 38199, June 20, 2000]

§ 178.113a Importation of firearm barrels by nonlicensees.

(a) A permit will not be issued for a firearm barrel for a handgun not generally recognized as particularly suitable for or readily adaptable to sporting purposes. No firearm barrel shall be imported or brought into the United States or possession thereof by any nonlicensee unless the Director issues a permit authorizing the importation of the firearm barrel.

(b)(1) An application for a permit, ATF Form 6—Part I, to import or bring a firearm barrel into the United States or a possession thereof under this section must be filed, in triplicate, with the Director. The application must be signed and dated and must contain the information requested on the form, including:

(i) The name, address, and telephone number of the applicant;

(ii) The country from which the firearm barrel is to be imported;

(iii) The name and address of the foreign seller and foreign shipper;

(iv) A description of the firearm barrel to be imported, including:

(A) The name and address of the manufacturer;

(B) The type (e.g., rifle, shotgun, pistol, revolver);

(C) The caliber, gauge, or size;

(D) The model;

(E) The barrel length (in inches);

(F) The quantity;

(G) The unit cost of the firearm barrel;

(v) The specific purpose of importation, including final recipient information if different from the importer; and

(vi) If a handgun barrel, an explanation of why the barrel is for a handgun that is generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(2)(i) If the Director approves the application, such approved application will serve as the permit to import the firearm barrel, and importation of such firearm barrels may continue to be made by the applicant under the approved application (permit) during the period specified thereon. The Director will furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use.

(ii) If the Director disapproves the application, the applicant will be notified of the basis for the disapproval.

(c) A firearm barrel imported or brought into the United States or a possession thereof under the provisions of this section may be released from Customs custody to the person importing the firearm barrel upon showing that the person has obtained a permit from the Director for the importation of the firearm barrel to be released.

(1) In obtaining the release from Customs custody of a firearm barrel authorized by this section to be imported through the use of a permit, the person importing the firearm barrel will prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the firearm barrel. The Customs officer will, after certification, forward the ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name and address of the person importing the firearm barrel;

(ii) The name of the manufacturer of the firearm barrel;

(iii) The country of manufacture;

(iv) The type;

(v) The model;

(vi) The caliber or gauge of the firearm barrel so released; and

(vii) The number of firearm barrels released.

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0017; paragraph (c) approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–270, 53 FR 10499, Mar. 31, 1988, as amended by T.D. ATF–426, 65 FR 38200, June 20, 2000]

§ 178.114 Importation by members of the U.S. Armed Forces.

(a) The Director may issue a permit authorizing the importation of a firearm or ammunition into the United States to the place of residence of any military member of the U.S. Armed Forces who is on active duty outside the United States, or who has been on active duty outside the United States within the 60-day period immediately preceding the intended importation: *Provided*, That such firearm or ammunition is generally recognized as particularly suitable for or readily adaptable to sporting purposes and is intended for the personal use of such member.

(1) An application for a permit, ATF Form 6—Part II, to import a firearm or ammunition into the United States under this section must be filed, in triplicate, with the Director. The application must be signed and dated and must contain the information requested on the form, including:

(i) The name, current address, and telephone number of the applicant;

(ii) Certification that the transportation, receipt, or possession of the firearm or ammunition to be imported would not constitute a violation of any provision of the Act or of any State law or local ordinance at the place of the applicant's residence;

(iii) The country from which the firearm or ammunition is to be imported;

(iv) The name and address of the foreign seller and foreign shipper;

(v) A description of the firearm or ammunition to be imported, including:

(A) The name and address of the manufacturer;

(B) The type (e.g., rifle, shotgun, pistol, revolver and, in the case of ammunition only, ball, wadcutter, shot, etc.);

(C) The caliber, gauge, or size;

(D) The model;

(E) The barrel length, if a firearm (in inches);

(F) The overall length, if a firearm (in inches);

(G) The serial number;

(H) Whether the firearm is new or used;

(I) The quantity;

(J) The unit cost of the firearm or ammunition to imported;

(vi) The specific purpose of importation, that is —

(A) That the firearm or ammunition being imported is for the personal use of the applicant; and

(B) If a firearm, a statement that it is not a surplus military firearm, that it does not fall within the definition of a firearm under section 5845(a) of the Internal Revenue Code of 1986, and an explanation of why the firearm is generally recognized as particularly suitable for or readily adaptable to sporting purposes; or

(C) If ammunition, a statement why it is generally recognized as particularly suitable for or readily adaptable to sporting purposes; and

(vii) The applicant's date of birth;

(viii) The applicant's rank or grade;

(ix) The applicant's place of residence;

(x) The applicant's present foreign duty station or last foreign duty station, as the case may be;

(xi) The date of the applicant's reassignment to a duty station within the United States, if applicable; and

(xii) The military branch of which the applicant is a member.

(2)(i) If the Director approves the application, such approved application will serve as the permit to import the firearm or ammunition described therein. The Director will furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use.

(ii) If the Director disapproves the application, the applicant will be notified of the basis for the disapproval.

(b) Except as provided in paragraph (b)(3) of this section, a firearm or ammunition imported into the United States under the provisions of this section by the applicant may be released from Customs custody to the applicant upon showing that the applicant has obtained a permit from the Director for

the importation of the firearm or ammunition to be released.

(1) In obtaining the release from Customs custody of a firearm or ammunition authorized by this section to be imported through the use of a permit, the military member of the U.S. Armed Forces will prepare ATF Form 6A and furnish the completed form to the Customs officer releasing the firearm or ammunition. The Customs officer will, after certification, forward the ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name and address of the military member;

(ii) The name of the manufacturer of the firearm or ammunition;

(iii) The country of manufacture;

(iv) The type;

(v) The model;

(vi) The caliber, gauge, or size;

(vii) The serial number in the case of firearms; and

(viii) If applicable, the number of firearms or rounds of ammunition released.

(3) When such military member is on active duty outside the United States, the military member may appoint, in writing, an agent to obtain the release of the firearm or ammunition from Customs custody for such member. Such agent will present sufficient identification of the agent and the written authorization to act on behalf of such military member to the Customs officer who is to release the firearm or ammunition.

(c) Firearms determined by the Department of Defense to be war souvenirs may be imported into the United States by the military members of the U.S. Armed Forces under such provisions and procedures as the Department of Defense may issue.

(Paragraph (a) approved by the Office of Management and Budget under control number 1512–0018; paragraph (b) approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–270, 53 FR 10500, Mar. 31, 1988, as amended by T.D. ATF–426, 65 FR 38200, June 20, 2000]

§ 178.115 Exempt importation.

(a) Firearms and ammunition may be brought into the United States or any possession thereof by any person who can establish to the satisfaction of Customs that such firearm or ammunition was previously taken out of the United States or any possession thereof by such person. Registration on Customs Form 4457 or on any other registration document available for this purpose may be completed before departure from the United States at any U.S. customhouse or any office of an Director of Industry Operations. A bill of sale or other commercial document showing transfer of the firearm or ammunition in the United States to such person also may be used to establish proof that the firearm or ammunition was taken out of the United States by such person. Firearms and ammunition furnished under the provisions of section 925(a)(3) of the Act to military members of the U.S. Armed Forces on active duty outside of the United States also may be imported into the United States or any possession thereof by such military members upon establishing to the satisfaction of Customs that such firearms and ammunition were so obtained.

(b) Firearms, firearm barrels, and ammunition may be imported or brought into the United States by or for the United States or any department or agency thereof, or any State or any department, agency, or political subdivision thereof. A firearm, firearm barrel or ammunition imported or brought into the United States under this paragraph may be released from Customs custody upon a showing that the firearm, firearm barrel or ammunition is being imported or brought into the United States by or for such a governmental entity.

(c) The provisions of this subpart shall not apply with respect to the importation into the United States of any antique firearm.

(d) Firearms and ammunition are not imported into the United States, and the provisions of this subpart shall not apply, when such firearms and ammunition are brought into the United States by:

(1) A nonresident of the United States for legitimate hunting or lawful

sporting purposes, and such firearms and such ammunition as remains following such shooting activity are to be taken back out of the territorial limits of the United States by such person upon conclusion of the shooting activity;

(2) Foreign military personnel on official assignment to the United States who bring such firearms or ammunition into the United States for their exclusive use while on official duty in the United States, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign military personnel when they leave the United States;

(3) Official representatives of foreign governments who are accredited to the U.S. Government or are en route to or from other countries to which accredited, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such official representatives of foreign governments when they leave the United States;

(4) Officials of foreign governments and distinguished foreign visitors who have been so designated by the Department of State, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such officials of foreign governments and distinguished foreign visitors when they leave the United States; and

(5) Foreign law enforcement officers of friendly foreign governments entering the United States on official law enforcement business, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign law enforcement officers when they leave the United States.

(e) Notwithstanding the provisions of paragraphs (d) (1), (2), (3), (4) and (5) of this section, the Secretary of the Treasury or his delegate may in the interest of public safety and necessity require a permit for the importation or bringing into the United States of any firearms or ammunition.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–58, 44 FR 32367, June 6, 1979; T.D. ATF–270, 53 FR 10500, Mar. 31, 1988; T.D. ATF–471, 67 FR 5426, Feb. 5, 2002]

§ 178.116 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States or any possession thereof of any firearm, firearm barrel, ammunition, or ammunition feeding device as defined in § 178.119(b) for the purpose of examining and testing the firearm, firearm barrel, ammunition, or ammunition feeding device in connection with making a determination as to whether the importation or bringing in of such firearm, firearm barrel, ammunition, or ammunition feeding device will be authorized under this part. An application on ATF Form 6 for such conditional importation shall be filed, in duplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm, firearm barrel, ammunition, or ammunition feeding device be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm, firearm barrel, ammunition, or ammunition feeding device must agree to either export the firearm, firearm barrel, ammunition, or ammunition feeding device or destroy same if a determination is made that the firearm, firearm barrel, ammunition, or ammunition feeding device may not be imported or brought in under this part. A firearm, firearm barrel, ammunition, or ammunition feeding device imported or brought into the United States or any possession thereof under the provisions of this section shall be released from Customs custody upon the payment of customs duties, if applicable, and in the manner prescribed in the conditional authorization issued by the Director.

[T.D. ATF–383, 61 FR 39321, July 29, 1996]

§ 178.117 Function outside a customs territory.

In the insular possessions of the United States outside customs territory, the functions performed by U.S. Customs officers under this subpart within a customs territory may be performed by the appropriate authorities of a territorial government or other officers of the United States who have been designated to perform such functions. For the purpose of this subpart, the term customs territory means the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 178.118 Importation of certain firearms classified as curios or relics.

Notwithstanding any other provision of this part, a licensed importer may import all rifles and shotguns classified by the Director as curios or relics, and all handguns classified by the Director as curios or relics that are determined to be generally recognized as particularly suitable for or readily adaptable to sporting purposes. The importation of such curio or relic firearms must be in accordance with the applicable importation provisions of this part and the importation provisions of 27 CFR part 47. Curios or relics which fall within the definition of ''firearm'' under 26 U.S.C. 5845(a) must also meet the importation provisions of 27 CFR part 179 before they may be imported.

[T.D. ATF–202, 50 FR 14383, Apr. 12, 1985]

§ 178.119 Importation of ammunition feeding devices.

(a) No ammunition feeding device shall be imported or brought into the United States unless the Director has authorized the importation of such device.

(b) For purposes of this section, an ''ammunition feeding device'' is a magazine, belt, drum, feed strip, or similar device for a firearm that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

(c) An application for a permit, ATF Form 6, to import or bring an ammunition feeding device into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name and address of the person importing the device,

(2) A description of the device to be imported, including type and cartridge capacity, model and caliber of firearm for which the device was made, country of manufacture, and name of the manufacturer if known,

(3) The unit cost of the device to be imported,

(4) The country from which to be imported,

(5) The name and address of the foreign seller and the foreign shipper,

(6) Verification that such device will be marked as required by this part, and

(7) A statement by the importer that the device is being imported for sale to purchasers specified in § 178.40a(b) or physical or reasonable documentary evidence establishing that the magazine was manufactured on or before September 13, 1994. Any one of the following examples, which are not meant to be exhaustive, may be sufficient to establish the time of manufacture:

(i) Permanent markings or physical characteristics which establish that the magazine was manufactured on or before September 13, 1994;

(ii) A certification from the importer, under penalty of perjury, that the importer maintained continuous custody beginning on a date prior to September 14, 1994, and continuing until the date of the certification. Such certification shall also be supported by reasonable documentary evidence, such as commercial records;

(iii) A certification from the importer, under penalty of perjury, that the magazines sought to be imported were in the custody and control of a foreign Government on or before September 13, 1994, along with reasonable documentary evidence to support the certification; or

(iv) A certification from the importer, under penalty of perjury, that

the magazine was in the possession of a foreign arms supplier on or before September 13, 1994, along with reasonable documentary evidence to support the certification.

(d) The Director shall act upon applications to import ammunition feeding devices as expeditiously as possible. If the Director approves the application, such approved application shall serve as the permit to import the device described therein, and importation of such devices may continue to be made by the person importing such devices under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the person importing such devices shall be notified of the basis for the disapproval.

(e) An ammunition feeding device imported or brought into the United States by a person importing such a device may be released from Customs custody to the person importing such a device upon showing that such person has obtained a permit from the Director for the importation of the device to be released. In obtaining the release from Customs custody of such a device authorized by this section to be imported through use of a permit, the person importing such a device shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the device. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of the person importing the device, the name of the manufacturer of the device, the country of manufacture, the type, model, caliber, size, and the number of devices released.

(f) Within 15 days of the date of release from Customs custody, the person importing such a device shall:

(1) Forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, and

(2) Pursuant to § 178.92, place all required identification data on each imported device manufactured after September 13, 1994, if same did not bear such identification data at the time of its release from Customs custody.

(g) The Director may authorize the conditional importation of an ammunition feeding device as provided in § 178.116.

(Paragraphs (a), (c), and (d) approved by the Office of Management and Budget under control numbers 1512–0017 and 1512–0018; paragraphs (e) and (f) approved by the Office of Management and Budget under control number 1512–0019)

[T.D. ATF–383, 61 FR 39322, July 29, 1996]

§ 178.120 Firearms or ammunition imported by or for a nonimmigrant alien.

(a) Any nonimmigrant alien who completes an ATF Form 6 to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for a nonimmigrant alien, must attach applicable documentation to the Form 6 (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition.

(b) Nonimmigrant aliens importing or bringing firearms or ammunition into the United States must provide the United States Customs Service with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1512–0570)

[T.D. ATF–471, 67 FR 5426, Feb. 5, 2002]

Subpart H—Records

§ 178.121 General.

(a) The records pertaining to firearms transactions prescribed by this

part shall be retained on the licensed premises in the manner prescribed by this subpart and for the length of time prescribed by § 178.129. The records pertaining to ammunition prescribed by this part shall be retained on the licensed premises in the manner prescribed by § 178.125.

(b) ATF officers may, for the purposes and under the conditions prescribed in § 178.23, enter the premises of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of examining or inspecting any record or document required by or obtained under this part. Section 923(g) of the Act requires licensed importers, licensed manufacturers, licensed dealers, and licensed collectors to make such records available for such examination or inspection during business hours or, in the case of licensed collectors, hours of operation, as provided in § 178.23.

(c) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of firearms and such records of the disposition of ammunition as the regulations contained in this part prescribe. Section 922(m) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain any such record.

(d) For recordkeeping requirements for sales by licensees at gun shows see § 178.100(c).

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 1512–0129; information collection requirements in paragraphs (b) and (c) approved by the Office of Management and Budget under control number 1512–0387)

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–191, 49 FR 46891, Nov. 29, 1984; T.D. ATF–208, 50 FR 26703, June 28, 1985; T.D. ATF–270, 53 FR 10501, Mar. 31, 1988]

§ 178.122 Records maintained by importers.

(a) Each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacture, and the serial number of each firearm imported or otherwise acquired, and the date such importation or other acquisition was made.

(b) A record of firearms disposed of by a licensed importer to another licensee and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provisions of § 178.149 shall be maintained by the licensed importer on the licensed premises. For firearms, the record shall show the quantity, type, manufacturer, country of manufacture, caliber or gauge, model, serial number of the firearms so transferred, the name and license number of the licensee to whom the firearms were transferred, and the date of the transaction. For armor piercing ammunition, the record shall show the date of the transaction, manufacturer, caliber or gauge, quantity of projectiles, and the name and address of the purchaser. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the following formats:

IMPORTER'S FIREARMS DISPOSITION RECORD

Quantity	Type	Manufacturer	Country of manufacture	Caliber or gauge	Model	Serial No.	Name and license No. of licensee to whom transferred	Date of the transaction

IMPORTER'S ARMOR PIERCING AMMUNITION DISPOSITION RECORD

Date	Manufacturer	Calibur or gauge	Quantity of projectiles	Purchaser—Name and address

(c) Notwithstanding the provisions of paragraph (b) of this section, the Director of Industry Operations may authorize alternate records to be maintained by a licensed importer to record the disposal of firearms and armor piercing ammunition when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to the Director of Industry Operations and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the Director of Industry Operations.

(d) Each licensed importer shall maintain separate records of the sales or other dispositions made of firearms to nonlicensees. Such records shall be maintained in the form and manner as prescribed by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–270, 53 FR 10501, Mar. 31, 1988]

§ 178.123 Records maintained by manufacturers.

(a) Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

(b) A record of firearms disposed of by a manufacturer to another licensee and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provision of § 178.149 shall be maintained by the licensed manufacturer on the licensed premises. For firearms, the record shall show the quantity, type, model, manufacturer, caliber, size or gauge, serial number of the firearms so transferred, the name and license number of the licensee to whom the firearms were transferred, and the date of the transaction. For armor piercing ammunition, the record shall show the manufacturer, caliber or gauge, quantity, the name and address of the transferee to whom the armor piercing ammunition was transferred, and the date of the transaction. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction, and such information shall be recorded under the format prescribed by § 178.122, except that the name of the manufacturer of a firearm or armor piercing ammunition need not be recorded if the firearm or armor piercing ammunition is of the manufacturer's own manufacture.

(c) Notwithstanding the provisions of paragraph (b) of this section, the Director of Industry Operations may authorize alternate records to be maintained by a licensed manufacturer to record the disposal of firearms and armor piercing ammunition when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (b) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the Director of Industry Operations and

shall describe the proposed alternate record and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the Director of Industry Operations.

(d) Each licensed manufacturer shall maintain separate records of the sales or other dispositions made of firearms to nonlicensees. Such records shall be maintained in the form and manner as prescribed by §§ 178.124 and 178.125 in regard to firearms transaction records and records of acquisition and disposition of firearms.

(Approved by the Office of Management and Budget under control number 1512–0369)

[T.D. ATF–270, 53 FR 10501, Mar. 31, 1988]

§ 178.124 Firearms transaction record.

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearms transaction record, Form 4473: *Provided,* That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received.

(b) A licensed manufacturer, licensed importer, or licensed dealer shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of the required records, each Form 4473 obtained in the course of transferring custody of the firearms.

(c)(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; the transferee's country of citizenship; the transferee's INS-issued alien number or admission number; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(3) After the transferee has executed the Form 4473, the licensee:

(i) Shall verify the identity of the transferee by examining the identification document (as defined in § 178.11) presented, and shall note on the Form 4473 the type of identification used;

(ii) Shall, in the case of a transferee who is an alien legally in the United States, cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located, and shall note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm; and

(iii) Must, in the case of a transferee who is a nonimmigrant alien who states that he or she falls within an exception to, or has a waiver from, the nonimmigrant alien prohibition, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473.

(iv) Shall comply with the requirements of § 178.102 and record on the form the date on which the licensee

contacted the NICS, as well as any response provided by the system, including any identification number provided by the system.

(4) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm.

(5) The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.

(d) Prior to making an over-the-counter transfer of a shotgun or rifle under the provisions contained in § 178.96(c) to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, the licensee so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section: *Provided*, That in the case of a transferee who is an alien legally in the United States, the documentation required by paragraph (c)(3)(ii) of this section need only establish that the transferee is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm. Examples of acceptable documentation include utility bills or a lease agreement. The licensee shall note on the form the documentation used.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee's business premises is located, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, or licensed dealer so furnishing the firearm, and such transferee, shall comply with the provisions of paragraph (c) of this section, except for the provisions of paragraph (c)(3)(ii).

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; in case the firearm to be transferred is a shotgun or rifle, the transferee is 18 years or more of age; whether the transferee is a citizen of the United States; the transferee's State of residence, and in the case of a transferee who is an alien legally in the United States, the transferee has resided in that State continuously for at least 90 days prior to the transfer of the firearm; the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. Upon receipt of such Forms 4473, the licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the copy of the Form

4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.

(g) A licensee who sells or otherwise disposes of a firearm to a nonlicensee who is other than an individual, shall obtain from the transferee the information required by this section from an individual authorized to act on behalf of the transferee. In addition, the licensee shall obtain from the individual acting on behalf of the transferee a written statement, executed under the penalties of perjury, that the firearm is being acquired for the use of and will be the property of the transferee, and showing the name and address of that transferee.

(h) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(i) A licensee may obtain, upon request, an emergency supply of Forms 4473 from any Director of Industry Operations. For normal usage, a licensee should request a year's supply from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0544, 1512–0129, and 1512–0570; paragraph (f) approved by the Office of Management and Budget under control number 1512–0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

[33 FR 18555, Dec. 14, 1968, as amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984; T.D. ATF–241, 51 FR 39625, Oct. 29, 1986; T.D. ATF–270, 53 FR 10502, Mar. 31, 1988; T.D. ATF–389, 62 FR 19444, Apr. 21, 1997; T.D. ATF–415, 63 FR 58279, Oct. 29, 1998; T.D. ATF–471, 67 FR 5426, Feb. 5, 2002]

§ 178.124a Firearms transaction record in lieu of record of receipt and disposition.

(a) A licensed dealer acquiring firearms after August 1, 1988 and contemplating the disposition of not more than 50 firearms within a succeeding 12-month period to licensees or nonlicensees may maintain a record of the acquisition and disposition of such firearms on a firearms transaction record, Form 4473(LV), Part I or II, in lieu of the records prescribed by § 178.125. Such 12-month period shall commence from the date the licensed dealer first records the purchase or other acuisition of a firearm on Form 4473(LV) pursuant to this section. A licensed dealer who maintains records pursuant to this section, but whose firearms dispositions exceed 50 firearms within such 12-month period, shall make and maintain the acquisition and disposition records required by § 178.125 with respect to each firearm exceeding 50.

(b) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall record the purchase or other acquisition of a firearm on Form 4473(LV), Part I or II, in accordance with the instructions on the form not later than the close of the next business day following the date of such purchase or acquisition. However, when disposition is made of a firearm before the close of the next business day after the receipt of that firearm, the licensed dealer making such disposition shall enter all required acquisition information regarding the firearm on the Form 4473(LV) at the time such transfer or disposition is made. The record on Form 4473(LV) shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and caliber or gauge of the firearm.

(c) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall retain Form 4473(LV), Part I or II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473(LV) reflecting the licensee's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

(d) A licensed dealer maintaining records pursuant to this section shall record the sale or other disposition of a firearm to another licensee by entering on the Form 4473(LV), Part I, associated with such firearm, the name and license number of the person to whom transferred and by signing and dating the form.

(e) A licensed dealer shall obtain the Form 4473(LV), Part I, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(c) prior to making an over-the-counter transfer of a firearm to a nonlicensee:

(1) Who is a resident of the State in which the licensee's business premises is located,

(2) Who is not a resident of the State in which the licensee's business premises is located and the firearm is a shotgun or rifle and the transfer is under the provisions of § 178.96(c), or

(3) Who is not a resident of the State in which the licensee's business premises is located and who is acquiring the firearm by loan or rental for temporary use for lawful sporting purposes.

(f) A licensed dealer shall obtain the Form 4473(LV), Part II, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(f) prior to making a disposition of a firearm to a nonlicensee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction and who is a resident of the State in which the licensee's business premises is located. If the licensee's record of the acquisition of the firearm is, at the time of the disposition, being maintained on a Form 4473(LV), Part I, for over-the-counter transactions, the licensee shall transfer the information relative to the receipt of the firearm, as required by paragraph (b) of this section, to Form 4473(LV), Part II. The corresponding form 4473(LV), Part I, may then be destroyed.

[T.D. ATF–273, 53 FR 24687, June 30, 1988, as amended by T.D. ATF–415, 63 FR 58280, Oct. 29, 1998]

§ 178.125 Record of receipt and disposition.

(a) *Armor piercing ammunition sales by licensed collectors to nonlicensees.* The sale or other disposition of armor piercing ammunition by licensed collectors shall be recorded in a bound record at the time a transaction is made. The bound record shall be maintained in chronological order by date of sale or disposition of the armor piercing ammunition, and shall be retained on the licensed premises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the armor piercing ammunition. The bound record entry shall show:

(1) The date of the transaction;

(2) The name of the manufacturer;

(3) The caliber or gauge;

(4) The quantity of projectiles;

(5) The name, address, and date of birth of the nonlicensee; and

(6) The method used to establish the identity of the armor piercing ammunition purchaser.

The format required for the bound record is as follows:

DISPOSITION RECORD OF ARMOR PIERCING AMMUNITION

Date	Manufacturer	Caliber or gauge	Quantity of projectiles	Purchaser		Enter a (x) in the ''known'' column if purchaser is personally known to you. Otherwise, establish the purchaser's identification		
				Name and address	Date of birth	Known	Driver's license	Other type (specify)

However, when a commercial record is made at the time a transaction is made, a licensee may delay making an entry into the bound record if the provisions of paragraph (d) of this section are complied with.

(b) *Armor piercing ammunition sales by licensed collectors to licensees.* Sales or other dispositions of armor piercing ammunition from a licensed collector to another licensee shall be recorded

and maintained in the manner prescribed in § 178.122(b) for importers: *Provided*, That the license number of the transferee may be recorded in lieu of the transferee's address.

(c) *Armor piercing ammunition sales by licensed dealers to governmental entities.* A record of armor piercing ammunition disposed of by a licensed dealer to a governmental entity pursuant to § 178.99(e) shall be maintained by the licensed dealer on the licensed premises and shall show the name of the manufacturer, the caliber or gauge, the quantity, the name and address of the entity to which the armor piercing ammunition was transferred, and the date of the transaction. Such information shall be recorded under the format prescribed by § 178.122(b). Each licensed dealer disposing of armor piercing ammunition pursuant to § 178.99(e) shall also maintain a record showing the date of acquisition of such ammunition which shall be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. The records required by this paragraph shall be retained on the licensed premises of the licensee for a period not less than two years following the date of the recorded sale or disposition of the armor piercing ammunition.

(d) *Commercial records of armor piercing ammunition transactions.* When a commercial record is made at the time of sale or other disposition of armor piercing ammunition, and such record contains all information required by the bound record prescribed by paragraph (a) of this section, the licensed collector transferring the armor piercing ammunition may, for a period not exceeding 7 days following the date of such transfer, delay making the required entry into such bound record: *Provided*, That the commercial record pertaining to the transfer is:

(1) Maintained by the licensed collector separate from other commercial documents maintained by such licensee, and

(2) Is readily available for inspection on the licensed premises until such time as the required entry into the bound record is made.

(e) *Firearms receipt and disposition by dealers.* Except as provided in § 178.124a with respect to alternate records for the receipt and disposition of firearms by dealers, each licensed dealer shall enter into a record each receipt and disposition of firearms. In addition, before commencing or continuing a firearms business, each licensed dealer shall inventory the firearms possessed for such business and shall record same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a firearm shall, except as provided in paragraph (g) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm. The sale or other disposition of a firearm shall be recorded by the licensed dealer not later than 7 days following the date of such transaction. When such disposition is made to a nonlicensee, the firearms transaction record, Form 4473, obtained by the licensed dealer shall be retained, until the transaction is recorded, separate from the licensee's Form 4473 file and be readily available for inspection. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensed dealer, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer and/or Importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if Forms 4473 filed numerically

(f) *Firearms receipt and disposition by licensed collectors.* Each licensed collector shall enter into a record each receipt and disposition of firearms curios or relics. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a curio or relic shall, except as provided in paragraph (g) of this section, be recorded not later than the close of the next business day following the date of such purchase or other acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm curio or relic. The sale or other disposition of a curio or relic shall be recorded by the licensed collector not later than 7 days following the date of such transaction. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensee, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm curio or relic, the name and address of the person to whom the firearm curio or relic is transferred, or the name and license number of the person to whom transferred if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the record the method used. In addition, the licensee shall—

(1) Cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and note on the record the method used, and

(2) In the case of a transferee who is an alien legally in the United States and who is other than a licensee—

(i) Verify the identity of the transferee by examining an identification document (as defined in § 178.11), and

(ii) Cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located if the firearm curio or relic is other than a shotgun or rifle, and note on the record the documentation used or is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm if the firearm curio or relic is a shotgun or rifle and shall note on the record the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm curio or relic.

(3) The format required for the record of receipt and disposition of firearms by collectors is as follows:

FIREARMS COLLECTORS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition				
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name and address or name and license No.	Date of birth if non-licensee	Driver's license No. or other identification if non-licensee	For transfers to aliens, documentation used to establish residency

(g) *Commercial records of firearms received.* When a commercial record is held by a licensed dealer or licensed collector showing the acquisition of a firearm or firearm curio or relic, and such record contains all acquisition information required by the bound record prescribed by paragraphs (e) and (f) of this section, the licensed dealer or licensed collector acquiring such firearm or curio or relic, may, for a period not exceeding 7 days following the date of such acquisition, delay making the required entry into such bound record: *Provided,* That the commercial record is, until such time as the required entry into the bound record is made, (1) maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) readily available for inspection on the licensed premises: *Provided further,* That when disposition is made of a firearm or firearm curio or relic not entered in the bound record under the provisions of this paragraph, the licensed dealer or licensed collector making such disposition shall enter all required acquisition information regarding the firearm or firearm curio or relic in the bound record at the time such transfer or disposition is made.

(h) *Alternate records.* Notwithstanding the provisions of paragraphs (a), (e), and (f) of this section, the Director of Industry Operations may authorize alternate records to be maintained by a licensed dealer or licensed collector to record the acquisition and disposition of firearms or curios or relics and the disposition of armor piercing ammunition when it is shown by the licensed dealer or the licensed collector that such alternate records will accurately and readily disclose the required information. A licensed dealer or licensed collector who proposes to use alternate records shall submit a letter application, in duplicate, to the Director of Industry Operations and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer or licensed collector until approval in such regard is received from the Director of Industry Operations.

(i) *Requirements for importers and manufacturers.* Each licensed importer and licensed manufacturer selling or otherwise disposing of firearms or armor piercing ammunition to nonlicensees shall maintain such records of such transactions as are required of licensed dealers by this section.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–270, 53 FR 10503, Mar. 31, 1988, as amended by T.D. ATF–273, 53 FR 24687, June 30, 1988; T.D. ATF–313, 56 FR 32508, July 17, 1991; T.D. ATF–389, 62 FR 19445, Apr. 21, 1997]

§ 178.125a Personal firearms collection.

(a) Notwithstanding any other provision of this subpart, a licensed manufacturer, licensed importer, or licensed dealer is not required to comply with the provisions of § 178.102 or record on a firearms transaction record, Form 4473, the sale or other disposition of a firearm maintained as part of the licensee's personal firearms collection: *Provided,* That

(1) The licensee has maintained the firearm as part of such collection for 1 year from the date the firearm was

transferred from the business inventory into the personal collection or otherwise acquired as a personal firearm,

(2) The licensee recorded in the bound record prescribed by § 178.125(e) the receipt of the firearm into the business inventory or other acquisition,

(3) The licensee recorded the firearm as a disposition in the bound record prescribed by § 178.125(e) when the firearm was transferred from the business inventory into the personal firearms collection or otherwise acquired as a personal firearm, and

(4) The licensee enters the sale or other disposition of the firearm from the personal firearms collection into a bound record, under the format prescribed below, identifying the firearm transferred by recording the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge, and showing the date of the sale or other disposition, the name and address of the transferee, or the name and business address of the transferee if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a drivers license). The format required for the disposition record of personal firearms is as follows:

DISPOSITION RECORD OF PERSONAL FIREARMS

Description of firearm					Disposition		
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address (business address if licensee)	Date of birth if non-licensee

(b) Any licensed manufacturer, licensed importer, or licensed dealer selling or otherwise disposing of a firearm from the licensee's personal firearms collection under this section shall be subject to the restrictions imposed by the Act and this part on the dispositions of firearms by persons other than licensed manufacturers, licensed importers, and licensed dealers.

(Approved by the Office of Management and Budget under control number 1512–0387)

[T.D. ATF–270, 53 FR 10504, Mar. 31, 1988, as amended by T.D. ATF–313, 56 FR 32509, July 17, 1991; T.D. ATF–415, 63 FR 58280, Oct. 29, 1998]

§ 178.126 Furnishing transaction information.

(a) Each licensee shall, when required by letter issued by the Director of Industry Operations, and until notified to the contrary in writing by such officer, submit on Form 4483, Report of Firearms Transactions, for the periods and at the times specified in the letter issued by the Director of Industry Operations, all record information required by this subpart, or such lesser record information as the Director of Industry Operations in his letter may specify.

(b) The Director of Industry Operations may authorize the information to be submitted in a manner other than that prescribed in paragraph (a) of this section when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this part. A licensee who proposes to use an alternate method of reporting shall submit a letter application, in duplicate, to the Director of Industry Operations and shall describe the proposed alternate method of reporting and the need therefor. An alternate method of reporting shall not be employed by the licensee until approval in such regard is received from the Director of Industry Operations.

(Approved by the Office of Management and Budget under control number 1512–0387)

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 178.126a Reporting multiple sales or other disposition of pistols and revolvers.

Each licensee shall prepare a report of multiple sales or other disposition whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totaling two or more, to an unlicensed person: *Provided*, That a report need not be made where pistols or revolvers, or any combination thereof, are returned to the same person from whom they were received. The report shall be prepared on Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers. Not later than the close of business on the day that the multiple sale or other disposition occurs, the licensee shall forward two copies of Form 3310.4 to the ATF office specified thereon and one copy to the State police or to the local law enforcement agency in which the sale or other disposition took place. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive Forms 3310.4, the licensee shall forward such forms to that designated official. The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473, executed upon delivery of the pistols or revolvers.

Example. 1. A licensee sells a pistol and revolver in a single transaction to an unlicensed person. This is a multiple sale and must be reported not later than the close of business on the date of the transaction.

Example. 2. A licensee sells a pistol on Monday and sells a revolver on the following Friday to the same unlicensed person. This is a multiple sale and must be reported not later than the close of business on Friday. If the licensee sells the same unlicensed person another pistol or revolver on the following Monday, this would constitute an additional multiple sale and must also be reported.

Example 3. A licensee maintaining business hours on Monday through Saturday sells a revolver to an unlicensed person on Monday and sells another revolver to the same person on the following Saturday. This does not constitute a multiple sale and need not be reported since the sales did not occur during five consecutive business days.

(Approved by the Office of Management and Budget under control number 1512–0006)

[T.D. ATF–16, 40 FR 19202, May 2, 1975, as amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984; T.D. ATF–270, 53 FR 10505, Mar. 31, 1988; T.D. ATF–354, 59 FR 7113, Feb. 14, 1994; T.D. ATF–361, 60 FR 10787, Feb. 27, 1995]

§ 178.127 Discontinuance of business.

Where a licensed business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records shall be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center, Spring Mills Office Park, 2029 Stonewall Jackson Drive, Falling Waters, West Virginia 25419, or to any ATF office in the division in which the business was located: *Provided, however*, Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, National Licensing Center may arrange for the delivery of the records required by this subpart to such authority: *Provided further*, That where a licensed business is discontinued and succeeded by a new licensee, the records may be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center or to any ATF office in the division in which the business was located.

[T.D. ATF–290, 54 FR 53055, Dec. 27, 1989, as amended by T.D. ATF–363, 60 FR 17455, Apr. 6, 1995]

§ 178.128 False statement or representation.

(a) Any person who knowingly makes any false statement or representation in applying for any license or exemption or relief from disability, under the provisions of the Act, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(b) Any person other than a licensed manufacturer, licensed importer, licensed dealer, or licensed collector who knowingly makes any false statement or representation with respect to any information required by the provisions

of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(c) Any licensed manufacturer, licensed importer, licensed dealer, or licensed collector who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person licensed under the Act or this part shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

[T.D. ATF–270, 53 FR 10505, Mar. 31, 1988]

§ 178.129 Record retention.

(a) *Records prior to Act.* Licensed importers and licensed manufacturers may dispose of records of sale or other disposition of firearms prior to December 16, 1968. Licensed dealers and licensed collectors may dispose of all records of firearms transactions that occurred prior to December 16, 1968.

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has initiated a NICS check for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record any transaction number on the Form 4473, and retain the Form 4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): *Provided,* That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) *Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.* Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

(d) *Records of importation and manufacture.* Licensees will maintain permanent records of the importation, manufacture, or other acquisition of firearms, including ATF Forms 6 and 6A as required by subpart G of this part. Licensed importers' records and licensed manufacturers' records of the sale or other disposition of firearms after December 15, 1968, shall be retained through December 15, 1988, after which records of transactions over 20 years of age may be discarded.

(e) *Records of dealers and collectors under the Act.* The records prepared by licensed dealers and licensed collectors under the Act of the sale or other disposition of firearms and the corresponding record of receipt of such firearms shall be retained through December 15, 1988, after which records of transactions over 20 years of age may be discarded.

(f) *Retention of records of transactions in semiautomatic assault weapons.* The documentation required by §§ 178.40(c) and 178.132 shall be retained in the licensee's permanent records for a period of not less than 5 years after the date of sale or other disposition.

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0544; Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0520, 1512–0006, and 1512–0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512–0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

[T.D. ATF–208, 50 FR 26704, June 28, 1985 and correctly designated at 50 FR 35081, Aug. 29, 1985, as amended by T.D. ATF–273, 53 FR 24687, June 30, 1988; T.D. ATF–361, 60 FR 10787, Feb. 27, 1995; T.D. ATF–363, 60 FR 17455, Apr. 6, 1995; T.D. ATF–415, 63 FR 58280, Oct. 29, 1998; T.D. ATF–426, 65 FR 38201, June 20, 2000]

§ 178.131 Firearms transactions not subject to a NICS check.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a firearm is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the NICS check prescribed by § 178.102(a) shall maintain the records required by paragraph (a) of this section.

(2) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(1), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

(Approved by the Office of Management and Budget under control number 1512–0544)

[T.D. ATF–415, 63 FR 58280, Oct. 29, 1998]

§ 178.132 Dispositions of semiautomatic assault weapons and large capacity ammunition feeding devices to law enforcement officers for official use and to employees or contractors of nuclear facilities.

Licensed manufacturers, licensed importers, and licensed dealers in semiautomatic assault weapons, as well as persons who manufacture, import, or deal in large capacity ammunition feeding devices, may transfer such weapons and devices manufactured after September 13, 1994, to law enforcement officers and to employees or contractors of nuclear facilities with the following documentation:

(a) *Law enforcement officers.* (1) A written statement from the purchasing officer, under penalty of perjury, stating that the weapon or device is being purchased for use in performing official duties and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale; and

(2) A written statement from a supervisor of the purchasing officer, on agency letterhead, under penalty of perjury, stating that the purchasing officer is acquiring the weapon or device for use in official duties, that the firearm is suitable for use in performing official duties, and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale.

(b) *Employees or contractors of nuclear facilities.* (1) Evidence that the employee is employed by a nuclear facility licensed pursuant to 42 U.S.C. 2133 or evidence that the contractor has a valid contract with such a facility.

(2) A written statement from the purchasing employee or contractor under penalty of perjury, stating that the weapon or device is being purchased for one of the purposes authorized in § 178.40(b)(7) and 178.40(b)(3), i.e., on-site physical protection, on-site or off-site training, or off-site transportation of nuclear materials.

(3) A written statement from a supervisor of the purchasing employee or contractor, on agency or company letterhead, under penalty of perjury, stating that the purchasing employee or contractor is acquiring the weapon or device for use in official duties, and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale.

(Approved by the Office of Management and Budget under control number 1512–0526)

[T.D. ATF–396, 63 FR 12646, Mar. 16, 1998]

§ 178.133 Records of transactions in semiautomatic assault weapons.

The evidence specified in § 178.40(c), relating to transactions in semiautomatic assault weapons, shall be retained in the permanent records of the manufacturer or dealer and in the records of the licensee to whom the weapons are transferred.

(Approved by the Office of Management and Budget under control number 1512–0526)

[T.D. ATF–363, 60 FR 17455, Apr. 6, 1995]

§ 178.134 Sale of firearms to law enforcement officers.

(a) Law enforcement officers purchasing firearms for official use who provide the licensee with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence are not required to complete Form 4473 or Form 5300.35. The law enforcement officer purchasing the firearm may purchase a firearm from a licensee in another State, regardless of where the officer resides or where the agency is located.

(b)(1) The following individuals are considered to have sufficient authority to certify that law enforcement officers purchasing firearms will use the firearms in the performance of official duties:

(i) In a city or county police department, the director of public safety or the chief or commissioner of police.

(ii) In a sheriff's office, the sheriff.

(iii) In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.

(iv) In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

(2) An individual signing on behalf of the person in authority is acceptable, provided there is a proper delegation of authority.

(c) Licensees are not required to prepare a Form 4473 or Form 5300.35 covering sales of firearm made in accordance with paragraph (a) of this section to law enforcement officers for official use. However, disposition to the officer must be entered into the licensee's permanent records, and the certification letter must be retained in the licensee's files.

[T.D. ATF–401, 63 FR 35523, June 30, 1998]

Subpart I—Exemptions, Seizures, and Forfeitures

§ 178.141 General.

With the exception of §§178.32(a)(9) and (d)(9) and 178.99(c)(9), the provisions of this part shall not apply with respect to:

(a) The transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(b) The shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of Title 10, U.S.C., and the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(c) The shipment, unless otherwise prohibited by the Act or any other Federal law, by a licensed importer, licensed manufacturer, or licensed dealer to a member of the U.S. Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members of the U.S. Armed Forces, and such members or clubs may receive a firearm or ammunition determined by the Director to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club. Before making a shipment of firearms or ammunition under the provisions of this paragraph, a licensed importer, licensed manufacturer, or licensed dealer may submit a written request, in duplicate, to the Director for a determination by the Director whether such shipment would constitute a violation of the Act or any other Federal law, or whether the firearm or ammunition is considered by the Director to be generally recognized as particularly suitable for sporting purposes.

(d) The transportation, shipment, receipt, possession, or importation of any antique firearm.

[33 FR 18555, Dec. 14, 1968. Redesignated at 40 FR 10835, Apr. 15, 1975, and amended by T.D. ATF–241, 51 FR 39628, Oct. 29, 1986; T.D. ATF–270, 53 FR 10505, Mar. 31, 1988; T.D. ATF–313, 56 FR 32509, July 17, 1991; T.D. ATF–401, 63 FR 35523, June 30, 1998]

§ 178.142 Effect of pardons and expunctions of convictions.

(a) A pardon granted by the President of the United States regarding a Federal conviction for a crime punishable by imprisonment for a term exceeding 1 year shall remove any disability which otherwise would be imposed by the provisions of this part with respect to that conviction.

(b) A pardon granted by the Governor of a State or other State pardoning authority or by the pardoning authority of a foreign jurisdiction with respect to a conviction, or any expunction, reversal, setting aside of a conviction, or other proceeding rendering a conviction nugatory, or a restoration of civil rights shall remove any disability which otherwise would be imposed by the provisions of this part with respect to the conviction, unless:

(1) The pardon, expunction, setting aside, or other proceeding rendering a conviction nugatory, or restoration of civil rights expressly provides that the person may not ship, transport, possess or receive firearms; or

(2) The pardon, expunction, setting aside, or other proceeding rendering a conviction nugatory, or restoration of civil rights did not fully restore the rights of the person to possess or receive firearms under the law of the jurisdiction where the conviction occurred.

[T.D. ATF–270, 53 FR 10505, Mar. 31, 1988]

§ 178.143 Relief from disabilities incurred by indictment.

A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding 1 year may, notwithstanding any other provision of the Act, continue operations pursuant to his existing license during the term of such indictment and until any conviction pursuant to the indictment becomes final: *Provided*, That if the term of the license expires during the period between the date of the indictment and the date the conviction thereunder becomes final, such importer, manufacturer, dealer, or collector must file a timely application for the renewal of his license in order to continue operations. Such application shall show that the applicant is under indictment for a crime punishable by imprisonment for a term exceeding 1 year.

§ 178.144 Relief from disabilities under the Act.

(a) Any person may make application for relief from the disabilities under section 922 (g) and (n) of the Act (see § 178.32).

(b) An application for such relief shall be filed, in triplicate, with the Director. It shall include the information required by this section and such other supporting data as the Director and the applicant deem appropriate.

(c) Any record or document of a court or other government entity or official required by this paragraph to be furnished by an applicant in support of an application for relief shall be certified by the court or other government entity or official as a true copy. An application shall include:

(1) In the case of an applicant who is an individual, a written statement from each of 3 references, who are not related to the applicant by blood or marriage and have known the applicant for at least 3 years, recommending the granting of relief;

(2) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, and criminal record;

(3) In the case of an applicant under indictment, a copy of the indictment or information;

(4) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding 1 year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo

contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored;

(5) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(6) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's summary of service record (Department of Defense Form 214), charge sheet (Department of Defense Form 458), and final court martial order;

(7) In the case of an applicant who, having been a citizen of the United States, has renounced his or her citizenship, a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States was in a state of war (see 8 U.S.C. 1481(a) (5) and (6)); and

(8) In the case of an applicant who has been convicted of a misdemeanor crime of domestic violence, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored.

(d) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest. The Director will not ordinarily grant relief if the applicant has not been discharged from parole or probation for a period of at least 2 years. Relief will not be granted to an applicant who is prohibited from possessing all types of firearms by the law of the State where such applicant resides.

(e) In addition to meeting the requirements of paragraph (d) of this section, an applicant who has been adjudicated a mental defective or committed to a mental institution will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored.

(f) Upon receipt of an incomplete or improperly executed application for relief, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned.

(g) Whenever the Director grants relief to any person pursuant to this section, a notice of such action shall be promptly published in the FEDERAL REGISTER, together with the reasons therefor.

(h) A person who has been granted relief under this section shall be relieved of any disabilities imposed by the Act with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms or ammunition and incurred by reason of such disability.

(i)(1) A licensee who incurs disabilities under the Act (see §178.32(a)) during the term of a current license or while the licensee has pending a license renewal application, and who files an application for removal of such disabilities, shall not be barred from licensed operations for 30 days following the date on which the applicant was first subject to such disabilities (or 30 days

after the date upon which the conviction for a crime punishable by imprisonment for a term exceeding 1 year becomes final), and if the licensee files the application for relief as provided by this section within such 30-day period, the licensee may further continue licensed operations during the pendency of the application. A licensee who does not file such application within such 30-day period shall not continue licensed operations beyond 30 days following the date on which the licensee was first subject to such disabilities (or 30 days from the date the conviction for a crime punishable by imprisonment for a term exceeding 1 year becomes final).

(2) In the event the term of a license of a person expires during the 30-day period specified in paragraph (i)(1) of this section, or during the pendency of the application for relief, a timely application for renewal of the license must be filed in order to continue licensed operations. Such license application shall show that the applicant is subject to Federal firearms disabilities, shall describe the event giving rise to such disabilities, and shall state when the disabilities were incurred.

(3) A licensee shall not continue licensed operations beyond 30 days following the date the Director issues notification that the licensee's applications for removal of disabilities has been denied.

(4) When as provided in this paragraph a licensee may no longer continue licensed operations, any application for renewal of license filed by the licensee during the pendency of the application for removal of disabilities shall be denied by the Director of Industry Operations.

[T.D. ATF–270, 53 FR 10506, Mar. 31, 1988, as amended by T.D. ATF–313, 56 FR 32509, July 17, 1991; 56 FR 43649, Sept. 3, 1991; T.D. ATF–401, 63 FR 35523, June 30, 1998]

§ 178.145 Research organizations.

The provisions of § 178.98 with respect to the sale or delivery of destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles shall not apply to the sale or delivery of such devices and weapons to any research organization designated by the Director to receive same. A research organization desiring such designation shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and address of the research organization, the names and addresses of the persons directing or controlling, directly or indirectly, the policies and management of such organization, the nature and purpose of the research being conducted, a description of the devices and weapons to be received, and the identity of the person or persons from whom such devices and weapons are to be received.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988]

§ 178.146 Deliveries by mail to certain persons.

The provisions of this part shall not be construed as prohibiting a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of title 18, U.S.C., is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duties.

§ 178.147 Return of firearm.

A person not otherwise prohibited by Federal, State or local law may ship a firearm to a licensed importer, licensed manufacturer, or licensed dealer for any lawful purpose, and, notwithstanding any other provision of this part, the licensed manufacturer, licensed importer, or licensed dealer may return in interstate or foreign commerce to that person the firearm or a replacement firearm of the same kind and type. See § 178.124(a) for requirements of a Form 4473 prior to return. A person not otherwise prohibited by Federal, State or local law may ship a firearm curio or relic to a licensed collector for any lawful purpose, and, notwithstanding any other provision of this part, the licensed collector may return in interstate or foreign commerce to that person the firearm curio or relic.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988]

§ 178.148 Armor piercing ammunition intended for sporting or industrial purposes.

The Director may exempt certain armor piercing ammunition from the requirements of this part. A person who desires to obtain an exemption under this section for any such ammunition which is primarily intended for sporting purposes or intended for industrial purposes, including charges used in oil and gas well perforating devices, shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the ammunition, the name and address of the manufacturer or importer, the purpose of and use for which it is designed and intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make a determination. The Director may require that a sample of the ammunition be submitted for examination and evaluation.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988]

§ 178.149 Armor piercing ammunition manufactured or imported for the purpose of testing or experimentation.

The provisions of §§ 178.37 and 178.99(d) with respect to the manufacture or importation of armor piercing ammunition and the sale or delivery of armor piercing ammunition by manufacturers and importers shall not apply to the manufacture, importation, sale or delivery of armor piercing ammunition for the purpose of testing or experimentation as authorized by the Director. A person desiring such authorization to receive armor piercing ammunition shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and addresses of the persons directing or controlling, directly or indirectly, the policies and management of the applicant, the nature or purpose of the testing or experimentation, a description of the armor piercing ammunition to be received, and the identity of the manufacturer or importer from whom such ammunition is to be received. The approved application shall be submitted to the manufacturer or importer who shall retain a copy as part of the records required by subpart H of this part.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988]

§ 178.150 Alternative to NICS in certain geographical locations.

(a) The provisions of § 178.102(d)(3) shall be applicable when the Director has certified that compliance with the provisions of § 178.102(a)(1) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

(c) For purposes of this section and § 178.129(c), the ''chief law enforcement officer'' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(Approved by the Office of Management and Budget under control number 1512–0544)

[T.D. ATF–415, 63 FR 58280, Oct. 29, 1998]

§ 178.151 Semiautomatic rifles or shotguns for testing or experimentation.

(a) The provisions of § 178.39 shall not apply to the assembly of semiautomatic rifles or shotguns for the purpose

of testing or experimentation as authorized by the Director.

(b) A person desiring authorization to assemble nonsporting semiautomatic rifles or shotguns shall submit a written request, in duplicate, to the Director. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm to be assembled, and such diagrams or drawings as may be necessary to enable the Director to make a determination. The Director may require the submission of the firearm parts for examination and evaluation. If the submission of the firearm parts is impractical, the person requesting the authorization shall so advise the Director and designate the place where the firearm parts will be available for examination and evaluation.

[T.D. ATF–346, 58 FR 40590, July 29, 1993]

§ 178.152 Seizure and forfeiture.

(a) Any firearm or ammunition involved in or used in any knowing violation of subsections (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 of the Act, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) of the Act, or knowing violation of section 924 of the Act, or willful violation of any other provision of the Act or of this part, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 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 under the provisions of the Act: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against such person other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or the delegate of the owner or possessor in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within 120 days of such seizure.

(b) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of the Act or this part, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (c) of this section, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture and disposition.

(c) The offenses referred to in paragraphs (a) and (b) of this section for which firearms and ammunition intended to be used in such offenses are subject to seizure and forfeiture are:

(1) Any crime of violence, as that term is defined in section 924(c)(3) of the Act;

(2) Any offense punishable under the Controlled Substances Act (21 U.S.C. 801 *et seq.*) or the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*);

(3) Any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act, where the firearm or ammunition intended to be used in such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of the Act;

(4) Any offense described in section 922(d) of the Act where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(5) Any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of the Act; and

(6) Any offense which may be prosecuted in a court of the United States

which involves the exportation of firearms or ammunition.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988; Redesignated by T.D. ATF–354, 59 FR 7114, Feb. 14, 1994, and further redesignated by T.D. ATF–361, 60 FR 10788, Feb. 27, 1995; T.D. ATF–363, 60 FR 17455, Apr. 6, 1995]

§ 178.153 Semiautomatic assault weapons and large capacity ammunition feeding devices manufactured or imported for the purposes of testing or experimentation.

The provisions of § 178.40 with respect to the manufacture, transfer, or possession of a semiautomatic assault weapon, and § 178.40a with respect to large capacity ammunition feeding devices, shall not apply to the manufacture, transfer, or possession of such weapons or devices by a manufacturer or importer for the purposes of testing or experimentation as authorized by the Director. A person desiring such authorization shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and addresses of the persons directing or controlling, directly or indirectly, the policies and management of the applicant, the nature or purpose of the testing or experimentation, a description of the weapons or devices to be manufactured or imported, and the source of the weapons or devices. The approved application shall be retained as part of the records required by subpart H of this part.

[T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

Subpart J [Reserved]

Subpart K—Exportation

§ 178.171 Exportation.

Firearms and ammunition shall be exported in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting firearms shall maintain records showing the manufacture or acquisition of the firearms as required by this part and records showing the name and address of the foreign consignee of the firearms and the date the firearms were exported. Licensed manufacturers and licensed importers exporting armor piercing ammunition and semiautomatic assault weapons manufactured after September 13, 1994, shall maintain records showing the name and address of the foreign consignee and the date the armor piercing ammunition or semiautomatic assault weapons were exported.

[T.D. ATF–270, 53 FR 10507, Mar. 31, 1988; T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

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AUTHORITY: 26 U.S.C. 7805.

SOURCE: 36 FR 14256, Aug. 3, 1971, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope of Regulations

§ 179.1 General.

This part contains the procedural and substantive requirements relative to the importation, manufacture, making, exportation, identification and registration of, and the dealing in, machine guns, destructive devices and certain other firearms under the provisions of the National Firearms Act (26 U.S.C. Chapter 53).

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

Subpart B—Definitions

§ 179.11 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 meanings 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 other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Antique firearm. Any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Any other weapon. Any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

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.

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.

Dealer. Any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellent charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) similar device; (b) any

type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes; and (c) any combination of parts either designed or intended for use in converting any device into a destructive device as described in paragraphs (a) and (b) of this definition and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed or redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army under 10 U.S.C. 4684(2), 4685, or 4686, or any device which the Director finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

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

Director of the Service Center. A director of an Internal Revenue Service Center in an internal revenue region.

District director. A district director of the Internal Revenue Service in an internal revenue district.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, 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, application, request, certificate), 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. The severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country.

Exporter. Any person who exports firearms from the United States.

Firearm. (a) A shotgun having a barrel or barrels of less than 18 inches in length; (b) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (c) a rifle having a barrel or barrels of less than 16 inches in length; (d) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (e) any other weapon, as defined in this subpart; (f) a machine gun; (g) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (h) a destructive device. The term shall not include an antique firearm or any device (other than a machine gun or destructive device) which, although designed as a weapon, the Director finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon. For purposes of this definition, the length of the barrel having an integral chamber(s) on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breech block when closed and when the shotgun or rifle is cocked. The overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore.

Fixed ammunition. That self-contained unit consisting of the case, primer, propellant charge, and projectile or projectiles.

Frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Importation. The bringing of a firearm within the limits of the United States or any territory under its control or jurisdiction, from a place outside thereof (whether such place be a foreign country or territory subject to the jurisdiction of the United States), with intent

to unlade. Except that, bringing a firearm from a foreign country or a territory subject to the jurisdiction of the United States into a foreign trade zone for storage pending shipment to a foreign country or subsequent importation into this country, under Title 26 of the United States Code, and this part, shall not be deemed importation.

Importer. Any person who is engaged in the business of importing or bringing firearms into the United States.

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Make. This term and the various derivatives thereof shall include manufacturing (other than by one qualified to engage in such business under this part), putting together, altering, any combination of these, or otherwise producing a firearm.

Manual reloading. The inserting of a cartridge or shell into the chamber of a firearm either with the hands or by means of a mechanical device controlled and energized by the hands.

Manufacturer. Any person who is engaged in the business of manufacturing firearms.

Muffler or silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Person. A partnership, company, association, trust, estate, or corporation, as well as a natural person.

Pistol. A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

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

Revolver. A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

Rifle. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

Shotgun. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

Transfer. This term and the various derivatives thereof shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

United States. The States and the District of Columbia.

U.S.C. The United States Code.

Unserviceable firearm. A firearm which is incapable of discharging a shot by means of an explosive and incapable of

being readily restored to a firing condition.

(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))

[T.D. ATF–48, 43 FR 13538, Mar. 31, 1978; 44 FR 55842, Sept. 28, 1979; T.D. ATF–241, 51 FR 39630, Oct. 29, 1986; T.D. ATF–270, 53 FR 10492, Mar. 31, 1988; T.D. ATF–396, 63 FR 12647, Mar. 16, 1998]

Subpart C—Administrative and Miscellaneous Provisions

§ 179.21 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. Each form requiring that it be executed under penalties of perjury 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 46916, Sept. 23, 1981, as amended by T.D. ATF–241, 51 FR 39630, Oct. 29, 1986; T.D. ATF–270, 53 FR 10508, Mar. 31, 1988; T.D. 372, 61 FR 20725, May 8, 1996]

§ 179.22 Right of entry and examination.

Any ATF officer or employee of the Bureau of Alcohol, Tobacco and Firearms duly authorized to perform any function relating to the administration or enforcement of this part may enter during business hours the premises (including places of storage) of any importer or manufacturer of or dealer in firearms, to examine any books, papers, or records required to be kept pursuant to this part, and any firearms kept by such importer, manufacturer or dealer on such premises, and may require the production of any books, papers, or records necessary to determine any liability for tax under 26 U.S.C. Chapter 53, or the observance of 26 U.S.C. Chapter 53, and this part.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.23 Restrictive use of required information.

No information or evidence obtained from an application, registration, or record required to be submitted or retained by a natural person in order to comply with any provision of 26 U.S.C. Chapter 53, or this part or section 207 of the Gun Control Act of 1968 shall be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration, or the compiling of the record containing the information or evidence: *Provided, however,* That the provisions of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.24 Destructive device determination.

The Director shall determine in accordance with 26 U.S.C. 5845(f), whether a device is excluded from the definition of a destructive device. A person who desires to obtain a determination under that provision of law for any device which he believes is not likely to be used as a weapon shall submit a written request, in triplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer thereof, the purpose of and use for which it is intended, and such photographs, diagrams, or drawings as may be necessary to enable the Director to make his determination. The Director may require the submission to him, of a sample of such device for examination and evaluation. If the submission of

such device is impracticable, the person requesting the ruling shall so advise the Director and designate the place where the device will be available for examination and evaluation.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.25 Collector's items.

The Director shall determine in accordance with 26 U.S.C. 5845(a), whether a firearm or device, which although originally designed as a weapon, is by reason of the date of its manufacture, value, design, and other characteristics primarily a collector's item and is not likely to be used as a weapon. A person who desires to obtain a determination under that provision of law shall follow the procedures prescribed in § 179.24 relating to destructive device determinations, and shall include information as to date of manufacture, value, design and other characteristics which would sustain a finding that the firearm or device is primarily a collector's item and is not likely to be used as a weapon.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.26 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* Any person subject to the provisions of this part, on specific approval by the Director as provided in this paragraph, 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 it is found that:

(1) Good cause is 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 that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; 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. Where such person desires to employ an alternate method or procedure, a written application shall be submitted to the appropriate 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 for it. Alternate methods or procedures may not be employed until the application is approved by the Director. Such person shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of the authorization.

(b) *Emergency variations from requirements.* The Director may approve a method of operation other than as specified in this part, where it is found that an emergency exists and the proposed variation from the specified requirements are necessary and the proposed variations (1) will not hinder the effective administration of this part, and (2) will not be contrary to any provisions of law. Variations from requirements granted under this paragraph 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 the procedures, conditions, and limitations shall automatically terminate the authority for the variations, and the person granted the variance 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 effective administration of this part is hindered by the continuation of the variation. Where a person desires to employ an emergency variation, a written application shall be submitted to the appropriate regional director (compliance) for transmittal to the Director. The application shall describe the proposed variation

and set forth the reasons for it. Variations may not be employed until the application is approved.

(c) *Retention of approved variations.* The person granted the variance shall retain and make available for examination by ATF officers any application approved by the Director under this section.

[T.D. ATF–270, 53 FR 10508 Mar. 31, 1988]

Subpart D—Special (Occupational) Taxes

§ 179.31 Liability for tax.

(a) *General.* Every person who engages in the business of importing, manufacturing, or dealing in (including pawnbrokers) firearms in the United States shall pay a special (occupational) tax at a rate specified by § 179.32. The tax shall be paid on or before the date of commencing the taxable business, and thereafter every year on or before July 1. Special (occupational) tax shall not be prorated. The tax shall be computed for the entire tax year (July 1 through June 30), regardless of the portion of the year during which the taxpayer engages in business. Persons commencing business at any time after July 1 in any year are liable for the special (occupational) tax for the entire tax year.

(b) *Each place of business taxable.* An importer, manufacturer, or dealer in firearms incurs special tax liability at each place of business where 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. See also §§ 179.38–179.39.

(26 U.S.C. 5143, 5801, 5846)

[T.D. ATF–271, 53 FR 17550, May 17, 1988]

§ 179.32 Special (occupational) tax rates.

(a) Prior to January 1, 1988, the special (occupational) tax rates were as follows:

	Per year or fraction thereof
Class 1—Importer of firearms	$500
Class 2—Manufacturer of firearms	500
Class 3—Dealer in firearms	200
Class 4—Importer only of weapons classified as ''any other weapon	25
Class 5—Manufacturer only of weapons classified as ''any other weapon	25
Class 6—Dealer only in weapons classified as ''any other weapon	10

(b) Except as provided in § 179.32a, the special (occupational) tax rates effective January 1, 1988, are as follows:

	Per year or fraction thereof
Class 1—Importer of firearms (including an importer only of weapons classified as ''any other weapon'')	$1,000
Class 2—Manufacturer of firearms (including a manufacturer only of weapons classified as ''any other weapon'')	1,000
Class 3—Dealer in firearms (including a dealer only of weapons classified as ''any other weapon'')	500

(c) A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

[T.D. ATF–271, 53 FR 17550, May 17, 1988]

§ 179.32a Reduced rate of tax for small importers and manufacturers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5801(b) provides for a reduced rate of special tax with respect to any importer or manufacturer 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 § 179.32 relates) are less than $500,000. The rate of tax for such an importer or manufacturer is $500 per year or fraction thereof. 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, quality for the reduced special (occupational) tax rate, unless the business is a member of a ''controlled group''; in that case, the rules of paragraph (b) of this section shall apply.

(b) *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 (a) 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.

(c) *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).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5801)

[T.D. ATF–271, 53 FR 17550, May 17, 1988]

§ 179.33 Special exemption.

(a) Any person required to pay special (occupational) tax under this part shall be relieved from payment of that tax if he establishes to the satisfaction of the Director that his business is conducted exclusively with, or on behalf of, the United States or any department, independent establishment, or agency thereof. The Director may relieve any person manufacturing firearms for or on behalf of the United States from compliance with any provision of this part in the conduct of the business with respect to such firearms.

(b) The exemption in this section may be obtained by filing with the Director an application, in letter form, setting out the manner in which the applicant conducts his business, the type of firearm to be manufactured, and proof satisfactory to the Director of the existence of the contract with the United States, department, independent establishment, or agency thereof, under which the applicant intends to operate.

§ 179.34 Special tax registration and return.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.7, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form. Properly completing, signing, and timely filing of a return (Form 5630.7) constitutes compliance with 26 U.S.C. 5802.

(b) *Preparation of ATF Form 5630.7.* All of the information called for on Form 5630.7 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 § 179.35).

(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 license application under Part 178 of this chapter, 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 5630.7, 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 5630.7), 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 not less than 3 years.

(d) *Signing of ATF Forms 5630.7*—(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 5630.7 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(e) *Identification of taxpayer.* If the taxpayer is an individual, with the initial return such person shall securely attach to Form 5630.7 a photograph of the individual 2 × 2 inches in size, clearly showing a full front view of the features of the individual with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 6 months prior to the date of completion of the return. The individual shall also attach to the return a properly completed FBI Form FD–258 (Fingerprint Card). The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them: *Provided,* That the provisions of this paragraph shall not apply to individuals who have filed with ATF a properly executed Application for License under 18 U.S.C. Chapter 44, Firearms, ATF Form 7 (5310.12) (12–93 edition), as specified in § 178.44(a).

(26 U.S.C. 5142, 5802, 5846, 6061, 6065, 6151)

[T.D. ATF–271, 53 FR 17551, May 17, 1988, as amended by T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

§ 179.35 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 17551, May 17, 1988; as amended by T.D. ATF–301, 55 FR 47657, Nov. 14, 1990]

§ 179.36 The special tax stamp, receipt for special (occupational) taxes.

Upon filing a properly completed and executed return (Form 5630.7) accompanied by remittance of the full amount due, the taxpayer will be issued a special tax stamp as evidence of payment of the special (occupational) tax.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

§ 179.37 Certificates in lieu of stamps lost or destroyed.

When a special tax stamp has been lost or destroyed, such fact should be reported immediately to the regional director (compliance) Center who issued the stamp. A certificate in lieu of the lost or destroyed stamp will be issued to the taxpayer upon the submission of an affidavit showing to the satisfaction of the regional director (compliance) that the stamp was lost or destroyed.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987]

§ 179.38 Engaging in business at more than one location.

A person shall pay the special (occupational) tax for each location where he engages in any business taxable under 26 U.S.C. 5801. However, a person paying a special (occupational) tax covering his principal place of business may utilize other locations solely for storage of firearms without incurring special (occupational) tax liability at such locations. A manufacturer, upon the single payment of the appropriate special (occupational) tax, may sell firearms, if such firearms are of his own manufacture, at the place of manufacture and at his principal office or place of business if no such firearms, except samples, are kept at such office or place of business. When a person changes the location of a business for which he has paid the special (occupational) tax, he will be liable for another such tax unless the change is properly registered with the regional director (compliance) for the region in which the special tax stamp was issued, as provided in § 179.46.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–271, 53 FR 17551, May 17, 1988]

§ 179.39 Engaging in more than one business at the same location.

If more than one business taxable under 26 U.S.C. 5801, is carried on at the same location during a taxable year, the special (occupational) tax imposed on each such business must be paid. This section does not require a qualified manufacturer or importer to qualify as a dealer if such manufacturer or importer also engages in business on his qualified premises as a dealer. However, a qualified manufacturer who engages in business as an importer must also qualify as an importer. Further, a qualified dealer is not entitled to engage in business as a manufacturer or importer.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–271, 53 FR 17551, May 17, 1988]

§ 179.40 Partnership liability.

Any number of persons doing business in partnership at any one location shall be required to pay but one special (occupational) tax.

§ 179.41 Single sale.

A single sale, unattended by circumstances showing the one making the sale to be engaged in business, does not create special (occupational) tax liability.

CHANGE OF OWNERSHIP

§ 179.42 Changes through death of owner.

Whenever any person who has paid special (occupational) tax dies, the surviving spouse or child, or executors or administrators, or other legal representatives, may carry on this business for the remainder of the term for which tax has been paid and at the place (or places) for which the tax was paid, without any additional payment, subject to the following conditions. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall, within 30 days after the date on which the successor begins to carry on the business, file a new return, Form 5630.7, with ATF in accordance with the instructions on the form. The return thus executed shall show the name of the original taxpayer, together with the basis of the succession. (As to liability in case of failure to register, see § 179.49.)

[T.D. ATF–70, 45 FR 33979, May 21, 1980, as amended by T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

§ 179.43 Changes through bankruptcy of owner.

A receiver or referee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special (occupational) tax liability. In such cases, the change shall be registered with ATF in a manner similar to that required by § 179.42.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987]

§ 179.44 Change in partnership or unincorporated association.

When one or more members withdraw from a partnership or an unincorporated association, the remaining member, or members, may, without incurring additional special (occupational) tax liability, carry on the same business at the same location for the balance of the taxable period for which special (occupational) tax was paid, provided any such change shall be registered in the same manner as required by § 179.42. Where new member(s) are taken into a partnership or an unincorporated association, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm must file a return, pay the special (occupational) tax and register in the same manner as a person who first engages in business is required to do under § 179.34 even though the name of the new firm may be the same as that of the old. Where the members of a partnership or an unincorporated association, which has paid special (occupational) tax, form a corporation to continue the business, a new special tax stamp must be taken out in the name of the corporation.

§ 179.45 Changes in corporation.

Additional special (occupational) tax is not required by reason of a mere change of name or increase in the capital stock of a corporation if the laws of the State of incorporation provide for such change or increase without the formation of a new corporation. A stockholder in a corporation who after its dissolution continues the business, incurs new special (occupational) tax liability.

CHANGE OF BUSINESS LOCATION

§ 179.46 Notice by taxpayer.

Whenever during the taxable year a taxpayer intends to remove his business to a location other than specified in his last special (occupational) tax return (see § 179.34), he shall file with

ATF (a) a return, Form 5630.7, bearing the notation ''Removal Registry,'' and showing the new address intended to be used, (b) his current special tax stamp, and (c) a letter application requesting the amendment of his registration. The regional director (compliance), upon approval of the application, shall return the special tax stamp, amended to show the new business location. Firearms operations shall not be commenced at the new business location by the taxpayer prior to the required approval of his application to so change his business location.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

CHANGE OF TRADE NAME

§ 179.47 Notice by taxpayer.

Whenever during the taxable year a taxpayer intends to change the name of his business, he shall file with ATF (a) a return, Form 5630.7, bearing the notation ''Amended,'' and showing the trade name intended to be used, (b) his current special tax stamp, and (c) a letter application requesting the amendment of his registration. The regional director (compliance), upon approval of the application, shall return the special tax stamp, amended to show the new trade name. Firearms operations shall not be commenced under the new trade name by the taxpayer prior to the required approval of his application to so change the trade name.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–363, 60 FR 17456, Apr. 6, 1995]

PENALTIES AND INTEREST

§ 179.48 Failure to pay special (occupational) tax.

Any person who engages in a business taxable under 26 U.S.C. 5801, without timely payment of the tax imposed with respect to such business (see § 179.34) shall be liable for such tax, plus the interest and penalties thereon (see 26 U.S.C. 6601 and 6651). In addition, such person may be liable for criminal penalties under 26 U.S.C. 5871.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.49 Failure to register change or removal.

Any person succeeding to and carrying on a business for which special (occupational) tax has been paid without registering such change within 30 days thereafter, and any taxpayer removing his business with respect to which special (occupational) tax has been paid to a place other than that for which tax was paid without obtaining approval therefor (see § 179.46), will incur liability to an additional payment of the tax, addition to tax and interest, as provided in sections 5801, 6651, and 6601, respectively, I.R.C., for failure to make return (see § 179.50) or pay tax, as well as criminal penalties for carrying on business without payment of special (occupational) tax (see section 5871 I.R.C.).

§ 179.50 Delinquency.

Any person liable for special (occupational) tax under section 5801, I.R.C., who fails to file a return (Form 5630.7), as prescribed, will be liable for a delinquency penalty computed on the amount of tax due unless a return (Form 5630.7) is later filed and failure to file the return timely is shown to the satisfaction of the regional director (compliance), to be due to reasonable cause. The delinquency penalty to be added to the tax is 5 percent if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate (section 6651, I.R.C.). However, no delinquency penalty is assessed where the 50 percent addition to tax is assessed for fraud (see § 179.51).

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19334, May 22, 1987; T.D. ATF–363, 60 FR 17453, Apr. 6, 1996]

§ 179.51 Fraudulent return.

If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to

the tax an amount equal to 50 percent of the underpayment, but no delinquency penalty shall be assessed with respect to the same underpayment (section 6653, I.R.C.).

APPLICATION OF STATE LAWS

§ 179.52 State regulations.

Special tax stamps are merely receipts for the tax. Payment of tax under Federal law confers no privilege to act contrary to State law. One to whom a special tax stamp has been issued may still be punishable under a State law prohibiting or controlling the manufacture, possession or transfer of firearms. On the other hand, compliance with State law confers no immunity under Federal law. Persons who engage in the business of importing, manufacturing or dealing in firearms, in violation of the law of a State, are nevertheless required to pay special (occupational) tax as imposed under the internal revenue laws of the United States. For provisions relating to restrictive use of information furnished to comply with the provisions of this part see § 179.23.

Subpart E—Tax on Making Firearms

§ 179.61 Rate of tax.

Except as provided in this subpart, there shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made. This tax shall be paid by the person making the firearm. Payment of the tax on the making of a firearm shall be represented by a $200 adhesive stamp bearing the words ''National Firearms Act.'' The stamps are maintained by the Director.

[T.D. ATF–270, 53 FR 10508, Mar. 31, 1988]

APPLICATION TO MAKE A FIREARM

§ 179.62 Application to make.

No person shall make a firearm unless the person has filed with the Director a written application on Form 1 (Firearms), Application to Make and Register a Firearm, in duplicate, executed under the penalties of perjury, to make and register the firearm and has received the approval of the Director to make the firearm which approval shall effectuate registration of the weapon to the applicant. The application shall identify the firearm to be made by serial number, type, model, caliber or gauge, length of barrel, other marks of identification, and the name and address of original manufacturer (if the applicant is not the original manufacturer). The applicant must be identified on the Form 1 (Firearms) by name and address and, if other than a natural person, the name and address of the principal officer or authorized representative and the employer identification number and, if an individual, the identification must include the date and place of birth and the information prescribed in § 179.63. Each applicant shall identify the Federal firearms license and special (occupational) tax stamp issued to the applicant, if any. The applicant shall also show required information evidencing that making or possession of the firearm would not be in violation of law. If the making is taxable, a remittance in the amount of $200 shall be submitted with the application in accordance with the instructions on the form. If the making is taxable and the application is approved, the Director will affix a National Firearms Act stamp to the original application in the space provided therefor and properly cancel the stamp (see § 179.67). The approved application will be returned to the applicant. If the making of the firearm is tax exempt under this part, an explanation of the basis of the exemption shall be attached to the Form 1 (Firearms).

[T.D. ATF–270, 53 FR 10508, Mar. 31, 1988]

§ 179.63 Identification of applicant.

If the applicant is an individual, the applicant shall securely attach to each copy of the Form 1 (Firearms), in the space provided on the form, a photograph of the applicant 2 × 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application. The applicant shall attach two properly completed FBI Forms FD–258 (Fingerprint Card) to the application. The

fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 1 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that possession of the firearm by the maker would be in violation of State or local law or that the maker will use the firearm for other than lawful purposes.

[T.D. ATF–270, 53 FR 10509, Mar. 31, 1988]

§ 179.64 Procedure for approval of application.

The application to make a firearm, Form 1 (Firearms), must be forwarded directly, in duplicate, by the maker of the firearm to the Director in accordance with the instructions on the form. The Director will consider the application for approval or disapproval. If the application is approved, the Director will return the original thereof to the maker of the firearm and retain the duplicate. Upon receipt of the approved application, the maker is authorized to make the firearm described therein. The maker of the firearm shall not, under any circumstances, make the firearm until the application, satisfactorily executed, has been forwarded to the Director and has been approved and returned by the Director with the National Firearms Act stamp affixed. If the application is disapproved, the original Form 1 (Firearms) and the remittance submitted by the applicant for the purchase of the stamp will be returned to the applicant with the reason for disapproval stated on the form.

[T.D. ATF–270, 53 FR 10509, Mar. 31, 1988]

§ 179.65 Denial of application.

An application to make a firearm shall not be approved by the Director if the making or possession of the firearm would place the person making the firearm in violation of law.

§ 179.66 Subsequent transfer of firearms.

Where a firearm which has been made in compliance with 26 U.S.C. 5821, and the regulations contained in this part, is to be transferred subsequently, the transfer provisions of the firearms laws and regulations must be complied with. (See subpart F of this part).

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979]

§ 179.67 Cancellation of stamp.

The person affixing to a Form 1 (Firearms) a ''National Firearms Act'' stamp shall cancel it by writing or stamping thereon, in ink, his initials, and the day, month and year, in such manner as to render it unfit for reuse. The cancellation shall not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

EXCEPTIONS TO TAX ON MAKING FIREARMS

§ 179.68 Qualified manufacturer.

A manufacturer qualified under this part to engage in such business may make firearms without payment of the making tax. However, such manufacturer shall report and register each firearm made in the manner prescribed by this part.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–271, 53 FR 17551, May 17, 1988]

§ 179.69 Making a firearm for the United States.

A firearm may be made by, or on behalf of, the United States or any department, independent establishment, or agency thereof without payment of the making tax. However, if a firearm is to be made on behalf of the United States, the maker must file an application, in duplicate, on Form 1 (Firearms) and obtain the approval of the Director in the manner prescribed in § 179.62.

§ 179.70 Certain government entities.

A firearm may be made without payment of the making tax by, or on behalf of, any State, or possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations. Any person making a firearm under this exemption shall first file an application, in duplicate, on Form 1 (Firearms) and obtain the approval of the Director as prescribed in § 179.62.

REGISTRATION

§ 179.71 Proof of registration.

The approval by the Director of an application, Form 1 (Firearms), to make a firearm under this subpart shall effectuate registration of the firearm described in the Form 1 (Firearms) to the person making the firearm. The original Form 1 (Firearms) showing approval by the Director shall be retained by the maker to establish proof of his registration of the firearm described therein, and shall be made available to any ATF officer on request.

Subpart F—Transfer Tax

§ 179.81 Scope of tax.

Except as otherwise provided in this part, each transfer of a firearm in the United States is subject to a tax to be represented by an adhesive stamp of the proper denomination bearing the words ''National Firearms Act'' to be affixed to the Form 4 (Firearms), Application for Transfer and Registration of Firearm, as provided in this subpart.

§ 179.82 Rate of tax.

The transfer tax imposed with respect to firearms transferred within the United States is at the rate of $200 for each firearm transferred, except that the transfer tax on any firearm classified as ''any other weapon'' shall be at the rate of $5 for each such firearm transferred. The tax imposed on the transfer of the firearm shall be paid by the transferor.

§ 179.83 Transfer tax in addition to import duty.

The transfer tax imposed by section 5811, I.R.C., is in addition to any import duty.

APPLICATION AND ORDER FOR TRANSFER OF FIREARM

§ 179.84 Application to transfer.

Except as otherwise provided in this subpart, no firearm may be transferred in the United States unless an application, Form 4 (Firearms), Application for Transfer and Registration of Firearm, in duplicate, executed under the penalties of perjury to transfer the firearm and register it to the transferee has been filed with and approved by the Director. The application, Form 4 (Firearms), shall be filed by the transferor and shall identify the firearm to be transferred by type; serial number; name and address of the manufacturer and importer, if known; model; caliber, gauge or size; in the case of a short-barreled shotgun or a short-barreled rifle, the length of the barrel; in the case of a weapon made from a rifle or shotgun, the overall length of the weapon and the length of the barrel; and any other identifying marks on the firearm. In the event the firearm does not bear a serial number, the applicant shall obtain a serial number from the Regional director (compliance) and shall stamp (impress) or otherwise conspicuously place such serial number on the firearm in a manner not susceptible of being readily obliterated, altered or removed. The application, Form 4 (Firearms), shall identify the transferor by name and address; shall identify the transferor's Federal firearms license and special (occupational) Chapter tax stamp, if any; and if the transferor is other than a natural person, shall show the title or status of the person executing the application. The application also shall identify the transferee by name and address, and, if the transferee is a natural person not qualified as a manufacturer, importer or dealer under this part, he shall be further identified in the manner prescribed in § 179.85. The application also

shall identify the special (occupational) tax stamp and Federal firearms license of the transferee, if any. Any tax payable on the transfer must be represented by an adhesive stamp of proper denomination being affixed to the application, Form 4 (Firearms), properly cancelled.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–241, 51 FR 39632, Oct. 29, 1986 T.D. ATF–270, 53 FR 10509, Mar. 31, 1988]

§ 179.85 Identification of transferee.

If the transferee is an individual, such person shall securely attach to each copy of the application, Form 4 (Firearms), in the space provided on the form, a photograph of the applicant 2 × 2 inches in size, clearly showing a full front view of the features of the applicant with head bare, with the distance from the top of the head to the point of the chin approximately 1¼ inches, and which shall have been taken within 1 year prior to the date of the application. The transferee shall attach two properly completed FBI Forms FD–258 (Fingerprint Card) to the application. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. A certificate of the local chief of police, sheriff of the county, head of the State police, State or local district attorney or prosecutor, or such other person whose certificate may in a particular case be acceptable to the Director, shall be completed on each copy of the Form 4 (Firearms). The certificate shall state that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that the receipt or possession of the firearm would place the transferee in violation of State or local law or that the transferee will use the firearm for other than lawful purposes.

[T.D. ATF–270, 53 FR 10509, Mar. 31, 1988]

§ 179.86 Action on application.

The Director will consider a completed and properly executed application, Form 4 (Firearms), to transfer a firearm. If the application is approved, the Director will affix the appropriate National Firearms Act stamp, cancel it, and return the original application showing approval to the transferor who may then transfer the firearm to the transferee along with the approved application. The approval of an application, Form 4 (Firearms), by the Director will effectuate registration of the firearm to the transferee. The transferee shall not take possession of a firearm until the application, Form 4 (Firearms), for the transfer filed by the transferor has been approved by the Director and registration of the firearm is effectuated to the transferee. The transferee shall retain the approved application as proof that the firearm described therein is registered to the transferee, and shall make the approved Form 4 (Firearms) available to any ATF officer on request. If the application, Form 4 (Firearms), to transfer a firearm is disapproved by the Director, the original application and the remittance for purchase of the stamp will be returned to the transferor with reasons for the disapproval stated on the application. An application, Form 4 (Firearms), to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law. In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National Instant Criminal Background Check System.

[T.D. ATF–270, 53 FR 10509, Mar. 31, 1988, as amended by T.D. ATF–415, 63 FR 58281, Oct. 29, 1998]

§ 179.87 Cancellation of stamp.

The method of cancellation of the stamp required by this subpart as prescribed in § 179.67 shall be used.

EXEMPTIONS RELATING TO TRANSFERS OF FIREARMS

§ 179.88 Special (occupational) taxpayers.

(a) A firearm registered to a person qualified under this part to engage in business as an importer, manufacturer, or dealer may be transferred by that person without payment of the transfer

tax to any other person qualified under this part to manufacture, import, or deal in firearms.

(b) The exemption provided in paragraph (a) of this section shall be obtained by the transferor of the firearm filing with the Director an application, Form 3 (Firearms), Application for Tax-exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer, in duplicate, executed under the penalties of perjury. The application, Form 3 (Firearms), shall (1) show the name and address of the transferor and of the transferee, (2) identify the Federal firearms license and special (occupational) tax stamp of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that he is entitled to the exemption because the transferee is a person qualified under this part to manufacture, import, or deal in firearms. If the Director approves an application, Form 3 (Firearms), he shall return the original Form 3 (Firearms) to the transferor with the approval noted thereon. Approval of an application, Form 3 (Firearms), by the Director shall remove registration of the firearm reported thereon from the transferor and shall effectuate the registration of that firearm to the transferee. Upon receipt of the approved Form 3 (Firearms), the transferor shall deliver same with the firearm to the transferee. The transferor shall not transfer the firearm to the transferee until his application, Form 3 (Firearms), has been approved by the Director and the original thereof has been returned to the transferor. If the Director disapproves the application, Form 3 (Firearms), he shall return the original Form 3 (Firearms) to the transferor with the reasons for the disapproval stated thereon.

(c) The transferor shall be responsible for establishing the exempt status of the transferee before making a transfer under the provisions of this section. Therefore, before engaging in transfer negotiations with the transferee, the transferor should satisfy himself as to the claimed exempt status of the transferee and the bona fides of the transaction. If not fully satisfied, the transferor should communicate with the Director, report all circumstances regarding the proposed transfer, and await the Director's advice before making application for the transfer. An unapproved transfer or a transfer to an unauthorized person may subject the transferor to civil and criminal liabilities. (See 26 U.S.C. 5852, 5861, and 5871.)

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–271, 53 FR 17551, May 17, 1988]

§ 179.89 Transfers to the United States.

A firearm may be transferred to the United States or any department, independent establishment or agency thereof without payment of the transfer tax. However, the procedures for the transfer of a firearm as provided in § 179.90 shall be followed in a tax-exempt transfer of a firearm under this section, unless the transferor is relieved of such requirement under other provisions of this part.

§ 179.90 Certain government entities.

(a) A firearm may be transferred without payment of the transfer tax to or from any State, possession of the United States, any political subdivision thereof, or any official police organization of such a governmental entity engaged in criminal investigations.

(b) The exemption provided in paragraph (a) of this section shall be obtained by the transferor of the firearm filing with the Director an application, Form 5 (Firearms), Application for Tax-exempt Transfer and Registration of Firearm, in duplicate, executed under the penalties of perjury. The application shall (1) show the name and address of the transferor and of the transferee, (2) identify the Federal firearms license and special (occupational) tax stamp, if any, of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber,

gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that the transferor is entitled to the exemption because either the transferor or the transferee is a governmental entity coming within the purview of paragraph (a) of this section. In the case of a transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under this part, the transferee shall be further identified in the manner prescribed in § 179.85. If the Director approves an application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the approval noted thereon. Approval of an application, Form 5 (Firearms), by the Director shall effectuate the registration of that firearm to the transferee. Upon receipt of the approved Form 5 (Firearms), the transferor shall deliver same with the firearm to the transferee. The transferor shall not transfer the firearm to the transferee until the application, Form 5 (Firearms), has been approved by the Director and the original thereof has been returned to the transferor. If the Director disapproves the application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the reasons for the disapproval stated thereon. An application by a governmental entity to transfer a firearm shall be denied if the tranfer, receipt, or possession of a firearm would place the transferee in violation of law.

(c) The transferor shall be responsible for establishing the exempt status of the transferee before making a transfer under the provisions of this section. Therefore, before engaging in transfer negotiations with the transferee, the transferor should satisfy himself of the claimed exempt status of the transferee and the bona fides of the transaction. If not fully satisfied, the transferor should communicate with the Director, report all circumstances regarding the proposed transfer, and await the Director's advice before making application for transfer. An unapproved transfer or a transfer to an unauthorized person may subject the transferor to civil and criminal liabilities. (See 26 U.S.C. 5852, 5861, and 5871.)

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55842, Sept. 28, 1979; T.D. ATF–241, 51 FR 39632, Oct. 29, 1986; T.D. ATF–270, 53 FR 10510, Mar. 31, 1988]

§ 179.91 Unserviceable firearms.

An unserviceable firearm may be transferred as a curio or ornament without payment of the transfer tax. However, the procedures for the transfer of a firearm as provided in § 179.90 shall be followed in a tax-exempt transfer of a firearm under this section, except a statement shall be entered on the transfer application, Form 5 (Firearms), by the transferor that he is entitled to the exemption because the firearm to be transferred is unservicable and is being transferred as a curio or ornament. An unapproved transfer, the transfer of a firearm under the provisions of this section which is in fact not an unserviceable firearm, or the transfer of an unserviceable firearm as something other than a curio or ornament, may subject the transferor to civil and criminal liabilities. (See 26 U.S.C. 5811, 5852, 5861, and 5871.)

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 179.92 Transportation of firearms to effect transfer.

Notwithstanding any provision of § 178.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the transfer of a firearm authorized under the provisions of this subpart.

[T.D. ATF–270, 53 FR 10510, Mar. 31, 1988]

OTHER PROVISIONS

§ 179.93 Transfers of firearms to certain persons.

Where the transfer of a destructive device, machine gun, short-barreled shotgun, or short-barreled rifle is to be made by a person licensed under the provisions of Title I of the Gun Control Act of 1968 (82 Stat. 1213) to a person not so licensed, the sworn statement

required by § 178.98 of this chapter shall be attached to and accompany the transfer application required by this subpart.

Subpart G—Registration and Identification of Firearms

§ 179.101 Registration of firearms.

(a) The Director shall maintain a central registry of all firearms in the United States which are not in the possession of or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record and shall include:

(1) Identification of the firearm as required by this part;

(2) Date of registration; and

(3) Identification and address of person entitled to possession of the firearm as required by this part.

(b) Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes in the manner prescribed by this part. Each firearm transferred shall be registered to the transferee by the transferor in the manner prescribed by this part. No firearm may be registered by a person unlawfully in possession of the firearm except during an amnesty period established under section 207 of the Gun Control Act of 1968 (82 Stat. 1235).

(c) A person shown as possessing firearms by the records maintained by the Director pursuant to the National Firearms Act (26 U.S.C. Chapter 53) in force on October 31, 1968, shall be considered to have registered the firearms in his possession which are disclosed by that record as being in his possession on October 31, 1968.

(d) The National Firearms Registration and Transfer Record shall include firearms registered to the possessors thereof under the provisions of section 207 of the Gun Control Act of 1968.

(e) A person possessing a firearm registered to him shall retain proof of registration which shall be made available to any ATF officer upon request.

(f) A firearm not identified as required by this part shall not be registered.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 179.102 How must firearms be identified?

(a) You, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows:

(1) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(2) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed), or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered or removed. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

(i) The model, if such designation has been made;

(ii) The caliber or gauge;

(iii) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer or maker;

(iv) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business, or where you, as the maker, made the firearm; and

(v) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(b) The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(c) The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(d) In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(e) A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(f)(1) Any part defined as a machine gun, muffler, or silencer for the purposes of this part that is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(2) The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Approved by the Office of Management and Budget under control number 1512–0550)

[T.D. ATF–461, 66 FR 40601, Aug. 3, 2001]

§ 179.103 Registration of firearms manufactured.

Each manufacturer qualified under this part shall file with the Director an accurate notice on Form 2 (Firearms), Notice of Firearms Manufactured or Imported, executed under the penalties of perjury, to show his manufacture of firearms. The notice shall set forth the name and address of the manufacturer, identify his special (occupational) tax stamp and Federal firearms license, and show the date of manufacture, the type, model, length of barrel, overall length, caliber, gauge or size, serial numbers, and other marks of identification of the firearms he manufactures, and the place where the manufactured firearms will be kept. All firearms manufactured by him during a single day shall be included on one notice, Form 2 (Firearms), filed by the manufacturer no later than the close of the next business day. The manufacturer shall prepare the notice, Form 2 (Firearms), in duplicate, file the original notice as prescribed herein and keep the copy with the records required by subpart I of this part at the premises covered by his special (occupational) tax stamp. Receipt of the notice, Form 2 (Firearms), by the Director shall effectuate the registration of the firearms listed on that notice. The requirements of this part relating to the transfer of a firearm are applicable to transfers by qualified manufacturers.

§ 179.104 Registration of firearms by certain governmental entities.

Any State, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations, which acquires for official use a firearm not registered to it, such as by abandonment or by forfeiture, will register such firearm with the Director by filing Form 10 (Firearms), Registration of Firearms Acquired by Certain Governmental Entities, and such registration shall become a part of the National Firearms Registration and Transfer Record. The application shall identify the applicant, describe each firearm covered by the application, show the location where each firearm usually

will be kept, and, if the firearm is unserviceable, the application shall show how the firearm was made unserviceable. This section shall not apply to a firearm merely being held for use as evidence in a criminal proceeding. The Form 10 (Firearms) shall be executed in duplicate in accordance with the instructions thereon. Upon registering the firearm, the Director shall return the original Form 10 (Firearms) to the registrant with notification thereon that registration of the firearm has been made. The registration of any firearm under this section is for official use only and a subsequent transfer will be approved only to other governmental entities for official use.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–241, 51 FR 39633, Oct. 29, 1986; T.D. ATF–270, 53 FR 10510, Mar. 31, 1988]

MACHINE GUNS

§ 179.105 Transfer and possession of machine guns.

(a) *General.* As provided by 26 U.S.C. 5812 and 26 U.S.C. 5822, an application to make or transfer a firearm shall be denied if the making, transfer, receipt, or possession of the firearm would place the maker or transferee in violation of law. Section 922(o), Title 18, U.S.C., makes it unlawful for any person to transfer or possess a machine gun, except a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or any lawful transfer or lawful possession of a machine gun that was lawfully possessed before May 19, 1986. Therefore, notwithstanding any other provision of this part, no application to make, transfer, or import a machine gun will be approved except as provided by this section.

(b) *Machine guns lawfully possessed prior to May 19, 1986.* A machine gun possessed in compliance with the provisions of this part prior to May 19, 1986, may continue to be lawfully possessed by the person to whom the machine gun is registered and may, upon compliance with the provisions of this part, be lawfully transferred to and possessed by the transferee.

(c) *Importation and manufacture.* Subject to compliance with the provisions of this part, importers and manufacturers qualified under this part may import and manufacture machine guns on or after May 19, 1986, for sale or distribution to any department or agency of the United States or any State or political subdivision thereof, or for use by dealers qualified under this part as sales samples as provided in paragraph (d) of this section. The registration of such machine guns under this part and their subsequent transfer shall be conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State or local governmental entities. Subject to compliance with the provisions of this part, manufacturers qualified under this part may manufacture machine guns on or after May 19, 1986, for exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778) and regulations prescribed thereunder by the Department of State.

(d) *Dealer sales samples.* Subject to compliance with the provisions of this part, applications to transfer and register a machine gun manufactured or imported on or after May 19, 1986, to dealers qualified under this part will be approved if it is established by specific information the expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Applications to transfer more than one machine gun of a particular model to a dealer must also establish the dealer's need for the quantity of samples sought to be transferred.

(e) *The making of machine guns on or after May 19, 1986.* Subject to compliance with the provisions of this part, applications to make and register machine guns on or after May 19, 1986, for the benefit of a Federal, State or local governmental entity (e.g., an invention for possible future use of a governmental entity or the making of a weapon in connection with research and development on behalf of such an entity) will be approved if it is established by

specific information that the machine gun is particularly suitable for use by Federal, State or local governmental entities and that the making of the weapon is at the request and on behalf of such an entity.

(f) *Discontinuance of business.* Since section 922(o), Title 18, U.S.C., makes it unlawful to transfer or possess a machine gun except as provided in the law, any qualified manufacturer, importer, or dealer intending to discontinue business shall, prior to going out of business, transfer in compliance with the provisions of this part any machine gun manufactured or imported after May 19, 1986, to a Federal, State or local governmental entity, qualified manufacturer, qualified importer, or, subject to the provisions of paragraph (d) of this section, dealer qualified to possess such, machine gun.

[T.D. ATF–270, 53 FR 10510, Mar. 31, 1988]

Subpart H—Importation and Exportation

IMPORTATION

§ 179.111 Procedure.

(a) No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the person importing or bringing in the firearm establishes to the satisfaction of the Director that the firearm to be imported or brought in is being imported or brought in for:

(1) The use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or

(2) Scientific or research purposes; or

(3) Testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer.

The burden of proof is affirmatively on any person importing or bringing the firearm into the United States or any territory under its control or jurisdiction to show that the firearm is being imported or brought in under one of the above paragraphs. Any person desiring to import or bring a firearm into the United States under this paragraph shall file with the Director an application on Form 6 (Firearms), Application and Permit for Importation of Firearms, Ammunition and Implements of War, in triplicate, executed under the penalties of perjury. The application shall show the information required by subpart G of Part 178 of this chapter. A detailed explanation of why the importation of the firearm falls within the standards set out in this paragraph shall be attached to the application. The person seeking to import or bring in the firearm will be notified of the approval or disapproval of his application. If the application is approved, the original Form 6 (Firearms) will be returned to the applicant showing such approval and he will present the approved application, Form 6 (Firearms), to the Customs officer at the port of importation. The approval of an application to import a firearm shall be automatically terminated at the expiration of one year from the date of approval unless, upon request, it is further extended by the Director. If the firearm described in the approved application is not imported prior to the expiration of the approval, the Director shall be so notified. Customs officers will not permit release of a firearm from Customs custody, except for exportation, unless covered by an application which has been approved by the Director and which is currently effective. The importation or bringing in of a firearm not covered by an approved application may subject the person responsible to civil and criminal liabilities. (26 U.S.C. 5861, 5871, and 5872.)

(b) Part 178 of this chapter also contains requirements and procedures for the importation of firearms into the United States. A firearm may not be imported into the United States under this part unless those requirements and procedures are also complied with by the person importing the firearm.

(c) The provisions of this subpart shall not be construed as prohibiting the return to the United States or any territory under its control or jurisdiction of a firearm by a person who can establish to the satisfaction of Customs that (1) the firearm was taken out of the United States or any territory under its control or jurisdiction

by such person, (2) the firearm is registered to that person, and (3) if appropriate, the authorization required by Part 178 of this chapter for the transportation of such a firearm in interstate or foreign commerce has been obtained by such person.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979; ATF–325, 57 FR 29787, July 7, 1992]

§ 179.112 Registration of imported firearms.

(a) Each importer shall file with the Director an accurate notice on Form 2 (Firearms), Notice of Firearms Manufactured or Imported, executed under the penalties of perjury, showing the importation of a firearm. The notice shall set forth the name and address of the importer, identify the importer's special (occupational) tax stamp and Federal firearms license, and show the import permit number, the date of release from Customs custody, the type, model, length of barrel, overall length, caliber, gauge or size, serial number, and other marks of identification of the firearm imported, and the place where the imported firearm will be kept. The Form 2 (Firearms) covering an imported firearm shall be filed by the importer no later than fifteen (15) days from the date the firearm was released from Customs custody. The importer shall prepare the notice, Form 2 (Firearms), in duplicate, file the original return as prescribed herein, and keep the copy with the records required by subpart I of this part at the premises covered by the special (occupational) tax stamp. The timely receipt by the Director of the notice, Form 2 (Firearms), and the timely receipt by the Director of the copy of Form 6A (Firearms), Release and Receipt of Imported Firearms, Ammunition and Implements of War, required by § 178.112 of this chapter, covering the weapon reported on the Form 2 (Firearms) by the qualified importer, shall effectuate the registration of the firearm to the importer.

(b) The requirements of this part relating to the transfer of a firearm are applicable to the transfer of imported firearms by a qualified importer or any other person.

(c) Subject to compliance with the provisions of this part, an application, Form 6 (Firearms), to import a firearm by an importer or dealer qualified under this part, for use as a sample in connection with sales of such firearms to Federal, State or local governmental entities, will be approved if it is established by specific information attached to the application that the firearm is suitable or potentially suitable for use by such entities. Such information must show why a sales sample of a particular firearm is suitable for such use and the expected governmental customers who would require a demonstration of the firearm. Information as to the availability of the firearm to fill subsequent orders and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular firearm would establish suitability for governmental use. Applications to import more than one firearm of a particular model for use as a sample by an importer or dealer must also establish the importer's or dealer's need for the quantity of samples sought to be imported.

(d) Subject to compliance with the provisions of this part, an application, Form 6 (Firearms), to import a firearm by an importer or dealer qualified under this part, for use as a sample in connection with sales of such firearms to Federal, State or local governmental entities, will be approved if it is established by specific information attached to the application that the firearm is particularly suitable for use by such entities. Such information must show why a sales sample of a particular firearm is suitable for such use and the expected governmental customers who would require a demonstration of the firearm. Information as to the availability of the firearm to fill subsequent orders and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular firearm would establish suitability for governmental use. Applications to import more than one firearm of a particular model for use as a sample by an importer or dealer must also establish the importer's or dealer's need for the

quantity of samples sought to be imported.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–241, 51 FR 39633, Oct. 29, 1986; T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

§ 179.113 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States of any firearm for the purpose of examining and testing the firearm in connection with making a determination as to whether the importation or bringing in of such firearm will be authorized under this subpart. An application under this section shall be filed on Form 6 (Firearms), in triplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm must agree to either export the weapon or destroy it if a final determination is made that it may not be imported or brought in under this subpart. A firearm so imported or brought into the United States may be released from Customs custody in the manner prescribed by the conditional authorization of the Director.

[T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

EXPORTATION

§ 179.114 Application and permit for exportation of firearms.

Any person desiring to export a firearm without payment of the transfer tax must file with the Director an application on Form 9 (Firearms), Application and Permit for Exportation of Firearms, in quadruplicate, for a permit providing for deferment of tax liability. Part 1 of the application shall show the name and address of the foreign consignee, number of firearms covered by the application, the intended port of exportation, a complete description of each firearm to be exported, the name, address, State Department license number (or date of application if not issued), and identification of the special (occupational) tax stamp of the transferor. Part 1 of the application shall be executed under the penalties of perjury by the transferor and shall be supported by a certified copy of a written order or contract of sale or other evidence showing that the firearm is to be shipped to a foreign designation. Where it is desired to make a transfer free of tax to another person who in turn will export the firearm, the transferor shall likewise file an application supported by evidence that the transfer will start the firearm in course of exportation, except, however, that where such transferor and exporter are registered special-taxpayers the transferor will not be required to file an application on Form 9 (Firearms).

§ 179.115 Action by Director.

If the application is acceptable, the Director will execute the permit, Part 2 of Form 9 (Firearms), to export the firearm described on the form and return three copies thereof to the applicant. Issuance of the permit by the Director will suspend assertion of tax liability for a period of six (6) months from the date of issuance. If the application is disapproved, the Director will indicate thereon the reason for such action and return the forms to the applicant.

§ 179.116 Procedure by exporter.

Shipment may not be made until the permit, Form 9 (Firearms), is received from the Director. If exportation is to be made by means other than by parcel post, two copies of the form must be addressed to the District Director of Customs at the port of exportation, and must precede or accompany the shipment in order to permit appropriate inspection prior to lading. If exportation is to be made by parcel post, one copy of the form must be presented to the postmaster at the office receiving the parcel who will execute Part 4 of such form and return the form to the exporter for transmittal to the Director. In the event exportation is not effected, all copies of the form must be immediately returned to the Director for cancellation.

§ 179.117 Action by Customs.

Upon receipt of a permit, Form 9 (Firearms), in duplicate, authorizing

the exportation of firearms, the District Director of Customs may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and the information contained in the permit to export is in agreement with information shown in the shipper's export declaration, the District Director of Customs will, after the merchandise has been duly exported, execute the certificate of exportation (Part 3 of Form 9 (Firearms)). One copy of the form will be retained with the shipper's export declaration and the remaining copy thereof will be transmitted to the Director.

§ 179.118 Proof of exportation.

Within a six-month's period from date of issuance of the permit to export firearms, the exporter shall furnish or cause to be furnished to the Director (a) the certificate of exportation (Part 3 of Form 9 (Firearms)) executed by the District Director of Customs as provided in § 179.117, or (b) the certificate of mailing by parcel post (Part 4 of Form 9 (Firearms)) executed by the postmaster of the post office receiving the parcel containing the firearm, or (c) a certificate of landing executed by a Customs officer of the foreign country to which the firearm is exported, or (d) a sworn statement of the foreign consignee covering the receipt of the firearm, or (e) the return receipt, or a reproduced copy thereof, signed by the addressee or his agent, where the shipment of a firearm was made by insured or registered parcel post. Issuance of a permit to export a firearm and furnishing of evidence establishing such exportation under this section will relieve the actual exporter and the person selling to the exporter for exportation from transfer tax liability. Where satisfactory evidence of exportation of a firearm is not furnished within the stated period, the transfer tax will be assessed.

§ 179.119 Transportation of firearms to effect exportation.

Notwithstanding any provision of § 178.28 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the exportation of a firearm authorized under the provisions of this subpart.

[T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

§ 179.120 Refunds.

Where, after payment of tax by the manufacturer, a firearm is exported, and satisfactory proof of exportation (see § 179.118) is furnished, a claim for refund may be submitted on Form 843 (see § 179.172). If the manufacturer waives all claim for the amount to be refunded, the refund shall be made to the exporter. A claim for refund by an exporter of tax paid by a manufacturer should be accompanied by waiver of the manufacturer and proof of tax payment by the latter.

§ 179.121 Insular possessions.

Transfers of firearms to persons in the insular possessions of the United States are exempt from transfer tax, provided title in cases involving change of title (and custody or control, in cases not involving change of title), does not pass to the transferee or his agent in the United States. However, such exempt transactions must be covered by approved permits and supporting documents corresponding to those required in the case of firearms exported to foreign countries (see §§ 179.114 and 179.115), except that the Director may vary the requirements herein set forth in accordance with the requirements of the governing authority of the insular possession. Shipments to the insular possessions will not be authorized without compliance with the requirements of the governing authorities thereof. In the case of a nontaxable transfer to a person in such insular possession, the exemption extends only to such transfer and not to prior transfers.

ARMS EXPORT CONTROL ACT

§ 179.122 Requirements.

(a) Persons engaged in the business of importing firearms are required by the Arms Export Control Act (22 U.S.C. 2778) to register with the Director. (See Part 47 of this chapter.)

(b) Persons engaged in the business of exporting firearms caliber .22 or larger

are subject to the requirements of a license issued by the Secretary of State. Application for such license should be made to the Office of Munitions Control, Department of State, Washington, DC 20502, prior to exporting firearms.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–241, 51 FR 39634, Oct. 29, 1986; T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

Subpart I—Records and Returns

§ 179.131 Records.

For the purposes of this part, each manufacturer, importer, and dealer in firearms shall keep and maintain such records regarding the manufacture, importation, acquisition (whether by making, transfer, or otherwise), receipt, and disposition of firearms as are prescribed, and in the manner and place required, by part 178 of this chapter. In addition, each manufacturer, importer, and dealer shall maintain, in chronological order, at his place of business a separate record consisting of the documents required by this part showing the registration of any firearm to him. If firearms owned or possessed by a manufacturer, importer, or dealer are stored or kept on premises other than the place of business shown on his special (occupational) tax stamp, the record establishing registration shall show where such firearms are stored or kept. The records required by this part shall be readily accessible for inspection at all reasonable times by ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0387)

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

Subpart J—Stolen or Lost Firearms or Documents

§ 179.141 Stolen or lost firearms.

Whenever any registered firearm is stolen or lost, the person losing possession thereof will, immediately upon discovery of such theft or loss, make a report to the Director showing the following:

(a) Name and address of the person in whose name the firearm is registered, (b) kind of firearm, (c) serial number, (d) model, (e) caliber, (f) manufacturer of the firearm, (g) date and place of theft or loss, and (h) complete statement of facts and circumstances surrounding such theft or loss.

§ 179.142 Stolen or lost documents.

When any Forms 1, 2, 3, 4, 5, 6A, or 10 (Firearms) evidencing possession of a firearm is stolen, lost, or destroyed, the person losing possession will immediately upon discovery of the theft, loss, or destruction report the matter to the Director. The report will show in detail the circumstances of the theft, loss, or destruction and will include all known facts which may serve to identify the document. Upon receipt of the report, the Director will make such investigation as appears appropriate and may issue a duplicate document upon such conditions as the circumstances warrant.

Subpart K—Examination of Books and Records

§ 179.151 Failure to make returns: Substitute returns.

If any person required by this part to make returns shall fail or refuse to make any such return within the time prescribed by this part or designated by the Director, then the return shall be made by an ATF officer upon inspection of the books, but the making of such return by an ATF officer shall not relieve the person from any default or penalty incurred by reason of failure to make such return.

(53 Stat. 437; 26 U.S.C. 6020)

§ 179.152 Penalties (records and returns).

Any person failing to keep records or make returns, or making, or causing the making of, a false entry on any application, return or record, knowing such entry to be false, is liable to fine and imprisonment as provided in section 5871, I.R.C.

Subpart L—Distribution and Sale of Stamps

§ 179.161 National Firearms Act stamps.

''National Firearms Act'' stamps evidencing payment of the transfer tax or tax on the making of a firearm are maintained by the Director. The remittance for purchase of the appropriate tax stamp shall be submitted with the application. Upon approval of the application, the Director will cause the appropriate tax to be paid by affixing the appropriate stamp to the application.

[T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

§ 179.162 Stamps authorized.

Adhesive stamps of the $5 and $200 denomination, bearing the words ''National Firearms Act,'' have been prepared and only such stamps shall be used for the payment of the transfer tax and for the tax on the making of a firearm.

[T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

§ 179.163 Reuse of stamps prohibited.

A stamp once affixed to one document cannot lawfully be removed and affixed to another. Any person willfully reusing such a stamp shall be subject to the penalty prescribed by 26 U.S.C. 7208.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

Subpart M—Redemption of or Allowance for Stamps or Refunds

§ 179.171 Redemption of or allowance for stamps.

Where a National Firearms Act stamp is destroyed, mutilated or rendered useless after purchase, and before liability has been incurred, such stamp may be redeemed by giving another stamp in lieu thereof. Claim for redemption of the stamp should be filed on ATF Form 2635 (5620.8) with the Director. Such claim shall be accompanied by the stamp or by a satisfactory explanation of the reasons why the stamp cannot be returned, and shall be filed within 3 years after the purchase of the stamp.

(68A Stat. 830; 26 U.S.C. 6805)

[T.D. ATF–270, 53 FR 10511, Mar. 31, 1988]

§ 179.172 Refunds.

As indicated in this part, the transfer tax or tax on the making of a firearm is ordinarily paid by the purchase and affixing of stamps, while special tax stamps are issued in payment of special (occupational) taxes. However, in exceptional cases, transfer tax, tax on the making of firearms, and/or special (occupational) tax may be paid pursuant to assessment. Claims for refunds of such taxes, paid pursuant to assessment, shall be filed on ATF Form 2635 (5620.8) within 3 years next after payment of the taxes. Such claims shall be filed with the regional director (compliance) serving the region in which the tax was paid. (For provisions relating to hand-carried documents and manner of filing, see 26 CFR 301.6091–1(b) and 301.6402–2(a).) When an applicant to make or transfer a firearm wishes a refund of the tax paid on an approved application where the firearm was not made pursuant to an approved Form 1 (Firearms) or transfer of the firearm did not take place pursuant to an approved Form 4 (Firearms), the applicant shall file a claim for refund of the tax on ATF Form 2635 (5620.8) with the Director. The claim shall be accompanied by the approved application bearing the stamp and an explanation why the tax liability was not incurred. Such claim shall be filed within 3 years next after payment of the tax.

(68A Stat. 808, 830; 26 U.S.C. 6511, 6805)

[T.D. ATF–270, 53 FR 10512, Mar. 31, 1988]

Subpart N—Penalties and Forfeitures

§ 179.181 Penalties.

Any person who violates or fails to comply with the requirements of 26 U.S.C. Chapter 53 shall, upon conviction, be subject to the penalties imposed under 26 U.S.C. 5871.

[T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 179.182 Forfeitures.

Any firearm involved in any violation of the provisions of 26 U.S.C. Chapter 53, shall be subject to seizure, and forfeiture under the internal revenue laws: *Provided, however,* That the disposition of forfeited firearms shall be in conformance with the requirements of 26 U.S.C. 5872. In addition, any vessel, vehicle or aircraft used to transport, carry, convey or conceal or possess any firearm with respect to which there has been committed any violation of any provision of 26 U.S.C. Chapter 53, or the regulations in this part issued pursuant thereto, shall be subject to seizure and forfeiture under the Customs laws, as provided by the act of August 9, 1939 (49 U.S.C. App., Chapter 11).

[T.D. ATF–270, 53 FR 10512, Mar. 31, 1988]

Subpart O—Other Laws Applicable

§ 179.191 Applicability of other provisions of internal revenue laws.

All of the provisions of the internal revenue laws not inconsistent with the provisions of 26 U.S.C. Chapter 53 shall be applicable with respect to the taxes imposed by 26 U.S.C. 5801, 5811, and 5821 (see 26 U.S.C. 5846).

[T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 179.192 Commerce in firearms and ammunition.

For provisions relating to commerce in firearms and ammunition, including the movement of destructive devices, machine guns, short-barreled shotguns, or short-barreled rifles, see 18 U.S.C. Chapter 44, and Part 178 of this chapter issued pursuant thereto.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 179.193 Arms Export Control Act.

For provisions relating to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see the Arms Export Control Act (22 U.S.C. 2778), and the regulations issued pursuant thereto. (See also Part 47 of this chapter.)

[T.D. ATF–270, 53 FR 10512, Mar. 31, 1988]

PART 194—LIQUOR DEALERS

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AUTHORITY: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

SOURCE: 25 FR 6270, July 2, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope of Regulations

§ 194.1 Applicability.

This part contains the substantive and procedural requirements relating to the special taxes imposed on wholesale and retail dealers in liquors and in beer, requirements and procedures pertaining to operations of such dealers prescribed under Title 26 of the United States Code, as amended, and provisions relating to entry of premises and inspection of records by ATF officers.

[T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.2 Territorial extent.

The provisions of this part shall be applicable in the several States of the United States and the District of Columbia.

§ 194.3 Basic permit requirements.

Every person, except an agency of a State or political subdivision thereof, who intends to engage in the business of selling distilled spirits, wines, or

beer to other dealers is required by regulations in in Part 1 of this chapter to obtain a basic permit authorizing him to engage in such business.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

§ 194.4 Relation to State and municipal law.

The payment of any tax imposed by 26 U.S.C. Chapter 51, for carrying on any trade or business specified in § 194.1 shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(72 Stat. 1348; 26 U.S.C. 5145)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979]

Subpart B—Definitions

§ 194.11 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 wine cellar. An establishment qualified under this chapter for the production, blending, cellar treatment, storage, bottling, and packaging or repackaging of untaxpaid wine.

Brewery. An establishment qualified under this chapter for the production of beer.

CFR. The Code of Federal Regulations.

Dealer. Any person who sells, or offers for sale, any distilled spirits, wines, or beer.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added as prescribed under this chapter.

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

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.

Distilled spirits plant. An establishment qualified under Part 19 of this chapter for the production, storage or processing of distilled spirits.

District director. A district director of internal revenue.

Fiscal year. The period from October 1 of one calendar year through September 30 of the following year.

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

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. Distilled spirits, wines, 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''.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Place, or place of business. The entire office, plant, or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not be deemed a separation for special tax purposes, if the various divisions are otherwise contiguous.

Reclaim. To grind up a liquor bottle or container and use the ground up material to make products other than liquor bottles or containers.

Recycle. To grind up a liquor bottle or container and use the ground up material to make new liquor bottles or containers.

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

Sale at retail or retail sale. Sale of liquors to a person other than a dealer.

Sale at wholesale or wholesale sale. Sale of liquors to a dealer.

Special tax. The occupational tax imposed on a dealer in liquors or a dealer in beer.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

U.S.C. The United States Code.

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

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

[T.D. ATF–48, 43 FR 13541, Mar. 31, 1978, as amended by T.D. ATF–50, 43 FR 37180, Aug. 22, 1978; 44 FR 55843, Sept. 28, 1979; T.D. ATF–62, 44 FR 71693, Dec. 11, 1979; T.D. ATF–114, 47 FR 43949, Oct. 5, 1982; T.D. ATF–344, 58 FR 40355, July 28, 1993]

Subpart C—Special (Occupational) Taxes

§ 194.21 Basis of tax.

Special taxes are imposed on persons engaging in or carrying on the business or occupation of selling or offering for sale alcoholic liquors fit for use as a beverage or any alcoholic liquors sold for use as a beverage. The classes of liquor dealer business on which special occupational tax is imposed and the conditions under which such tax is incurred are specified in §§ 194.23 through 194.26. No person shall engage in any business on which the special tax is imposed until he has filed a special tax return as provided in § 194.26 of this part and paid the special tax for such business.

(72 Stat. 1346; 26 U.S.C. 5142)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.22 Selling or offering for sale.

Whether the activities of any person constitute engaging in the business of selling or offering for sale is to be determined by the facts in each case, but any course of selling or offering for sale, though to a restricted class of persons or without a view to profit, is within the meaning of the statute.

DEALERS CLASSIFIED

§ 194.23 Retail dealer in liquors.

(a) *General*. Every person who sells or offers for sale distilled spirits, wines, or beer to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in liquors. Every retail dealer in liquors shall pay special tax at the rate

specified in § 194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be retail dealers in liquors.* The following persons are not deemed to be retail dealers in liquors within the meaning of 26 U.S.C. Chapter 51, and are not required to pay special tax as such dealer:

(1) A retail dealer in beer as defined in § 194.25,

(2) A limited retail dealer as specified in § 194.27, or

(3) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in § 194.188 through § 194.190 or § 194.191(a).

(c) *Persons exempt from special tax.* The following persons are exempt from special tax as retail dealers in liquors:

(1) A wholesale dealer in liquors selling or offering for sale distilled spirits, wines, or beer, whether to dealers or persons other than dealers, at any place where such wholesale dealer in liquors is required to pay special tax as such dealer.

(2) A wholesale dealer in beer selling or offering for sale beer only, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax as such dealer, or

(3) A person who is exempt from special tax under the provisions of §§ 194.181–194.184, 194.187, or 194.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979; T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.24 Wholesale dealer in liquors.

(a) *General.* Every person who sells or offers for sale distilled spirits, wines, or beer to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in liquors. Every wholesale dealer in liquors is required to pay special tax at the rate specified in § 194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be wholesale dealers in liquors.* The following persons are not deemed to be wholesale dealers in liquors within the meaning of 26 U.S.C., Chapter 51, and are not required to pay special tax as such dealer:

(1) A wholesale dealer in beer as defined in § 194.26,

(2) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in §§ 194.188 through 194.190 or § 194.192, or

(3) A person returning liquors for credit, refund, or exchange as provided in § 194.193.

(c) *Persons exempt from special tax.* (1) The following persons are exempt from special tax as wholesale dealers in liquors:

(i) A retail dealer in liquors who consummates sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax as such dealer for the current tax year,

(ii) A retail dealer in beer who, having paid the special tax as such dealer for the current tax year, consummates sales at his place of business of beer to a limited retail dealer, or

(iii) A person who is exempt from such tax under the provision of §§ 194.181 through 194.184.

(2) A wholesale dealer in liquors who has paid the special tax as such dealer at the place or places, from which he conducts his selling operations is exempt from additional special tax on account of his sales of beer or wines to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–21, 40 FR 56887, Dec. 5, 1975; T.D. ATF–42, 42 FR 8369, Feb. 10, 1977]

§ 194.25 Retail dealer in beer.

(a) *General.* Every person who sells or offers for sale beer, but not distilled spirits or wines, to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in beer. Every retail dealer in beer shall pay special tax at the rate specified in § 194.101 for such dealer, unless such dealer is exempt from such

special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be retail dealers in beer*. The following persons are not deemed to be retail dealers in beer within the meaning of Chapter 51, I.R.C., and are not required to pay a special tax as such dealer:

(1) A limited retail dealer as specified in § 194.27, or

(2) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in § 194.188 through § 194.189 or § 194.191(a).

(c) *Persons exempt from special tax*. The following persons are exempt from special tax as retail dealers in beer:

(1) A wholesale dealer in beer selling or offering for sale beer, but not distilled spirits or wines, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax as such dealer.

(2) A person who is exempt from special tax under the provisions of §§ 194.181, 194.184, 194,187, or 194.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979; T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.26 Wholesale dealer in beer.

(a) *General*. Every person who sells or offers for sale beer, but not distilled spirits or wines, to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in beer. Every wholesale dealer in beer is required to pay special tax at the rate specified in § 194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be wholesale dealers in beer*. The following persons are not deemed to be wholesale dealers in beer within the meaning of 26 U.S.C., Chapter 51, and are not required to pay special tax as such dealer:

(1) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in § 194.188 through § 194.189 or § 194.192, or

(2) A person returning beer for credit, refund or exchange as provided in § 194.193.

(c) *Persons exempt from special tax*. (1) The following persons are exempt from special tax as wholesale dealers in beer:

(i) A retail dealer in liquors who consummates sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax as such dealer for the current tax year,

(ii) A retail dealer in beer who consummates sales of beer to a limited dealer at the place where such retail dealer in beer has paid the special tax as such dealer for the current tax year, or

(iii) A person who is exempt from such tax under the provisions of §§ 194.181 and 194.184.

(2) A wholesale dealer in beer who has paid the special tax as such dealer at the place, or places, from which he conducts his selling operations is exempt from additional special tax on account of his sales of beer to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–42, 42 FR 8369, Feb. 10, 1977]

§ 194.27 Limited retail dealer; persons eligible.

Any person selling distilled spirits, beer or wine, or any combination thereof, to members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or similar outings, and any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization selling distilled spirits, beer or wine, or any combination thereof, on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, is a ''limited retail dealer,'' if the person or organization is not otherwise engaged in business as a dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1344; sec. 1905, Pub. L. 94–455, 90 Stat. 1819, as amended (26 U.S.C. 5122))

[T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.28 Sales of 20 wine gallons (75.7 liters) or more.

Any person who sells or offers for sale distilled spirits, wines, or beer, in quantities of 20 wine gallons (75.7 liters) or more, to the same person at the same time, shall be presumed and held to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, unless such person shows by satisfactory evidence that such sale, or offer for sale, was made to a person other than a dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1413 (26 U.S.C. 5691))

[T.D. ATF–34, 41 FR 46860, Oct. 26, 1976]

SPECIAL TAX LIABILITY OF CERTAIN ORGANIZATIONS, AGENCIES AND PERSONS

§ 194.29 Clubs or similar organizations.

A club or similar organization shall pay special tax if such club or organization:

(a) Furnishes liquors to members under conditions constituting sale (including the acceptance of orders therefor, furnishing the liquors ordered and collecting the price thereof); or

(b) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a ''limited retail dealer'' under § 194.27 (the special tax stamp of the proprietor of the premises where the bar is located will not relieve the club or organization of special tax liability); or

(c) Purchases liquors for members without prior agreement concerning payment therefor and such organization subsequently recoups.

However, special tax liability is not incurred if money is collected in advance from members for the purchase of liquors, or money is advanced for purchase of liquors on agreement with the members for reimbursement.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5111, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979; T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.30 Restaurants serving liquors with meals.

Proprietors of restaurants and other persons who serve liquors with meals to customers, though no separate or specific charge for the liquors is made, shall pay special tax.

(72 Stat. 1344; 26 U.S.C. 5122)

§ 194.31 States, political subdivisions thereof, or the District of Columbia.

A State, a political subdivision thereof, or the District of Columbia which engages in the business of selling, or offering for sale, distilled spirits, wines, or beer is not exempt from special tax. However, no such governmental entity shall be required to pay more than one special tax as a retail dealer in liquors regardless of the number of locations at which such entity carries on business as a retail dealer in liquors. Any such governmental entity which has paid the applicable wholesale dealer special tax at its principal office, and has paid the applicable special tax as a retail dealer, shall not be required to pay additional wholesale dealer special tax at its retail stores by reason of the sale thereat of distilled spirits, wines, or beer, to dealers qualified to do business as such within the jurisdiction of such entity.

(72 Stat. 1340, 1343, 1344, as amended; 26 U.S.C. 5111, 5113, 5121, 5123)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.32 Sales of denatured spirits or articles.

Any person who sells denatured spirits or any substance or preparation made with or containing denatured spirits for use, or for sale for use, for beverage purposes, or who sells any of such products under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, shall pay special tax.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

(a) *Special tax liability*. Special tax liability will be incurred with respect to the sale, or offering for sale, of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer, unless such compounds, preparations, or mixtures are unfit for use for beverage purposes and are sold solely for use for nonbeverage purposes.

(b) *Products unfit for beverage use*. Products meeting the requirements for exemption from qualification under the provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–379, 61 FR 31426, June 20, 1996]

§ 194.34 Sales by agencies and instrumentalities of the United States.

Unless specifically exempt by statute, any agency or instrumentality of the United States, including post exchanges, ship's stores, ship's service stores, and commissaries, or any canteen, club, mess, or similar organization operated under regulations of any such agency or instrumentality, which sells, or offers for sale, distilled spirits, wines, or beer shall pay special tax as a dealer in liquors or as a dealer in beer, as the case may be, for carrying on such business.

(72 Stat. 1340, 1343, 1347; 26 U.S.C. 5111, 5121, 5143)

§ 194.35 Warehouse receipts covering spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person who sells or offers for sale warehouse receipts for spirits held or stored in a distilled spirits plant, customs bonded warehouse, or elsewhere, is required to file a special tax return and pay special tax as a wholesale dealer in liquors, or as a retail dealer in liquors, as the case may be, at the place where such warehouse receipts are sold, or offered for sale, unless exempt by the provisions of subpart L, of this part.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

Subpart D—Administrative Provisions

§ 194.41 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.

(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 46916, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5962, Feb. 27, 1987; T.D. 372, 61 FR 20725, May 8, 1996]

§ 194.42 Right of entry and examination.

Any ATF officer may enter during business hours the premises (including places of storage) of any dealer for the purpose of inspecting or examining any records or other documents required to be kept by such dealer under this part and any distilled spirits, wines, or beer kept or stored by such dealer on such premises.

(72 Stat. 1348; 26 U.S.C. 5146)

Subpart E—Places Subject to Special Tax

§ 194.51 Special tax liability incurred at each place of business.

Except as provided in §§ 194.31 and 194.181 through 194.193, liability to special tax is incurred at each and every place where distilled spirits, wines, or beer are sold or offered for sale: *Provided*, That the term ''place'' as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not

be deemed sufficient separation to require the payment of addition special tax, if the various divisions are otherwise contiguous.

(72 Stat. 1347; 26 U.S.C. 5143)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.52 Place of sale.

The place at which ownership of liquors is transferred, actually or constructively, is the place of sale.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.53 Place of offering for sale.

Liquors are offered for sale (a) at the place where they are kept for sale and where a sale may be effected, or (b) at any place where sales are consummated. Liquors are not offered for sale by sending abroad an agent to take orders, or by establishing an office for the mere purpose of taking orders, provided in each case the orders received are transmitted to the principal for acceptance at the place where he holds a special tax stamp or is exempt from special tax as provided in subpart L of this part.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.54 Places of storage; deliveries therefrom.

Special tax is not required to be paid for warehouses and similar places which are used by dealers merely for the storage of liquors and are not places where orders for liquors are accepted. Where orders for liquors are received and duly accepted at a place where the dealer holds the required special tax stamp, the subsequent actual delivery of the liquors from a place of storage does not require the payment of special tax at such place of storage. Except as provided in §§ 194.185 and 194.186, a dealer holding a special tax stamp at a given place, who makes actual delivery of liquors from a warehouse at another place, without prior constructive delivery by the acceptance of an order therefor at the place covered by the special tax stamp, shall pay special tax at the place where ownership of the liquors is transferred.

(72 Stat. 1340, 1347; 26 U.S.C. 5113, 5143)

§ 194.55 Caterers.

(a) *General.* Where a contract to furnish liquors is made by a caterer at his place of business where he holds a special tax stamp, no liability to special tax is incurred by the serving of the liquors at a different location.

(b) *Additional liability.* Where the contract of a caterer provides for the sale of liquors by the drink at a place, or simultaneously at different places, other than his place of business where he holds a special tax stamp, a separate liability to special tax is incurred at each such place.

(c) *Records.* Caterers must maintain sufficient commercial records to verify that their special (occupational) tax liabilities have been satisfied for all locations at which activities subject to special (occupational) tax occur. These commercial records should indicate the names and addresses of locations at which alcoholic beverages have been sold or offered for sale and the dates and times that such activities occurred. These commercial records must be available to ATF officers upon request.

(26 U.S.C. 5121, 5122, 5143, 5555, 6806, 7011)

[T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–329, 57 FR 39598, Sept. 1, 1992]

§ 194.56 Peddling.

No person shall peddle distilled spirits, wines, or beer, except as provided in §§ 194.126, 194.185, and 194.186. Persons peddling liquors and not meeting the exemptions specified in §§ 194.126, 194.185, and 194.186 are required to pay special tax at each place where sales are consummated.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

SALES IN TWO OR MORE AREAS ON THE SAME PREMISES

§ 194.57 General.

Where liquors are sold by a proprietor in two or more areas within his place of business, only one special tax stamp is required. Where the proprietor lets to another person or persons the privilege of selling liquors in two or more areas within his place of business, whether such privilege is exercised separately or simultaneously with the

proprietor or another concessionaire, each such person shall pay but one special tax.

§ 194.58 Hotels.

The proprietor of a hotel who conducts the sale of liquors throughout the hotel premises shall pay but one special tax. For example, different areas in a hotel such as banquet rooms, meeting rooms, guest rooms, or other such areas, operated by the proprietor, collectively constitute a single place of business. Where any concessionaire conducts the sale of liquors at two or more areas in a hotel, such areas shall be regarded as a single place of business, and he shall pay but one special tax.

§ 194.59 Ball park, race track, etc.; sales throughout the premises.

The proprietor of a ball park, race track, stadium, pavilion, or other similar enclosure constituting one premises, who engages in the business of selling liquors throughout such enclosure, including sales from baskets or containers by his employees in his behalf, shall pay but one special tax for such enclosure. Each concessionaire having the same privilege throughout the enclosure, whether such privilege is exercised separately or simultaneously with the proprietor or another concessionaire, or concessionaires, shall pay but one special tax for such enclosure.

(72 Stat. 1347; 26 U.S.C. 5143)

Subpart F—Each Business Taxable

§ 194.71 Different businesses of same ownership and location.

Where more than one taxable business is conducted by the same person at the same place, special tax for each business shall be paid at the rates severally prescribed, except as provided in §§ 194.24 and 194.26.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.72 Dealer in beer and dealer in liquors at the same location.

(a) *Rule in effect prior to January 1, 1988.* Any person who was required to pay special tax as a wholesale or retail dealer in beer, who entered business as such, and who thereafter, in the same or a subsequent month prior to January 1, 1988, began to sell distilled spirits or wine shall, in addition, pay the special tax as a wholesale or retail dealer in liquors before commencing the sale, or offering for sale, of distilled spirits or wine.

(b) *Rule in effect on January 1, 1988, and thereafter.* Any person who pays special tax as a retail dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a retail dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a retail dealer in beer was paid. Similarly, any person who pays special tax as a wholesale dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a wholesale dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a wholesale dealer in beer was paid.

(26 U.S.C. 5113, 5143)

[T.D. ATF–285, 54 FR 12610, Mar. 28, 1989]

Subpart G—Partnerships

§ 194.91 Liability of partners.

Any number of persons carrying on one business in partnership at any one place during any fiscal year shall be required to pay but one special tax for such business.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.92 Addition of partners or incorporation of partnership.

Where a number of persons who have paid special tax as partners admit one or more new members to the firm or form a corporation (a separate legal entity) to take over the business, the new firm or corporation shall pay special tax before commencing business.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.93 Formation of a partnership by two dealers.

Where two persons, each holding a special tax stamp for a business carried

on by himself, form a partnership, the firm shall pay special tax to cover the business conducted by the partnership.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.94 Withdrawal of one or more partners.

When one or more partners withdraw from a partnership which has paid special tax, the remaining partner, or partners, may file with ATF a notice of succession to the partnership business within 30 days after the change in control, as provided in § 194.169, and carry on the same business at the same address for the remainder of the taxable period for which special tax was paid without paying additional special tax. However, where the remaining partner, or partners, do not file such timely notice of succession, they are required to pay special tax, as provided in § 194.170.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

Subpart H—Payment of Special Tax

§ 194.101 Special tax rates.

(a) *Previous rates.* Prior to January 1, 1988, the special (occupational) taxes imposed on dealers in liquors and beer were as follows:

(1) *Annual (tax year) rates:*

Wholesale dealer in liquors (spirits, wines, beer) $255.00
Wholesale dealer in beer (beer only) 123.00
Retail dealer in liquors (spirits, wines, beer) 54.00
Retail dealer in beer (beer only) 24.00

(2) *Monthly (calendar month) rates:*

Limited retail dealer (spirits, wines, beer) $4.50
Limited retail dealer (wines, beer) 2.20

(b) *Current rates.* Effective January 1, 1988, special (occupational) taxes are imposed on dealers in liquors and beer at the following rates:

Wholesale dealer in liquors (spirits, wines, beer) $500
Wholesale dealer in beer (beer only) 500
Retail dealer in liquors (spirits, wines, beer) 250
Retail dealer in beer (beer only) 250

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, 1343; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5121))

[T.D. ATF–271, 53 FR 17552, May 17, 1988; 54 FR 11866, Mar. 22, 1989]

§ 194.102 Date special tax is due.

Special taxes shall be paid on or before July 1 of each year, or before engaging in businesss.

(72 Stat. 1346; 26 U.S.C. 5142)

§ 194.103 Computation of special tax.

(a) *General.* In the case of a person engaged in a business subject to special tax during the month of July, the special tax liability shall be reckoned for the entire tax year beginning July 1 and ending June 30 following. Where business is commenced subsequent to July, the liability shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced to June 30 following. For example, a person commencing business in August is liable to special tax for 11 months, or eleven-twelfths of the annual tax.

(b) *Transition rule.* A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(72 Stat. 1346; 26 U.S.C. 5142)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55843, Sept. 28, 1979; T.D. ATF–271, 53 FR 17554, May 17, 1988]

FILING RETURN AND PAYMENT OF SPECIAL TAX

§ 194.104 Time for filing return.

Every person who intends to engage in a business subject to special tax

under the provisions of this part shall, on or before the date such business is commenced, file a special tax return, Form 5630.5, with payment of tax; and every taxpayer who continues into a new tax year a business subject to special tax under the provisions of this part shall file a Form 5630.5 with tax on or before July 1 of the new tax year. A taxpayer subject to special tax for the same period at two or more locations shall file one special tax return, Form 5630.5, prepared as provided in § 194.106, with payment of tax to cover all such locations. If the return and tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return shall be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used the date of registration shall be accepted as the postmark date.

(68A Stat. 732 as amended, 749 as amended (26 U.S.C. 6011, 6071); sec. 201, Pub. L. 85–859, 72 Stat. 1346 as amended (26 U.S.C. 5142))

[T.D. ATF–70, 45 FR 33979, May 21, 1980, as amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.104a Place for filing return.

Form 5630.5 with remittance of tax shall be filed with ATF in accordance with the instructions on the form.

[T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.105 Method of payment.

Payment of special tax shall be made in cash, or by check or money order payable to ''Bureau of Alcohol, Tobacco and Firearms''. If a check or money order so tendered is not honored when presented for payment, the person who tendered such check or money order shall remain liable for the payment of the special tax, and for all penalties and additions, to the same extent as if the check or money order had not been tendered. In addition, unless the person who tendered the check or money order can show that such check or money order was issued in good faith, and with reasonable cause to believe that it would be duly paid, there shall be paid as penalty an amount equal to 1 percent of the amount of the check or money order, except that if the amount of the check or money order is less than $500, the penalty shall be $5, or the amount of the check or money order, whichever is lesser.

(68A Stat. 777, 826; 26 U.S.C. 6311, 6657)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

SPECIAL TAX RETURN, FORM 5630.5

§ 194.106 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 AFT 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 § 194.106a).

(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, 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 § 194.237.

(26 U.S.C. 6011, 6151, 7011)

[T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.106a 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 17553, May 17, 1988; as amended by T.D. ATF–301, 55 FR 47657, Nov. 14, 1990]

§ 194.107 Execution of Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a member of the firm; and the return of a corporation shall be signed by a duly authorized officer thereof: *Provided,* That any individual, partnership, or corporation may appoint an agent to sign in his behalf. In each case, the person signing the return shall designate his capacity as ''individual owner,'' ''member of firm,'' ''agent,'' ''attorney-in-fact'' or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a dealer by reason of death, insolvency, or other circumstances, shall indicate the fiduciary capacity in which they act. Returns signed by persons, as agents or attorneys-in-fact, will not be accepted unless, in each instance, the principal named on the return has executed a power of attorney authorizing such person to sign the return, and such power of attorney is filed with the ATF officer with whom the Form 5630.5 is required to be filed. Form 11 shall be verified by a written declaration that the return has been executed under the penalties of perjury.

(68A Stat. 748, 749; 26 U.S.C. 6061, 6065)

[T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.109 Penalty for failure to file return or to pay tax.

(a) *Failure to file return.* Any person required by this part to file a return on Form 5630.5 who fails to file the return

on or before the last date prescribed in § 194.104 shall pay, as an addition to the tax, a delinquency penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The delinquency penalty for failure to file the return on or before the last date prescribed shall be 5 percent of the amount required to be shown as tax on the return if the failure is for not more than one month; with an additional 5 percent for each additional month or fraction thereof during which such delinquency continues, but not more than 25 percent in the aggregate.

(b) *Failure to pay tax*. Any person who files a return on Form 5630.5 under the provisions of this part and who fails to pay the amount shown as tax on the return on or before the date prescribed in § 194.104 for payment of such tax, shall pay, as an addition to the tax, a penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The penalty for failure to pay the tax on or before the date prescribed for payment shall be 0.5 percent of the amount shown as tax on the return if the failure is not more than one month; with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not exceeding 25 percent in the aggregate.

(c) *Limitations*. With respect to any return on Form 5630.5, the amount of the addition under paragraph (a) of this section shall be reduced by the amount of the addition under paragraph (b) of this section for any month to which an addition to tax applies under both paragraphs (a) and (b) of this section. If the amount of tax required to be shown as tax on the return is less than the amount shown as tax on such return, the penalties prescribed in paragraphs (a) and (b) of this section shall be applied by substituting such lower amount.

(68A Stat. 821, as amended; 26 U.S.C. 6651)

[T.D. 7110, 36 FR 8034, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.110 Interest on unpaid tax.

(a) *General*. Interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest shall be charged for each day at the rate prescribed by law in effect on that day.

(b) *Adjusted interest rates*. Adjusted interest rates are announced by the Commissioner of Internal Revenue not later than October 15 of any year, in accordance with variations in the prime interest rate during September of that year, as prescribed by 26 U.S.C. 6621(b). The regional director (compliance) will provide information, when requested, regarding interest rates applicable to specific time periods.

(Sec. 7, Pub. L. 96–625, 88 Stat. 2114 as amended (26 U.S.C. 6621); 68A Stat. 817 (26 U.S.C. 6601))

[T.D. ATF–116, 47 FR 51571, Nov. 16, 1982]

DELINQUENT RETURNS

§ 194.111 Waiver of penalties.

In every case where a special tax return is not filed, or the tax is not paid, at the time prescribed in § 194.104, the delinquency penalties specified in § 194.109 for failure to file a return or for failure to pay the amount shown as tax on the return will be asserted and collected unless a reasonable cause for delay in filing the return or payment of the tax is clearly established. A dealer who believes the circumstances which delayed his filing of the return or payment of the tax are reasonable, and who desires to have the penalties waived, shall submit with his return a written statement under the penalties of perjury, affirmatively showing all of the circumstances alleged as reasonable causes for delay. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, or if he made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would have suffered an undue hardship if he had paid on the due date, then the delay is due to reasonable cause. Mere ignorance of the

law will not be considered a reasonable cause.

(68A Stat. 821, as amended; 26 U.S.C. 6651)

[T.D. 7110, 36 FR 8034, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

Subpart I—Special Tax Stamps

§ 194.121 Issuance of stamps.

(a) *Issuance.* Upon filing a return properly executed on Form 5630.5, together with a remittance in the full amount due, the taxpayer will be issued an appropriately designated stamp. Special tax stamps will not be issued in the case of a return covering liability for a past period.

(b) *Multiple locations.* If Form 5630.5 with remittance covers multiple locations, the taxpayer will be issued one stamp for each location listed in the attachment to Form 5630.5 required by § 194.106(c) 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).

(Sec. 1905, Pub. L. 94–455, 90 Stat. 1820 (26 U.S.C. 5142))

[T.D. ATF–42, 42 FR 8369, Feb. 10, 1977, as amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.121a Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer will verify that he has one stamp for each location listed in his copy of the attachment to Form 5630.5 and examine them to insure that his name and address are correctly stated thereon. Incorrect stamps shall be returned to the regional director (compliance) as provided in § 194.134. The taxpayer shall designate one stamp for each location listed in his copy of the attachment to Form 5630.5 required by § 194.106 and shall type thereon the trade name, if different from the name in which the stamp was issued, and the address of the business conducted at the location for which that stamp is designated. He shall then forward each stamp to the place of business designated on the stamp. On receipt of the stamp at the designated place of business, it shall be examined to verify that the name and address of the business are correctly stated. If they are not, the stamp shall be returned, with a statement showing the nature of the error and the correct data, to the principal office of the taxpayer who will compare the data on the stamp with his retained copy of the attachment to Form 5630.5. If the error in name and address was made by the taxpayer, he will correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer will file with ATF an amended Form 5630.5 and an amended attachment with a statement explaining the error.

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.122 Receipt in lieu of stamp prohibited.

No receipt shall be issued in lieu of a special tax stamp. A receipt may be given only pending the issuance of a stamp, or where the tax liability relates to a prior fiscal year.

(68A Stat. 778; 26 U.S.C. 6314)

§ 194.123 Stamps covering business in violation of State law.

Regional directors (compliance) are without authority to refuse to issue a special tax stamp to a liquor dealer engaged in business in violation of State law. The stamp is not a Federal permit or license, but is merely a receipt for the tax. The stamp affords the holder no protection against prosecution for violation of State law.

(72 Stat. 1348; 26 U.S.C. 5145)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.124 Stamps for passenger trains, aircraft, and vessels.

Special tax stamps may be issued in general terms ''in the United States'' to persons who will carry on the business of retail dealers in liquors or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the

business of carrying passengers. If sales of liquors are made at the same time on two or more passenger carriers, a special tax stamp shall be obtained for each such carrier. However, a dealer may transfer any such stamp from one passenger carrier to another on which he conducts his business, without registering the transfer with ATF, and he may conduct such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred. A person subject to special tax on two or more passenger carriers shall file one Form 5630.5, prepared in the manner prescribed in § 194.106(b), with payment of tax, to cover all such carriers and shall specify on the Form 5630.5 the number of passenger carriers for which special tax is being paid.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1344 as amended, 1347 as amended (26 U.S.C. 5123, 5143))

[T.D. ATF–70, 45 FR 33980, May 21, 1980, as amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.125 Carriers not engaged in passenger service.

Except as provided in § 194.126, a special tax stamp may not be issued for the retailing of liquor on any railroad train, aircraft, or boat that is not engaged in the business of carrying passengers.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

§ 194.126 Stamps for supply boats or vessels.

Special tax stamps may be issued to persons carrying on the business of a retail dealer in liquor or a retail dealer in beer on supply boats or vessels operated by them, when such persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at such port or harbor. Any person desiring to obtain a special tax stamp for such business shall file Form 5630.5, prepared in the manner prescribed in § 194.106(b), with remittance, and shall specify on the Form 5630.5, or on an attachment thereto, (a) that the business will consist of supplying exclusively boats, vessels, or persons thereon, (b) the name of the port or harbor at which the business is to be carried on, and (c) the fixed address from which operations are to be conducted: *Provided*, That where such sales are to be made from two or more supply boats or vessels, the dealer shall obtain a special tax stamp for each such boat or vessel, and shall, in addition to the information required by paragraphs (a), (b), and (c) of this section, specify on the Form 5630.5 the number of supply boats or vessels for which special tax is being paid. A dealer may transfer any such stamp from any boat or vessel on which he discontinues such sales to any other boat or vessel on which he proposes to conduct such business, without registering the transfer with ATF. If the taxpayer operates from two or more fixed addresses, he shall prepare, as required by § 194.106(c), one tax return, Form 5630.5, to cover all such addresses and shall, in addition, show on the attachment to the Form 5630.5 the number of stamps to be procured for supply boats or vessels operating from each address. On receipt of the special tax stamps, the taxpayer shall designate an appropriate number of stamps for each location and shall type thereon the trade name, if different from the name in which the stamp was issued, and the fixed address of the business conducted at the location for which the stamps are designated. He shall then forward the stamps to the place of business designated on the stamps. The taxpayer shall enter on each stamp received for retailing liquors on supply boats or vessels, immediately after the occupational tax classification, the phrase ''on supply boats'' and in the lower margin the notation, ''Covers supplying exclusively of boats or vessels, or persons thereon, at the Port (or Harbor) of'' followed by the name of such port or harbor.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.127 Stamps for retail dealers ''At Large.''

A retail dealer in liquors or a retail dealer in beer whose business requires him to travel from place to place in different States of the United States,

such as those who sell at carnivals or circuses, may obtain a special tax stamp ''At Large'' covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or a retail dealer in beer, as required by his business. A dealer desiring such stamp shall state on his special tax return, Form 11, or on an attached statement, the nature of his business and the reason he requires a special tax stamp ''At Large.'' Unless satisfied that the business of the dealer requires him to travel in more than one State, the regional director (compliance) will not issue a stamp ''At Large'' to the applicant.

(72 Stat. 1344; 26 U.S.C. 5123)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251. 52 FR 19335, May 22, 1987]

STAMP TO BE AVAILABLE FOR EXAMINATION

§ 194.131 General.

A dealer shall keep his special tax stamp available in his place of business for inspection by any ATF officer during business hours. A dealer holding a special tax stamp as a retail dealer in liquors or a retail dealer in beer ''At Large'' or ''In the United States'' shall keep the stamp available for inspection where he is conducting such business.

(72 Stat. 1348; 26 U.S.C. 5146)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.132 Lost or destroyed.

If a special tax stamp has been lost or destroyed, the dealer shall immediately notify the regional director (compliance) who issued the stamp. A ''Certificate in Lieu of Lost or Destroyed Special Tax Stamp'' will be issued to the dealer who submits an affidavit showing to the satisfaction of the regional director (compliance) that the stamp was lost or destroyed. The certificate shall be kept available for inspection in the same manner as prescribed for a special tax stamp in § 194.131.

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.133 Seizure by State authorities.

Where a stamp designated ''Retail Dealer in Liquors'' is seized by State authorities because it does not conform to the dealer's local license or permit (wine, or wine and beer), the regional director (compliance) will, on request, issue a ''Certificate in Lieu of Lost or Destroyed Special Tax Stamp'' to show that the dealer has paid special tax as a ''Retail Dealer in Wine'' or ''Retail Dealer in Wines and Beer,'' as the case may require.

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

CORRECTION OF ERRORS ON SPECIAL TAX STAMPS

§ 194.134 Errors disclosed by taxpayers.

On receipt of a special tax stamp, the dealer will examine it to insure that the name and address are correctly stated; if not, the taxpayer will return the stamp to the regional director (compliance) who issued the stamp with a statement showing the nature of the error and the correct name or address. The regional director (compliance), on receipt of such stamp and statement, will compare the data on the stamp with that of the Form 5630.5 in his files, correct the error if made in his office, and return the stamp to the taxpayer. However, if the error was in the taxpayer's preparation of the Form 5630.5, the regional director (compliance) will require such taxpayer to file a new Form 5630.5, designated ''Amended Return,'' setting forth the taxpayer's correct name and address, and a statement explaining the error on the original Form 5630.5. On receipt of the amended Form 5630.5 and a satisfactory explanation of the error, the regional director (compliance) will

make the proper correction on the stamp and return it to the taxpayer.

[T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987; T.D. ATF–344, 58 FR 40355, July 28, 1993]

§ 194.135 Errors discovered on inspection.

When an ATF officer discovers a material error on a special tax stamp in the name, ownership, or address of the dealer, he will secure from the dealer a new Form 5630.5, designated ''Amended Return,'' showing correctly all of the information required in § 194.106 and, in the body of the form or in an attachment thereto, a statement of the reason for requesting correction of the stamp. On receipt of the amended return and an acceptable explanation for the error, the officer will make the proper correction on the stamp and return it to the taxpayer. However, if the error found by the ATF officer is on a special tax stamp obtained pursuant to a return on Form 5630.5 filed under the provisions of § 194.106(c), he shall instruct the taxpayer to return the stamp, with a statement showing the nature of the error and the correct data, to the dealer's principal office as provided in § 194.121a.

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

STAMPS FOR INCORRECT PERIOD OR INCORRECT LIABILITY

§ 194.136 General.

Where a dealer through error has filed a return and paid special tax for an incorrect period of liability or incorrect class of business, he shall prepare a correct Form 5630.5 for each taxable year involved, designating it as an ''Amended Return,'' and submit the amended return, or returns, with remittance for the total tax and additions to the tax (delinquency penalties and interest) incurred, to ATF in accordance with the instructions on the Form 5630.5 or, if the error is discovered by an ATF officer, to such officer: *Provided*, That, subject to the limitations imposed by 26 U.S.C. 6511, the tax (including additions thereto) paid for the incorrect period of liability or incorrect class of business may be allowed as a credit against the correct tax (including any additions thereto) as provided in § 194.137 or § 194.139 on surrender of the incorrect stamp or stamps with the amended return or returns noted to show that credit is requested. Tax (including additions thereto) paid for a stamp for an incorrect period of liability or incorrect class of business which is not credited as provided in § 194.137 or § 194.139, including any creditable tax and additions thereto in excess of the correct tax (including additions thereto), may be refunded pursuant to the provisions of subpart M of this part where the dealer has filed a correct return on Form 5630.5 with remittance for the correct amount of tax (including any additions thereto). A new stamp will be issued only in respect of a current period of liability.

(68A Stat. 732; 26 U.S.C. 6011)

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55844, Sept. 28, 1979; T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.137 Credit by an ATF officer.

Where the ATF officer discovers that tax was paid for an incorrect class of business for a correct period of liability and examination of the incorrect stamp discloses that no additions to the tax were collected, he may, where the correct tax (including any additions thereto) exceeds the incorrect tax paid, credit the tax paid against such correct tax on receipt by him of an amended Form 5630.5, as provided in § 194.136, remittance of the difference between the tax paid and the correct tax plus any additions thereto, and the incorrect stamp. The regional director (compliance) will issue a correct stamp if the additional tax collected is for a current year.

(68A Stat. 791, 808; 26 U.S.C. 6402, 6511)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

§ 194.138 Receipt for taxes.

An ATF officer will issue a receipt to a dealer if cash is received as a remittance in payment of special tax (including penalties and interest, if any), or for any type of remittance received if the dealer requests a receipt.

[T.D. ATF–21, 40 FR 56887, Dec. 5, 1975]

§ 194.139 Credit for incorrect stamp.

The regional director (compliance) may credit the tax (including additions thereto) paid for an incorrect stamp if the taxpayer has filed an amended return on Form 5630.5, as provided in § 194.136, and has, with his amended return, surrendered the incorrect stamp for credit and submitted a remittance for the difference between the incorrect tax and the correct tax. Where the tax (and additions thereto) paid for the incorrect stamp surrendered exceeds the amount due, the regional director (compliance) shall advise the dealer to file claim for refund of such excess on ATF Form 2635 (5620.8). The applicable provisions of subpart M of this part shall govern claims for refund.

(68A Stat. 791, 808; 26 U.S.C. 6402, 6511)

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15 1975, and amended by T.D. ATF–251, 52 FR 19335, May 22, 1987]

Subpart J—Change of Location

§ 194.151 Amended return, Form 5630.5; endorsement on stamp.

(a) *General.* A dealer who, during the taxable period for which special tax was paid, removes the business to a place other than that specified on the original special tax return on Form 5630.5, and stated on the special tax stamp, shall, within 30 days from the date the dealer begins to carry on such business at the new location, register the change with ATF by filing a new return on Form 5630.5, designated ''Amended Return'', setting forth the time when and the place to which such removal was made, and shall surrender the special tax stamp with the Form 5630.5 for endorsement of the change in location: *Provided,* That a dealer, whose original return on ATF Form 5630.5 covered only one location, may deliver the amended return and the stamp at any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF: *Provided further,* That a dealer who filed an original return under the provisions of § 194.106(c) shall forward with the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The regional director (compliance) or the ATF officer receiving such return or stamp shall, if the return is submitted within the 30-day period, enter the proper endorsement on the stamp and return it to the taxpayer.

(b) *Caterers.* A caterer who sells liquor by the drink at locations other than his or her principal place of business shall not be required to provide the change of location registration prescribed in paragraph (a) of this section for such catering activities provided the records prescribed by § 194.55(c) are maintained as required. For a permanent change in location of the principal place of business, an amended return must be filed in accordance with paragraph (a) of this section.

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–21, 40 FR 56887, Dec. 5, 1975; T.D. ATF–251, 52 FR 19336, May 22, 1987; T.D. ATF–271, 53 FR 17553, May 17, 1988; T.D. ATF–329, 57 FR 39598, Sept. 1, 1992]

§ 194.152 Failure to register change of address within 30 days.

A dealer who removes his business to a place other than that stated on his special tax stamp and fails to register such removal with ATF within 30 days from the date he begins to carry on such business at the new location is required to pay special tax, and interest on the amount required to be shown on the return as tax, just as if he were engaging in business for the first time (as to liability for delinquency penalty see § 194.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in

§§ 194.103, 194.109, and 194.110, respectively.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975,as amended by T.D. ATF–251, 52 FR 19336, May 22, 1987]

§ 194.153 Certificate in lieu of lost or destroyed special tax stamp.

The provisions of this part shall apply to certificates in lieu of lost or destroyed special tax stamps issued to taxpayers under the provisions of §§ 194.132 and 194.133.

Subpart K—Change in Proprietorship or Control

§ 194.161 Sale of business.

A special tax stamp is a receipt for tax, personal to the one to whom issued, and is not transferable from one dealer to another. Where there occurs a change in the proprietorship of a business for which special tax has been paid, the successor shall pay special tax and procure a special tax stamp for such business, except as provided in § 194.169.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.162 Incorporation of business.

Where an individual or a firm engaged in business requiring payment of special tax forms a corporation to take over and conduct the business, the corporation (a separate legal entity) shall pay special tax and procure a stamp in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.163 New corporation.

Where a new corporation is formed to take over and conduct the business of one or more corporations which have paid special tax, the new corporation shall pay special tax and procure a stamp in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.164 Stockholder continuing business of corporation.

A special tax stamp held by a corporation as a dealer in liquors, or as a dealer in beer, cannot cover the same business carried on by one or more of its stockholders after dissolution of the corporation.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.165 Change in trade name or style of business.

A dealer who has paid the special tax for his business at a given location is not required to pay additional special tax by reason of a mere change in the trade name or style under which he conducts such business, or by reason of a change in management which involves no change in proprietorship of the business.

(72 Stat. 1340, 1343, 26 U.S.C. 5111, 5121)

§ 194.166 Change of name or increase in capital stock of a corporation.

Additional special tax is not required by reason of a change of name or increase in the capital stock of a corporation if a new corporation is not created under the laws of the State of incorporation.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.167 Change in ownership of capital stock.

Additional special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

§ 194.168 Change in membership of unincorporated club.

Additional special tax is not required of an unincorporated club by reason of changes in membership, where such changes do not result in the dissolution thereof and the formation of a new club.

§ 194.169 Change of control, persons having right of succession.

Certain persons other than the special taxpayer may, without paying additional special tax, secure the right to carry on the same business at the same address for the remainder of the taxable period for which the special tax was paid. Such persons are:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased dealer;

(b) A husband or wife succeeding to the business of his or her living spouse;

(c) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(d) The partner or partners remaining after death or withdrawal of a member of a partnership.

In order to secure such right, the person or persons continuing the business shall file with ATF, within 30 days from the date on which the successor begins to carry on the business, an amended special tax return on Form 5630.5, showing the basis of the succession, and shall surrender the unexpired special tax stamp or stamps for endorsement of the change in control: *Provided*, That, if the original return, Form 5630.5, was filed under the provisions of § 194.106(b), the person succeeding to the business may deliver the amended return and stamp to any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF. If the applicant has the right of succession and the return and stamp are submitted on time, the regional director (compliance) or other ATF officer receiving them will enter the proper endorsement on the stamp and return it to the successor.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[T.D. 7110, 36 FR 8036, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975; as amended at 52 FR 19336, May 22, 1987]

§ 194.170 Failure to perfect right of succession within 30 days.

A person who would have had the privilege of succeeding, as provided in § 194.169, to a business for which the special tax had been paid for the remainder of the taxable period but failed to register such succession within 30 days from the date he began to carry on such business is required to pay special tax, and interest on the amount required to be shown on the return as tax, just as if he were engaging in a new business (as to liability for delinquency penalty see § 194.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in §§ 194.103, 194.109, and 194.110.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

Subpart L—Exemptions and Exceptions

PERSONS EXEMPT FROM LIQUOR AND BEER DEALER SPECIAL TAXES

§ 194.181 Single sale of liquors or warehouse receipts.

A single sale of distilled spirits, wines, or beer, or a single sale of one or more warehouse receipts for distilled spirits, unattended by circumstances showing the person making the sale to be engaged in the business, does not subject the vendor to special tax.

(72 Stat. 1340, 1343, 1346; 26 U.S.C. 5111, 5121, 5142)

§ 194.182 Proprietors of distilled spirits plants selling certain distilled spirits or wines.

(a) *Exemption of proprietor*. No proprietor of a distilled spirits plant shall be required to pay special tax as a wholesale or retail dealer in liquors on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his distilled spirits plant, of distilled spirits or wines which, at the time of sale, are stored at his distilled spirits plant, or had been removed from such plant to a taxpaid storeroom the operations of which are integrated with the operations of such plant and which is contiguous or adjacent to, or in the immediate vicinity of, such plant. However, no such proprietor shall have more than one place of sale, as to each plant, that shall be exempt from special tax under this section.

(b) *Place of exemption*. Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the plant where the spirits or wines are stored. If the proprietor wishes to be exempt from payment of special tax with respect to sales at his principal business office rather than for sales at his plant, he shall notify the regional director (compliance) of the region in which the plant is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance).

Where the exemption is claimed for a place other than the plant, special tax shall be paid at the plant if sales are made thereat.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.183 Proprietors of bonded wine cellars selling certain wines or wine spirits.

(a) *Exemption of proprietor*. No proprietor of a bonded wine cellar shall be required to pay special tax as a wholesale or retail dealer in liquors on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his bonded wine cellar, of wines or wine spirits which, at the time of sale, are stored at his bonded wine cellar, or had been removed from such bonded wine cellar to a taxpaid storeroom the operations of which are integrated with the operations of such bonded wine cellar and which is contiguous or adjacent to, or in the immediate vicinity of, such bonded wine cellar. However, no such proprietor shall have more than one place of sale, as to each bonded wine cellar, that shall be exempt from special tax under this section.

(b) *Place of exemption*. Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the bonded wine cellar where the wines or wine spirits are stored. If the proprietor wishes to be exempt from special tax with respect to sales at his principal office rather than for sales at his bonded wine cellar, he shall notify the regional director (compliance) of the region in which the bonded wine cellar is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a place other than the bonded wine cellar, special tax shall be paid at the bonded wine cellar if sales are made thereat.

(c) *Exception*. Where the proprietor of a bonded wine cellar consummates sales of wines to other dealers at the purchasers' places of business, through a delivery route salesman or otherwise, the proprietor of the bonded wine cellar is required to pay special tax as a wholesale dealer in liquors (or wines) at each place from which he conducts such selling operations.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.183a Proprietors of taxpaid wine bottling houses selling certain wines.

(a) *Exemption of proprietor*. No proprietor of a taxpaid wine bottling house shall be required to pay special tax as a wholesale or retail dealer in liquors for a period beginning on or after January 1, 1988, (including such tax under the transition rule of § 194.103(b)) on account of sales of wine transacted at the proprietor's principal business office, as designated in writing to the regional director (compliance), or at the proprietor's taxpaid wine bottling house. However, this exemption applies only to wines which, at the time of sale, are either stored at the taxpaid wine bottling house or had been removed therefrom to a taxpaid storeroom whose operations are integrated with those of the taxpaid wine bottling house and which is contiguous or adjacent to, or in the immediate vicinity of, the taxpaid wine bottling house. Moreover, no such proprietor shall have more than one place of sale, as to each taxpaid wine bottling house, that shall be exempt from special tax under this section.

(b) *Place of exemption*. Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the taxpaid wine bottling house where the wines are stored. If the proprietor wishes to be exempt from special tax with respect to sales at the proprietor's principal office rather than at the proprietor's taxpaid wine bottling house, the proprietor shall so notify the regional director (compliance) of the region in which the taxpaid wine bottling house is located. The notice shall be in writing, on letter size paper, and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the proprietor's principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a

place other than the taxpaid wine bottling house, special tax shall be paid at the taxpaid wine bottling house if sales are made there.

(c) *Exception*. Where the proprietor of a taxpaid wine bottling house consummates sales of wines to other dealers at the purchasers' places of business, through a delivery route salesman or otherwise, the proprietor of the taxpaid wine bottling house is required to pay special tax as a wholesale dealer in liquors at each place from which the proprietor conducts such selling operations.

(26 U.S.C. 5113)

[T.D. ATF–285, 53 FR 12610, Mar. 28, 1989]

§ 194.184 Proprietors of breweries selling beer stored at their breweries.

(a) *Exemption of proprietor*. No proprietor of a brewery shall be required to pay special tax as a wholesale or retail dealer in beer on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his brewery, of beer which, at the time of sale, is stored at his brewery, or had been removed from such brewery to a taxpaid storeroom the operations of which are integrated with the operations of such brewery and which is contiguous or adjacent to, or in the immediate vicinity of, such brewery. However, no such proprietor shall have more than one place of sale, as to each brewery, that shall be exempt from special tax under this section.

(b) *Place of exemption*. Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the brewery where the beer is stored. If the proprietor wishes to be exempt from special tax with respect to sales at his principal office rather than for sales at his brewery, he shall notify the regional director (compliance) of the region in which the brewery is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a place other than the brewery, special tax shall be paid at the brewery if sales are made thereat.

(c) *Exception*. Where the proprietor of a brewery consummates sales of beer to dealers at the purchasers' places of business (through delivery route salesmen or otherwise), such proprietor is required to pay special tax as a wholesale dealer in beer at each place from which he conducts such selling operations.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.185 Wholesale dealers in liquors consummating sales of wines or beer at premises of other dealers.

(a) *Sales of wines*. Any wholesale dealer in liquors (including the proprietor of a bonded wine cellar) who has paid special tax as a wholesale dealer in liquors for the place from which he conducts his selling operations may consummate sales of wines to other wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' places of business without being required to pay additional special tax on account of such sales.

(b) *Sales of beer*. Any wholesale dealer in liquors who has paid the tax as provided in paragraph (a) of this section may also consummate sales of beer to wholesale or retail dealers in beer, to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' place of business without being required to pay additional special tax on account of such sales.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.186 Wholesale dealers in beer consummating sales at premises of other dealers.

Any dealer (including the proprietor of a brewery) who has paid special tax as a wholesale dealer in beer for the place from which he conducts his selling operations may consummate sales of beer (but not wines or distilled spirits) to other dealers at the purchasers' places of business without being required to pay additional special tax on account of such sales.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.187 Hospitals.

Hospitals and similar institutions furnishing liquors to patients are not required to pay special tax, provided no specific or additional charge is made for the liquors so furnished.

§ 194.187a Limited retail dealers.

Limited retail dealers, as specified in § 194.27, are not required to pay special tax.

[T.D. ATF–271, 53 FR 17553, May 17, 1988]

§ 194.187b Coordination of taxes under 26 U.S.C. 5111 and 5121.

Effective January 1, 1988, special tax is not imposed concurrently under both 26 U.S.C. 5111(a) (relating to wholesale liquor sales) and 26 U.S.C. 5111(b) (relating to wholesale beer sales), nor under both 26 U.S.C. 5121(a) (relating to retail liquor sales) and 26 U.S.C. 5121(b) (relating to retail beer sales), with respect to a taxpayer's activities at a single place during a single tax year. (See § 194.72.)

(26 U.S.C. 5113(g), 5123(c))

[T.D. ATF–285, 54 FR 12611, Mar. 28, 1989]

PERSONS WHO ARE NOT DEALERS IN LIQUORS OR BEER

§ 194.188 Persons making casual sales.

Certain persons making casual sales of liquors are not liquor or beer dealers within the meaning of the statute; they are as follows:

(a) Administrators, executors, receivers, and other fiduciaries who receive distilled spirits, wines, or beer in their fiduciary capacities and sell such liquors in one parcel, or at public auction in parcels of not less than 20 wine gallons (75.7 liters);

(b) Creditors who receive distilled spirits, wines, or beer as security for, or in payment of, debts and sell such liquors in one parcel, or at a public auction in parcels of not less than 20 wine gallons (75.7 liters);

(c) Public officers or court officials who levy on distilled spirits, wines, or beer under order or process of any court or magistrate and sell such liquors in one parcel, or at public auction in parcels of not less than 20 wine gallons (75.7 liters); or,

(d) A retiring partner, or representative of a deceased partner, who sells distilled spirits, wines, or beer to the incoming or remaining partner, or partners, of a partnership.

Persons making such sales are not required to pay special tax, or keep the records or reports required of dealers in subpart O of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340 (26 U.S.C. 5113))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–34, 41 FR 46860, Oct. 26, 1976]

§ 194.189 Agents, auctioneers, brokers, etc., acting on behalf of others.

Certain persons may sell liquors as agents or employees of others, or receive and transmit orders therefor to a dealer, without being considered liquor or beer dealers on account of such activities; they are as follows:

(a) Auctioneers who merely sell liquors at auction on behalf of others,

(b) Agents or brokers who merely solicit orders for liquors in the name of a principal, but neither stock nor deliver the liquors for which orders are taken,

(c) Employees who merely sell liquors on behalf of their employers, and

(d) Retail dealers in liquors or retail dealers in beer who merely receive and transmit to a wholesale dealer orders for liquors or beer to be billed, charged, and shipped to customers by such wholesale dealers.

Such persons, who have no property rights in the liquors or beer sold, may make collections for their principals and receive commissions for their services, or guarantee the payment of accounts, without being required to pay special tax. In all such cases, however, the principal is required to pay special tax at each place where sales are consummated, unless he is exempt therefrom under the provisions of this subpart.

§ 194.190 Apothecaries or druggists selling medicines and tinctures.

Apothecaries and druggists who use wines or spirituous liquors for compounding medicines and in making tinctures which are unfit for use for beverage purposes are not required to pay special tax as dealers in liquors by

reason of the sale of such compounds or tinctures for nonbeverage purposes.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 194.191 Persons selling products unfit for beverage use.

(a) *Vendors not deemed dealers in liquors or beer*. No person selling or offering for sale for nonbeverage purposes products classed as unfit for beverage use under the provisions of § 19.58 of this chapter shall be deemed, solely by reason of such sales, to be a dealer in liquors.

(b) *Restrictions*. Any person who sells or offers for sale any nonbeverage products for use, or for sale for use, for beverage purposes, or who sells any of such products under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, shall pay special tax as a wholesale or retail dealer in liquors or as a wholesale or retail dealer in beer, as the case may be.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–379, 61 FR 31426, June 20, 1996]

§ 194.192 Retail dealer selling in liquidation his entire stock.

No retail dealer in liquors or retail dealer in beer, selling in liquidation his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of beer, which parcels may contain a combination of any or all such liquors, to any other dealer shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, by reason of such sale or sales. A retail dealer making such sale or sales is not required to keep records or submit reports thereof.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.193 Persons returning liquors for credit, refund, or exchange.

No retail dealer in liquors or beer, or other person, shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer, as defined in this part, by reason of his bona fide return of distilled spirits, wines, or beer, as the case may be, to the dealer from whom purchased (or to the successor of such vendor's business or line of merchandise) for credit, refund, or exchange, and the giving of such credit, refund or exchange shall not be deemed to be a purchase within the meaning of 26 U.S.C. 5117 of § 194.211 of this part. Except in the case of wholesale dealers in liquors required to keep records of their transactions under §§ 194.225 and 194.226, or retail dealers required to keep records under § 194.234, persons returning liquors as provided herein are not required to keep records or submit reports of such transactions.

(72 Stat. 1340, 1343; 26 U.S.C. 5113, 5117)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55844, Sept. 28, 1979; T.D. ATF–116. 47 FR 51571, Nov. 16, 1982]

Subpart M—Refund of Special Taxes

§ 194.201 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), shall be filed on Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid or assessed. Each claim shall set forth in detail each ground on which it is made and shall contain facts sufficient to apprise the Bureau of Alcohol, Tobacco and Firearms of the exact basis thereof. If the claim is for refund of special tax for which a stamp was issued, such stamp shall be attached to and made a part of the claim, or the claimant shall include in the claim evidence satisfactory to the Bureau of Alcohol, Tobacco and Firearms that the stamp cannot be submitted.

[T.D. ATF–251, 52 FR 19336, May 22, 1987]

§ 194.202 Time limit on filing of claim.

No claim for the refund of a special tax or penalty shall be allowed unless presented within 3 years next after the payment of such tax or penalty.

(68A Stat. 808; 26 U.S.C. 6511)

§ 194.203 Discontinuance of business.

A dealer who for any reason discontinues business is not entitled to refund for the unexpired portion of the fiscal year for which the special tax stamp was issued.

(72 Stat. 1346; 26 U.S.C. 5142)

Subpart N—Restrictions Relating to Purchases of Distilled Spirits

§ 194.211 Unlawful purchases of distilled spirits.

(a) *General*. It is unlawful for any dealer to purchase distilled spirits for resale from any person other than:

(1) A dealer who has paid special tax as a wholesale dealer in liquors at the place where the distilled spirits are purchased;

(2) A wholesale dealer whose place of business comes within the exemptions provided by § 194.151 for changes in location and § 194.169 for changes in control;

(3) The proprietor of a distilled spirits plant who is exempt from special tax as a dealer at the place where the distilled spirits are purchased;

(4) A retail liquor store operated by a State, a political subdivision thereof, or the District of Columbia, which is not required to pay special tax as a wholesale dealer in liquors as provided in § 194.31;

(5) A person not required to pay special tax as a wholesale liquor dealer, as provided in §§ 194.188 through 194.190 and 194.192 through 194.193.

(b) *Special provisions for limited retail dealers*. A limited retail dealer may purchase distilled spirits for resale from a retail dealer in liquors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1343; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5117))

[T.D. ATF–42, 42 FR 8370, Feb. 10, 1977]

Subpart O—Prescribed Records and Reports, and Posting of Signs

WHOLESALE DEALERS' RECORDS AND REPORTS

§ 194.221 General requirements as to distilled spirits.

Except as provided in §§ 194.223 and 194.224, every wholesale dealer in liquors shall keep daily records of the physical receipt and disposition of distilled spirits, as prescribed in §§ 194.225 and 194.226. When required in writing by the regional director (compliance), dealers shall also prepare and file a monthly summary report totaling the daily receipts and disposition of distilled spirits as prescribed in § 194.230.

(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 51571, Nov. 16, 1982]

§ 194.222 Requirements as to wines and beer.

Each wholesale dealer in liquors who receives wines, or wines and beer, and each wholesale dealer in beer shall keep at his place of business a complete record of all wines and beer received, showing (a) the quantities thereof, (b) from whom received, and (c) the receiving dates. This record, which must be kept for a period of not less than three years as prescribed in § 194.237, shall consist of all purchase invoices or bills covering wines and beer received or, at the option of the dealer, a book record containing all of the required information. Wholesale dealers are not required to prepare or submit reports to regional director (compliance) of transactions relating to wines and beer.

(Approved by the Office of Management and Budget under control number 1512–0353)

(68A Stat. 731 (26 U.S.C. 6001); sec. 201, Pub. L. 85–859, 72 Stat. 1342, 1345, 1348, 1395 (26 U.S.C. 5114, 5124, 5146, 5555))

[T.D. ATF–50, 43 FR 20494, May 12, 1978, as amended by T.D. ATF–116, 47 FR 51571, Nov. 16, 1982; T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 194.223 Records to be kept by States, political subdivisions thereof, or the District of Columbia.

The provisions of this subpart relative to the maintenance of records and the submission of reports shall not apply to States, political subdivisions thereof, or the District of Columbia, or any liquor stores operated by such entities that maintain and make available for inspection by ATF officers records which will enable such officers to verify receipts of wines and beer and trace readily all distilled spirits received and disposed of by them: *Provided,* That such States, political subdivisions thereof, or the District of Columbia, and liquor stores operated by them, shall, on request of the regional director (compliance), furnish such transcripts, summaries, and copies of their records as he shall require.

(72 Stat. 1342, 1348, 1395; 26 U.S.C. 5114, 5146, 5555)

§ 194.224 Records to be kept by proprietors of distilled spirits plants.

Wholesale liquor dealer operations conducted by proprietors of distilled spirits plants shall be recorded and reported in accordance with the applicable provisions of Part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended (26 U.S.C. 5114); sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–62, 44 FR 71693, Dec. 11, 1979]

§ 194.225 Records of receipt.

(a) *Information required.* Every wholesale dealer in liquors shall maintain a daily record of the physical receipt of each individual lot or shipment of distilled spirits, which record shall show (1) name and address of consignor, (2) date of receipt (to include date of inventory for recorded gains), (3) brand name, (4) name of producer or bottler, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying the producer or bottler with the brand name, (5) kind of spirits, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying ''kind'' with the brand name, (6) quantity actually received (showing number of packages, if any, and number of cases by size of bottle, and explaining any difference from the quantity shown on the commercial papers covering the shipment), and (7) package identification numbers of containers of alcohol received for repackaging for industrial use pursuant to subpart R of this part. Additional information may also be shown.

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be a part of the accounting system and shall consist of consignors' invoices (or, where such invoices are not available on the day the shipment is received, memorandum receiving records prepared on the day of receipt of distilled spirits, to include records of inventory for recorded gains), and credit memorandums covering distilled spirits returned to the dealer, which contain all required information.

(Approved by the Office of Management and Budget under control number 1512–0353)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF–46, 42 FR 44758, Sept. 6, 1977, as amended by T.D. ATF–116, 47 FR 51571, Nov. 16, 1982; T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 194.226 Records of disposition.

(a) *Information required.* Every wholesale dealer in liquors shall prepare a daily record of the physical disposition of each individual lot of distilled spirits, which record shall show (1) name and address of consignee, (2) date of disposition (to include date of discovery in the case of casualty, theft or recorded inventory losses), (3) brand name, (4) kind of spirits, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying ''kind'' with the brand name, (5) number of packages, if any, and number of cases by size of bottle, and (6) package identification numbers of containers of alcohol repackaged for industrial use pursuant to subpart R of this part. Additional information may also be shown.

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be part of the accounting system and shall consist of wholesale dealer's invoices (or, where such invoices are not available at the time the spirits

are removed, memorandum shipping records prepared at the time of removal of the distilled spirits, to include date of discovery in the case of casualty, theft or recorded inventory losses) which contain all required information.

(Approved by the Office of Management and Budget under control number 1512–0353)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF–46, 42 FR 44759, Sept. 6, 1977, as amended by T.D. ATF–116, 47 FR 51571, Nov. 16, 1982; T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 194.227 Canceled or corrected records.

Entries on the records of receipt and disposition prescribed by §§ 194.225 and 194.226 shall not be erased or obliterated. Correction or deletion of any entry shall be accomplished by drawing a line through such entry, and making appropriate correction or explanation. If a wholesale dealer in liquors voids an invoice for any reason, the file copy prescribed in § 194.235 will be marked ''Cancelled'' and be filed as provided in that section; any remaining copy of the voided invoice will be destroyed or similarly cancelled and filed. If a new invoice is prepared, its serial number will be cross referenced on any retained copies of the cancelled invoice.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–116, 47 FR 51572, Nov. 16, 1982]

§ 194.228 Previously prescribed or approved records of receipt and disposition.

A wholesale dealer in liquors may continue to use records of receipt and disposition in a format previously prescribed, or approved for him, provided he gives written notice of such intent to the regional director (compliance). Such records shall show the information required by paragraph (a) of § 194.225 or paragraph (a) of § 194.226, as applicable. Such records shall be preprinted with the name and address of the wholesale dealer. Each sheet or page shall bear a preprinted serial number, or page serial numbers may be affixed in unbroken sequence during the preparation or processing of the records. A serial number shall not be duplicated within a period of 6 months.

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

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.229 Variations in format, or preparation, of records.

(a) *Authorization.* The Director may approve variations in the type and format of records of receipt and disposition, or in the methods of preparing such records, where it is shown that variations from the requirements are necessary in order to use data processing equipment, other business machines, or existing accounting systems, and will not (1) unduly hinder the effective administration of this part, (2) jeopardize the revenue, or (3) be contrary to any provision of law. A dealer who proposes to employ such a variation shall submit written application so to do, in triplicate, to the regional director (compliance). Such application shall describe the proposed variations and set forth the need therefor. The regional director (compliance) will determine the need for the variations, and whether approval thereof would unduly hinder the effective administration of this part or result in jeopardy to the revenue. The regional director (compliance) will forward two copies of the application to the Director together with a report of his findings and his recommendation. Variations in type and format of records or methods of preparation shall not be employed until approval is received from the Director.

(b) *Requirements.* Any information required by this part to be kept or filed is subject to the provisions of law and this part relating to required records and reports, regardless of the form or manner in which kept or filed.

(Approved by the Office of Management and Budget under control number 1512–0357)

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 194.230 Monthly summary report.

(a) *Requirement*. Every wholesale dealer in liquors shall, when required, submit to the regional director (compliance), a monthly summary report of the total quantities of all distilled spirits received and disposed of daily during the month (including the date of discovery for theft, casualty and inventory losses and inventory gains). This report will be posted by the wholesaler on a daily basis. If there were no receipts or disposals of distilled spirits during the month, the report will be marked ''No Transactions During Month.'' This report will be filed not later than the 15th day of the month following the report period, and a copy retained by the dealer. Upon receipt of an application the regional director (compliance) may authorize a dealer to post the report less frequently until otherwise notified. The regional director's (compliance) authorization will specify the intervals at which the posting will be accomplished, but not less frequently than monthly.

(b) *Form of report*. When required, the monthly summary report may be prepared in a format which most conveniently adapts itself to the dealer's accounting and recordkeeping systems. In addition to any other information shown therein, the report will include the daily totals of all distilled spirits received and disposed of, including dispositions caused by inventory, casualty or theft losses and receipts caused by recorded gains in inventory; and

(1) Daily totals of all bottled spirits received and disposed of, recorded separately by wine gallons, or liters,

(2) Daily totals of all bulk spirits in packages received and disposed of, recorded separately by proof gallons.

(c) *Declaration*. When required to be filed, the monthly summary report will bear the following declaration signed by the dealer or an authorized agent:

I declare under the penalties of perjury that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete, and is supported by true, correct, and complete records which are available for inspection.

(d) When the monthly summary report is not required by the regional director (compliance) to be filed, every wholesale dealer in distilled spirits is still required to maintain and make available for review by ATF officers:

(1) Records of receipt, required by § 194.225;

(2) Records of disposition, required by § 194.226; and

(3) Any other supporting information or documents regarding the receipt and disposition of distilled spirits which have a direct bearing in determining the completeness and accuracy of the accounting and recordkeeping systems.

(Approved by the Office of Management and Budget under control number 1512–0353)

(Act of August 16, 1954, 68A Stat. 749 (26 U.S.C. 6065); sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1348, as amended, 1395, as amended (26 U.S.C. 5114, 5146, 5555))

[T.D. ATF–116, 47 FR 51572, Nov. 16, 1982, and amended by T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

§ 194.231 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded to the sixth decimal.

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded to the nearest hundredth.

Once converted to wine gallons, the proof gallons of spirits in cases shall be determined as provided in 27 CFR 30.52.

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

[T.D. ATF–198, 50 FR 8542, Mar. 1, 1985]

§ 194.232 Discontinuance of business.

When a wholesale dealer in liquors, who is required under § 194.230 to file a monthly summary report, discontinues business, a monthly summary report marked ''Final'' shall be filed covering

transactions through the date of discontinuance.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF–115, 47 FR 51572, Nov. 16, 1982]

§ 194.233 Requirements when a wholesale dealer in liquors maintains a retail department.

(a) When a wholesale dealer in liquors maintains a separate department on the premises for the retailing of distilled spirits, and the retail sales of distilled spirits normally represent 90 percent or more of the volume of distilled spirits sold, the dealer may ''constructively'' receive all distilled spirits in the retail department. Sales involving a wholesale transaction may be ''constructively'' sold through the wholesale department.

(1) *Receipts*. In lieu of maintaining and preparing the records required by §§ 194.225 and 194.226, a wholesale dealer may constructively receive *all* distilled spirits in its retail department. In this case, the receiving document will serve as a receipt for (through) the wholesale department and a disposition (transfer) to the retail department. The receiving document will be maintained by the retail department, as required by § 194.234.

(2) *Dispositions*. In lieu of the records required by § 194.226, a wholesale dealer may constructively sell distilled spirits from its retail department to other dealers. The sales invoice or bill will be filed in the wholesaler's disposition records and will serve as a record of receipt from the retail department and a record of disposition to another dealer.

(b) Except as provided in paragraph (a) of this section, a wholesale dealer shall prepare and maintain the required records of receipt and disposition as prescribed in §§ 194.225 and 194.226. Transfers between the wholesale and retail departments will be treated in the same manner as any other transaction involving the wholesale department.

(c) When required by § 194.230, a wholesale dealer shall prepare and file the monthly summary report of actual or constructive receipts and dispositions of all distilled spirits.

(d) Wholesale and retail departments need not be physically separated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1345, as amended, 1395, as amended (26 U.S.C. 5114, 5124, 5555))

[T.D. ATF–116, 47 FR 51572, Nov. 16, 1982]

RETAIL DEALER'S RECORDS

§ 194.234 Requirements for retail dealers.

(a) *Records of receipt*. All retail dealers shall keep at their place of business complete records of all distilled spirits, wines, or beer received showing (1) the quantities thereof, (2) from whom received, and (3) the receiving dates. The regional director (compliance) may, pursuant to an application authorize the records to be maintained at another business premises under the control of the same dealer when it is determined that such maintenance will not cause undue inconvenience to ATF officers desiring to examine such records. Records of receipts shall consist of all purchase invoices or bills covering distilled spirits, wines, and beer received, or, at the option of the dealer, a book record containing all of the required information.

(b) *Records of sales of 20 wine gallons (75.7 liters) or more*. Every retail dealer who makes sales of distilled spirits, of wines, or of beer in quantities of 20 wine gallons (75.7 liters) or more to the same person at the same time shall prepare and keep a record of each such sale, which shall show (1) the date of sale, (2) the name and address of the purchaser, (3) the kind and quantity of each kind of liquors sold, and (4) the serial numbers of all full cases of distilled spirits included in the sale. Each entry on such record shall be supported by a corresponding delivery receipt (which may be executed on a copy of the sales slip) signed by the purchaser or his agent.

(Approved by the Office of Management and Budget under control number 1512–0354)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1345, 1348, 1395, 1413 (26 U.S.C. 5124, 5146, 5555, 5691))

[T.D. 7130, 36 FR 12853, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–34, 41 FR 46861, Oct. 26, 1976. Redesignated and amended by T.D. ATF–116, 47 FR 51572, Nov. 16, 1982; T.D. ATF–172, 49 FR 14942, Apr. 16, 1984]

FILES OF RECORDS AND REPORTS

§ 194.235 Filing.

The required records of receipt and disposition of all distilled spirits, as prescribed in §§ 194.225 and 194.226, may be filed in accordance with the wholesaler's regular accounting and recordkeeping systems. The required records shall consist of the dealer's own file copies of the receiving or shipping invoices.

(a) Dealers may file records of receipt and disposition in accordance with their own filing system as long as the filing system systematically and accurately accounts for all receipts and dispositions of distilled spirits.

(b) The required records of receipt and disposition will be filed not later than one business day following the date the transaction occurred.

(c) Supporting documents for receipts and dispositions, such as delivery receipts and bills of lading, may be filed in accordance with the wholesaler'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]

§ 194.236 Place of filing.

Prescribed records of receipt and disposition and monthly summary reports required by § 194.230 will be maintained by transaction or reporting date, at the dealer'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 dealer, if the alternative location does not cause undue inconvenience to ATF officers desiring to examine the files.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

[T.D. ATF–116, 47 FR 51573, Nov. 16, 1982]

PERIOD OF RETENTION

§ 194.237 Retention of records and files.

All records prescribed by this part, documents or copies of documents supporting these records, and file copies of reports submitted, shall be retained by the person required to keep the documents for a period of not less than three years, and during this period shall be available, during business hours, for inspection and copying by ATF 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, 1395 (26 U.S.C. 5114, 5124, 5146, 5555))

[T.D. ATF–50, 43 FR 20494, May 12, 1978. Redesignated by T.D. ATF–116, 47 FR 51573, Nov. 16, 1982]

§ 194.238 Photographic copies of records.

(a) *General*. Dealers may record, copy, or reproduce records required by this part. Dealers may use any process which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the origninal record.

(b) *Copies of records treated as original records*. Whenever records are reproduced under this section, the produced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record. As used in this section, ''original record'' means the record required by this part to be maintained or preserved by the dealer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

[T.D. ATF–116, 47 FR 51573, Nov. 16, 1982]

§§ 194.239–194.241 [Reserved]

Subpart P [Reserved]

Subpart Q—Reuse and Possession of Used Liquor Bottles

§ 194.261 Refilling of liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall (a) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of closing under the provisions of 26 U.S.C. Chapter 51, or (b) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of closing under the provisions of 26 U.S.C. Chapter 51.

(72 Stat. 1374; 26 U.S.C. 5301)

[T.D. 6954, 33 FR 6814, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55844, Sept. 28, 1979; T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 194.262 Possession of refilled liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall:

(a) Possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of § 194.261, or

(b) Possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of § 194.261.

(72 Stat. 1374; 26 U.S.C. 5301)

§ 194.263 Possession of used liquor bottles.

The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited except for the following:

(a) The owner or occupant of any premises on which such bottles have been lawfully emptied may assemble the same on such premises—

(1) For delivery to a bottler or importer on specific request of such bottler or importer;

(2) For destruction, either on the premises on which the bottles are emptied or elsewhere, including disposition for purposes which will result in the bottles being rendered unusable as bottles; or

(3) In the case of unusual or distinctive bottles, for disposition or sale as collectors' items or for other purposes not involving the packaging of any product for sale.

(b) Any person may possess, offer for sale, or sell unusual or distinctive bottles for purposes not involving the packaging of any product for sale.

(c) Any person may assemble used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material.

(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]

§ 194.264 Mixed cocktails.

A retail liquor dealer who mixes cocktails or compounds any alcoholic liquors in advance of sale, as provided in § 194.293, may not use liquor bottles in which distilled spirits have been previously packaged for the storage of the mixture pending sale.

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

[T.D. ATF–62, 44 FR 71694, Dec. 11, 1979]

Subpart R—Packaging of Alcohol for Industrial Uses

§ 194.271 Requirements and procedure.

On compliance with the provisions of Part 19 of this chapter applicable to persons repackaging distilled spirits, a dealer in liquor engaged in the business of supplying alcohol for industrial use may obtain bulk alcohol on which the tax has been paid or determined and repackage the alcohol for sale for industrial use in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(a) *Qualification procedure.* Application for registration, Form 5110.41, and application for an operating permit, Form 5110.25, modified in accordance with instructions of the regional director (compliance), shall be executed and

filed with the regional director (compliance). No alcohol shall be repackaged until the approved application for registration and the operating permit are received.

(b) *Operations.* Repackaging operations shall be conducted in accordance with the bottling and packaging requirements of Part 19 of this chapter. Packaging and labeling operations may be carried on without supervision of an ATF officer unless the regional director (compliance) requires supervision.

(c) *Records.* The dealer shall keep records, daily, showing the bulk alcohol received, dumped for packaging, packaged, and disposed of, including the name and address of each consignor and consignee. The dealer shall prepare a monthly report on Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5110.28 shall be submitted to the regional director (compliance) not later than the 15th day of the month succeeding the period for which rendered. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the regional director (compliance) shall be filed and retained as prescribed in §§ 194.236 and 194.237.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1343, as amended, 1358, as amended, 1360, as amended (26 U.S.C. 5116, 5205, 5206))

[T.D. ATF–62, 44 FR 71694, Dec. 11, 1979, as amended by T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 194.272 Labeling.

Every dealer packaging alcohol for industrial use shall affix to each package filled a label bearing in conspicuous print the words ''Alcohol'' and ''For Industrial Use,'' the proof of the alcohol, the capacity of the container, and the packaging dealer's name and address. The dealer may incorporate in the label other appropriate statements; however, such statements shall not obscure or contradict the data required hereby to be shown on such labels.

(72 Stat. 1343, 1360; 26 U.S.C. 5116, 5206)

Subpart S—Distilled Spirits for Export With Benefit of Drawback

§ 194.281 General.

A state, or political subdivision thereof, or a person holding a wholesale liquor dealer's basic permit issued under Part 1 of this chapter, may export bottled taxpaid distilled spirits with benefit of drawback to the extent provided in § 252.171 of this chapter. The marking of cases, preparation of notice of shipment on Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits shall be in accordance with the applicable provisions of Parts 19 and 252 of this chapter.

[T.D. ATF–206, 50 FR 23953, June 7, 1985]

§ 194.283 Records.

The provisions of subpart O of this part regarding records and reports relating to liquors for domestic use are hereby extended to export transactions permitted under the provisions of this subpart.

[T.D. 7002, 34 FR 1592, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart T—Miscellaneous

§ 194.291 Destruction of marks and brands on wine containers.

The dealer who empties any cask, barrel, keg, or other bulk container of wine shall scrape or obliterate from the empty container all marks, brands, tags, or labels placed thereon under the provisions of part 24 of this chapter as evidence of the payment or determination of the tax on the wine removed therein from the bonded wine cellar.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–344, 58 FR 40355, July 28, 1993]

§ 194.292 Wine bottling.

Each person desiring to bottle, package, or repackage taxpaid wines shall, before carrying on such operations, apply and receive permission from the regional director (compliance), as required under part 24 of this chapter. The decanting of wine by caterers or

other retail dealers for table or room service, banquets, and similar purposes shall not be considered as ''bottling,'' if the decanters are not furnished for the purpose of carrying wine away from the area where served.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended (26 U.S.C. 5352))

[T.D. ATF–62, 44 FR 71694, Dec. 11, 1979, as amended by T.D. ATF–344, 58 FR 40355, July 28, 1993]

§ 194.293 Mixing cocktails in advance of sale.

A retail liquor dealer shall not mix cocktails, or compound any alcoholic liquors in advance of sale, except for the purpose of filling, for immediate consumption on the premises, orders received at the bar or in the expectation of the immediate receipt of orders. (For further provisions, see § 194.264.)

(Sec. 805, Pub. L. 96–39, 93 Stat. 277 (26 U.S.C. 5002))

[T.D. ATF–62, 44 FR 71694, Dec. 11, 1979]

PARTS 198–199 [RESERVED]