



Code of Federal Regulations

27

Part 200 to End

Revised as of April 1, 2002

Alcohol, Tobacco Products and Firearms

Containing a codification of documents
of general applicability and future effect

As of April 1, 2002

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Cite this Code: CFR

*To cite the regulations in
this volume use title,
part and section num-
ber. Thus, 27 CFR
251.1 refers to title 27,
part*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, April 1, 2002), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, or 1973–1985, published in seven separate volumes. For the period beginning January 1, 1986, a “List of CFR Sections Affected” is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency’s name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202–523–5227 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

April 1, 2002.

THIS TITLE

Title 27—ALCOHOL, TOBACCO PRODUCTS, AND FIREARMS is composed of two volumes, parts 1–199 and part 200 to end. The contents of these volumes represent all current regulations issued by the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury as of April 1, 2002.

A redesignation table appears in the Finding Aids section of the volume containing parts 1–199.

Title 27—Alcohol, Tobacco Products and Firearms

(This book contains part 200 to End)

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

Federal Trade Commission: See 16 CFR chapter I.

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

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

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

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

ABBREVIATIONS:

The following abbreviations are used in this chapter:

ATF = *Alcohol, Tobacco and Firearms*.

TD = *Treasury Decision*.

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

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

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

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AUTHORITY: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

SOURCE: 20 FR 3561, May 21, 1955; unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

CROSS REFERENCE: For regulations with respect to distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands, see part 26 of this subchapter.

EDITORIAL NOTE: Nomenclature changes to part 251 appear at T.D. ATF-474, 67 FR 11231, Mar. 13, 2002.

Subpart A—Scope of Regulations

§ 251.1 Imported distilled spirits, wines, and beer.

This part, “Importation of Distilled Spirits, Wines, and Beer”, contains procedural and substantive requirements relative to the importation of distilled spirits, wines, and beer into

the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, closing and labeling of containers and packages, and records and reports.

NOTE: Distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands are governed by the provisions of part 26 of this chapter.

[T.D. ATF-206, 50 FR 23955, June 7, 1985, as amended by T.D. ATF-459, 66 FR 38550, July 25, 2001]

§ 251.2 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. 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 46921, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5963, Feb. 27, 1987; T.D. ATF-372, 61 FR 20725, May 8, 1996; T.D. ATF-474, 67 FR 11231, Mar. 13, 2002]

§ 251.3 Delegations of the Director.

All of the regulatory authorities of the Director contained in part 251 of the regulations are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.12, Delegation of the Director’s Authorities in 27 CFR part 251, Importation of Distilled Spirits, Wines, and Beer. ATF delegation orders, such as ATF Order 1130.12, 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-474, 67 FR 11232, Mar. 13, 2002]

Subpart B—Definitions

§ 251.11 Meaning of terms.

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

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 1130.12, Delegation of the Director’s Authorities in 27 CFR Part 251, Importation of Distilled Spirits, Wines, and Beer.

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

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

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

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

CFR. The Code of Federal Regulations.

Class 8 Customs bonded warehouse. A class 8 customs bonded warehouse established under the provisions of Customs Regulations (19 CFR, chapter I).

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

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

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, and all mixtures or dilutions thereof, from whatever source or by whatever process produced, including alcohol, whisky, brandy, gin, rum, and vodka, but not including wine as defined in this subpart.

Distilled spirits plant. An establishment qualified under the provisions of part 19 of this chapter for the production, storage, or processing of spirits, or for authorized combinations of such operations.

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

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

Eligible flavor. A flavor which:

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

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

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

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

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

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

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR part 5. As applied to wines, kind

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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.

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

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

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

United States. “United States” includes only the States and the District of Columbia.

U.S.C. The United States Code.

Wine. (a) Still wine, including vermouth or other aperitif wine, artificial or imitation wines or compounds sold as still wines, champagne or sparkling wine, and artificially carbonated wine, and (b) flavored or sweetened fortified or unfortified wines, by whatever name sold or offered for sale, containing not over 24 percent alcohol by volume.

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

[T.D. ATF-48, 43 FR 13552, Mar. 31, 1978, as amended by T.D. ATF-50, 43 FR 37180, Aug. 22, 1978; 44 FR 55853, Sept. 28, 1979; T.D. ATF-62, 44 FR 71718, Dec. 11, 1979; T.D. ATF-114, 47 FR 43950, Oct. 5, 1982; T.D. ATF-198, 50 FR 8555, Mar. 1, 1985; T.D. ATF-206, 50 FR 23955, June 7, 1985; T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-297, 55 FR 18069, Apr. 30, 1990; T.D. ATF-398, 63 FR 44784, Aug. 21, 1998; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

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Subpart C—Special (Occupational) Taxes

§ 251.30 Special (occupational) tax.

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer are subject to the provisions of part 194 of this chapter relating to special (occupational) taxes. Part 194 requires that the special tax return, Form 5630.5, with payment of the tax, shall be filed with ATF in accordance with the instruction on the form, before commencing business. Subsequently, Form 5630.5 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

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

[T.D. ATF-70, 45 FR 33981, May, 21, 1980, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987]

§ 251.31 Warehouse receipts covering distilled spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person engaged in business as an importer of distilled spirits, who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in § 251.30.

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

Subpart D—Tax On Imported Distilled Spirits, Wines, and Beer

DISTILLED SPIRITS

§ 251.40 Distilled spirits.

(a) A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on each proof gallon and a proportionate tax at a like rate on all fractional

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parts of each proof gallon. All products of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with §251.40a. The effective tax rate established will be applied to each entry.

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

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF-297, 55 FR 18069, Apr. 30, 1990]

§251.41 Computation of effective tax rate.

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

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of

distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

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

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

(2) The denominator will be the sum of:

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

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

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

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

BATCH RECORD

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

¹ Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the

total proof gallons in the batch (100.9 - (2½%) × 3.371.8 = 16.6).

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

$$\frac{\$30,362.85 + \$2,423.55 + \$1,601.40 + \$224.10}{2,350.0 + 634.2 + 387.6} = \frac{\$34,611.90}{3,371.8} = \$10.27, \text{ the effective tax rate.}$$

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

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

[T.D. ATF-297, 55 FR 18069, Apr. 30, 1990, as amended by T.D. ATF-307, 55 FR 52742, Dec. 21, 1990. Redesignated by T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

WINES

§ 251.42 Wines.

All wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax at the rates prescribed by law; such tax to be determined at the time of removal from customs custody for consumption or sale. The tax is imposed on each wine gallon and at a like rate on fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(72 Stat. 1331, as amended; 26 U.S.C. 5041)

[T.D. 6644, 28 FR 3165, Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 251.42a Still wines containing carbon dioxide.

Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be com-

pletely controlled under good commercial practices. Such tolerance will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded.

[T.D. ATF-13, 40 FR 4419, Jan. 30, 1975. Redesignated at 40 FR 16835, Apr. 15, 1975]

LIQUEURS, CORDIALS, AND OTHER COMPOUNDS AND PREPARATIONS

§ 251.43 Liqueurs, cordials, and similar compounds.

A tax is imposed by 26 U.S.C. 5001 on all liqueurs, cordials, and similar compounds, containing distilled spirits, in a customs bonded warehouse or imported into the United States at the rate prescribed in such section on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon. The tax shall be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom. Fortified or unfortified wines, containing not over 24 percent alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added are not classified as liqueurs, cordials, or similar compounds, but are considered to be flavored wines only and are subject to internal revenue tax at the rates applicable to wines.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1331, as amended (26 U.S.C. 5001, 5041))

[T.D. ATF-62, 44 FR 71718, Dec. 11, 1979]

§ 251.44 Other compounds and preparations.

Compounds and preparations, other than those specified in §251.43 containing distilled spirits, which are fit for beverage purposes, in customs bonded warehouse or imported into the United States are subject to internal

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revenue tax at the rates applicable to distilled spirits. Compounds and preparations, containing fortified or unfortified wine, but no distilled spirits, which are fit for beverage purposes and which are sold as wine, are subject to internal revenue tax at the rates applicable to wines.

(68A Stat. 595, as amended, 609, as amended; 26 U.S.C. 5001, 5041)

BEER

§ 251.45 Rate of tax.

A tax is imposed by 26 U.S.C. 5051, on all beer imported into the United States, at the rate prescribed in such section, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for fractional parts of a barrel. The tax on beer shall be determined at the time of importation, or, if entered into customs custody, at the time of removal from such custody.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5054))

[T.D. 6644, 28 FR 3165, Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55853, Sept. 28, 1979]

§ 251.46 Computation of tax.

The tax on imported beer shall be computed on the basis of the actual quantity in a container, at the rate prescribed by law.

(72 Stat. 1333, as amended; 26 U.S.C. 5051)

[T.D. 6644, 28 FR 3165, Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

COLLECTION OF INTERNAL REVENUE TAXES

§ 251.48 Imported distilled spirits, wines, and beer.

Internal revenue taxes payable on imported distilled spirits, including perfumes containing distilled spirits, and on wines and beer, are collected, accounted for, and deposited as internal revenue collections by directors of customs in accordance with customs requirements: *Provided*, That the taxes on distilled spirits withdrawn from customs custody without payment of tax under the provisions of subpart L and

thereafter withdrawn from bonded premises of a distilled spirits plant subject to tax shall be collected and paid under the provisions of part 19 of this chapter.

(72 Stat. 1314, 1366; 26 U.S.C. 5001, 5232)

[20 FR 3561, May 21, 1955, as amended by T.D. 6477, 25 FR 6204, July 1, 1960; T.D. 7006, 34 FR 2250, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 251.48, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 251.48a Payment of tax by electronic fund transfer.

(a) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 26 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 24 and 26 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 26 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (c) of this section, of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals from premises in the United States and importations (including products of the same tax class brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

(b) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in

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

(c) Electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tape, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service.

(d) An importer who is required by this section to make remittances by EFT shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-245, 52 FR 533, Jan. 7, 1987, as amended by T.D. ATF-459, 66 FR 38550, July 25, 2001]

EXEMPTION OF CERTAIN SAMPLES FROM INTERNAL REVENUE TAXES

§ 251.49 Commercial samples of alcoholic beverages.

Samples of distilled spirits, beer, and wine, to be used in the United States by persons importing alcoholic beverages in commercial quantities, are, subject to the limitations in this section, exempt from the payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for products of foreign countries. In no case shall this exemp-

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tion apply to more than one sample of each alcoholic beverage product admitted during any calendar quarter for the use of each such person. No sample of beer shall contain more than 8 ounces, no sample of wine shall contain more than 4 ounces, and no sample of distilled spirits shall contain more than 2 ounces.

(76 Stat. 72; 19 U.S.C. 1202)

[T.D. 6300, 23 FR 5168, July 8, 1958; T.D. ATF-2, 37 FR 22740, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart E—General Requirements

PERMIT FOR IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

§ 251.55 Federal Alcohol Administration Act permit.

Under the Federal Alcohol Administration Act and the regulations issued pursuant thereto (27 CFR part 1), any person except an agency of a State or political subdivision thereof, or any officer or employee of any such agency, intending to engage in the business of importing distilled spirits, wines or beer for nonindustrial use is required to procure a permit therefor.

(Sec. 3, 49 Stat. 978, as amended; 27 U.S.C. 203)

[20 FR 3561, May 21, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

PACKAGING AND MARKING OF DISTILLED SPIRITS

§ 251.56 Distilled spirits containers of a capacity of not more than 1 gallon.

Bottled distilled spirits imported into the United States for sale shall be bottled in liquor bottles which conform to the requirements of subpart N of this part and part 5 of this chapter. Empty bottles imported for the packaging of distilled spirits shall conform to the requirements of subpart N of this part. (For Customs requirements as to marking, see 19 CFR parts 11 and 12.)

[T.D. ATF-206, 50 FR 23955, June 7, 1985]

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§ 251.57 Containers in excess of 1 gallon.

Imported containers of distilled spirits in excess of 1 gallon are required to be marked in accordance with customs regulations (19 CFR parts 11 and 12).

[20 FR 3561, May 21, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-206, 50 FR 23955, June 7, 1985]

LABELING OF DISTILLED SPIRITS

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

Labels on imported containers of distilled spirits, and on containers of imported distilled spirits bottled in customs custody, for sale at retail, are required to be covered by a certificate of label approval ATF Form 5100.31 issued pursuant to part 5 of this chapter. Containers of imported distilled spirits bottled after taxpayment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval ATF Form 5100.31 issued pursuant to part 5 of this chapter. When distilled spirits are to be labeled under a certificate of exemption from label approval, the labels affixed to containers are required to conform to the provisions of part 19 of this chapter.

[T.D. 6954, 33 FR 6818, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 251.58, see the List of CFR Sections Affected in the Finding Aids section of this volume.

MARKING AND LABELING OF WINES AND BEER

§ 251.59 Wines.

All imported wines containing not less than 7 percent and not more than 24 percent of alcohol by volume are required to be packaged, marked, branded, and labeled in conformity with the Federal Alcohol Administration Act and regulations promulgated thereunder (27 CFR part 4), prior to their removal from customs custody. Containers of imported wine bottled or packaged after taxpayment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of ex-

emption from label approval on ATF Form 5100.31 issued pursuant to the Federal Alcohol Administration Act and regulations promulgated thereunder (27 CFR part 4). Imported containers of wine are required also to be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

[20 FR 3561, May 21, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-242, 51 FR 39526, Oct. 29, 1986; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

§ 251.60 Beer.

All imported beer is required to be released from customs custody in conformity with the Federal Alcohol Administration Act and regulations thereunder. The attention of all concerned is directed, in this connection, to the provisions of Regulations 7 (27 CFR part 7) relating to the labeling and advertising of malt beverages, issued under the Federal Alcohol Administration Act. Imported containers of beer are required to be marked and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

CLOSURES FOR CONTAINERS OF DISTILLED SPIRITS

§ 251.61 Containers of distilled spirits to bear closures.

No person shall transport, buy, possess, or sell, or transfer any imported distilled spirits in containers of 1 gallon (3.785 liters) or less, unless the immediate container thereof has a closure or other device affixed in accordance with the provisions of this part.

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

[T.D. ATF-206, 50 FR 23955, June 7, 1985]

§ 251.62 Affixing closures.

Closures or other devices on containers of imported distilled spirits having a capacity of 1 gallon (3.785 liters) or less shall be affixed so as to leave a portion of the closure or other device remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require

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that they be broken to gain access to the contents of the containers.

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

[T.D. ATF-206, 50 FR 23955, June 7, 1985]

EXEMPTIONS

§ 251.74 Exemption from requirements pertaining to marks, bottles, and labels.

The provisions of this part relating to the labeling of containers as prescribed by 27 CFR part 5 are not applicable to imported distilled spirits (a) not for sale or for any other commercial purpose whatever; (b) on which no internal revenue tax is required to be paid or determined on or before withdrawal from customs custody; (c) for use as ship stores; or (d) for personal use. Samples of distilled spirits, other than those provided for in §§ 251.49 and 251.75, imported for any purpose are not exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the labeling requirements of 27 CFR parts 4 and 7, respectively. Exemptions from the requirements that imported distilled spirits, wines, and beer be marked to indicate the country of origin are set forth in customs regulations (19 CFR part 11).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5205, 5301))

[T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 251.75 Samples of distilled spirits, wine, and beer for quality control purposes.

Samples of distilled spirits, wine, and beer in containers of a capacity of not more than 1.75 liters, imported solely for quality control purposes (laboratory testing and analysis) and not for sale or for use in the manufacture or production of any article for sale, shall be exempt from any requirements relating to marks, bottles, labels, and standards of fill. Samples imported for quality control purposes shall not be

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exempt from the payment of any internal revenue tax imposed on, or by reason of, importation.

[T.D. ATF-198, 50 FR 8557, Mar. 1, 1985, as amended by T.D. ATF-206, 50 FR 23955, June 7, 1985]

WINE AND FLAVORS CONTENT OF DISTILLED SPIRITS

§ 251.76 Approval and certification of wine and flavors content.

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

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, MD 20850, the following:

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

(2) A statement of composition listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume; and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

(c) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States, the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 251.40a as follows—

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

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

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

(4) After December 1, 1990, the date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(d) The importer shall file the certificate of effective tax rate computation with the district director of customs at the port of entry, at the time of entry summary, or, for distilled spirits to be withdrawn from customs custody under the provisions of subpart L of this part, furnish a copy to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

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

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

[T.D. ATF-297, 55 FR 18070, Apr. 30, 1990]

§ 251.77 Standard effective tax rate.

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 251.76(c), an importer may have a standard effective tax rate established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples prescribed in § 251.76(b)(1) and an 8-ounce sample of the finished product;

(2) The statement of composition prescribed in § 251.76(b)(2);

(3) A statement of composition for the finished product listing the—

(i) Name of the product;

(ii) Quantity, alcohol content (percentage of alcohol by volume), and the kind (class and type) of each eligible wine or the name of each eligible flavor used in the manufacture of the product; and

(iii) Standard effective tax rate for the product computed in accordance with § 251.40a.

(c) Where a standard effective tax rate has been previously approved for a product, an importer, in lieu of having a standard effective tax rate established, may use that rate. An importer desiring to use a previously approved standard effective tax rate shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration:

I declare under the penalties of perjury that this approval has been examined by me and, to best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like products contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the appropriate ATF officer. The importer shall file or furnish a copy of the standard effective tax rate approval in the manner prescribed in § 251.76(d). The use of a standard effective tax rate shall not relieve an importer from the payment of any tax found to be due. The appropriate ATF officer may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control Number 1512-0352)

[T.D. ATF-297, 55 FR 18070, Apr. 30, 1990; 55 FR 23635, June 11, 1990; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

Subparts F-G [Reserved]

Subpart H—Importation of Distilled Spirits In Bulk

§ 251.120 Persons authorized to receive distilled spirits imported in bulk.

Distilled spirits imported in bulk (i.e., in containers having a capacity in excess of 1 gallon (3.785 liters)) may be entered into a class 8 customs bonded warehouse for bottling, or may be withdrawn from customs custody only if entered for exportation or if withdrawn by a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk pursuant to the Federal Alcohol Administration Act (49 Stat. 985, as amended; 27 U.S.C., 206) and Regulation 3 (27 CFR part 3). The importation and disposition of distilled spirits imported in bulk shall be reported as prescribed by §§251.133 to 251.134.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, 1361, 1374, 1395 (26 U.S.C. 5114, 5207, 5301, 5555))

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

§ 251.121 Containers.

Imported distilled spirits may be bottled in either domestic or imported containers conforming to the provisions of subpart N of this part.

(72 Stat. 1374; 26 U.S.C. 5301)

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart I—Importer's Records and Reports

§§ 251.130-251.132 [Reserved]

RECORD AND REPORT OF IMPORTED LIQUORS

§ 251.133 General requirements.

Except as provided in §251.134, every importer who imports distilled spirits, wines, or beer shall keep such records and render such reports of the physical receipt and disposition of such liquors as are required to be kept by a wholesale or retail dealer, as applicable, under the provision of part 194 of this chapter. Any importer who does not take physical possession of the liquors at the time of, but is responsible for, their release from customs custody shall keep commercial records reflect-

ing such release; such records shall identify the kind and quantity of the liquors released, the name and address of the person receiving the liquors from customs custody, and the date of release, and shall be filed chronologically by release dates. Records and reports will not be required under this part with respect of liquors while in customs custody.

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

(72 Stat. 1342, 1345, 1395; 26 U.S.C. 5114, 5124, 5555)

[T.D. ATF-2, 37 FR 22743, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

§ 251.134 Proprietors of qualified premises.

Importing operations conducted by proprietors of premises qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of each such premises.

(72 Stat. 1342, 1361, 1395; 26 U.S.C. 5114, 5207, 5555)

[T.D. 6388, 24 FR 4824, June 12, 1959, as amended by T.D. 6477, 25 FR 6207, July 1, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

FILING AND RETENTION OF RECORDS AND REPORTS

§ 251.136 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The 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 officers desiring to examine the files or delay in the timely submission of documents, and are not inconsistent with Customs recordkeeping requirements (See 19 CFR part 163).

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition

shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, they may maintain either loose-leaf or book records of the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

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

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-116, 47 FR 51573, Nov. 16, 1982, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

§ 251.137 Retention.

All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part, must be retained for not less than three years, and during this period must 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 the appropriate ATF officer determines retention necessary or advisable. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

[T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

OTHER RECORDS

§ 251.138 Transfer record.

The transfer record for imported spirits prescribed in § 251.172 shall show the:

- (a) Date prepared;
- (b) Serial number of the transfer record, beginning with "1" each January 1;

(c) Name and distilled spirits plant number of the proprietor who received the spirits from customs custody;

- (d) Country of origin;
- (e) Name of foreign producer;
- (f) Kind of spirits;
- (g) Age, in years, months and days of the spirits;
- (h) Proof of the spirits;
- (i) Type and number of containers; and
- (j) Proof gallons of spirits in the shipment.

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

[T.D. ATF-198, 50 FR 8558, Mar. 1, 1985]

§ 251.139 Package gauge record.

When required in this part, a package gauge record shall be prepared to show:

- (a) The date prepared;
- (b) The related transaction record and its serial number; and
- (c) For each package:
 - (1) Package identification or serial number;
 - (2) Kind of spirits;
 - (3) Gross weight;
 - (4) Proof;
 - (5) Proof gallons;
 - (6) Name of warehouseman who received the spirits from customs custody; and
 - (7) Name of importer.

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

[T.D. ATF-198, 50 FR 8558, Mar. 1, 1985]

Subparts J-K [Reserved]

Subpart L—Transfer of Distilled Spirits From Customs Custody to Bonded Premises of Distilled Spirits Plant

§ 251.171 General provisions.

Imported distilled spirits in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax imposed on imported spirits by 26 U.S.C. 5001. Imported spirits so

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withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if of 185 degrees or more of proof, and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic distilled spirits. Imported distilled spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the applicable provisions of 27 CFR part 19. However, distilled spirits plant proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody. The person operating the bonded premises of the distilled spirits plant to which imported spirits are transferred shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody, and the importer shall thereupon be relieved of his liability for such tax.

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

[T.D. ATF-62, 44 FR 71719, Dec. 11, 1979, as amended by T.D. ATF-198, 50 FR 8558, Mar. 1, 1985]

§ 251.172 Preparation of transfer record and package gauge record.

The person importing spirits under this subpart shall prepare a transfer record according to § 251.138. A separate transfer record shall be prepared for each conveyance. If the spirits are in packages he shall prepare a package gauge record according to § 251.139 and attach it to the transfer record. The transfer record and the package gauge record shall be prepared in triplicate, and, upon release of the spirits from customs custody one copy will be given to the customs officer, one copy will be forwarded to the appropriate ATF officer, and the original will be forwarded to the consignee.

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

[T.D. ATF-198, 50 FR 8558, Mar. 1, 1985, as amended by T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

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§ 251.173 Inspection and release.

The customs officer shall not release distilled spirits under this subpart until he inspects the spirits. If it appears that losses in transit were sustained from any container, the customs officer shall gauge the spirits in such container and enter the elements of gauge on the transfer record if the spirits are in a bulk conveyance or on the package gauge record if the spirits are in packages. The customs officer shall enter on the transfer record the port of entry, carrier identification, warehouse entry number, applicable rate of duty, and serial number of any customs seals affixed to bulk conveyances. When all customs requirements are complied with, he shall release the spirits for transfer to the distilled spirits plant by dating and signing on the transfer with his title the statement: "To the best of my knowledge the information hereon is accurate and the spirits are released." The original of the transfer record with any attachments shall be retained by the consignee.

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

[T.D. ATF-198, 50 FR 8558, Mar. 1, 1985]

§ 251.174 Tank cars and tank trucks to be sealed.

Where a shipment of distilled spirits from customs custody to the distilled spirits plant is made in a tank car or tank truck, all openings affording access to the spirits shall be sealed by the customs officer with customs seals in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

[T.D. 6477, 25 FR 6208, July 1, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 251.175 Receipt by consignee.

Proprietors of distilled spirits plants who receive imported spirits under this subpart shall follow the requirements in 27 CFR part 19 for spirits received by transfer in bond. However, proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody.

[T.D. ATF-198, 50 FR 8558, Mar. 1, 1985]

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States

SOURCE: 50 FR 9200, Mar. 6, 1985, unless otherwise noted.

§ 251.181 General.

(a) The United States or any of its Government agencies may, upon filing proper customs entry, withdraw imported distilled spirits free of tax from customs custody, as authorized by 26 U.S.C. 5313 and under the provisions of this subpart. Before any distilled spirits may be withdrawn, a permit to procure the spirits shall be obtained from the appropriate ATF officer. A bond is not required for any Government agency to procure and withdraw spirits free of tax under this subpart.

(b) The provisions of subpart N of part 22 of this chapter cover the withdrawal of domestically produced tax-free spirits for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1372, as amended, 1375, as amended (26 U.S.C. 5273, 5313))

§ 251.182 Application and permit, Form 5150.33.

(a) *General.* All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) *Application.* (1) A Government agency of the United States must apply for a permit to procure and withdraw spirits free of tax on Form 5150.33. Upon approval by the appropriate ATF officer, Form 5150.33 will be returned to the agency.

(2) If a Government agency intends to withdraw spirits free of tax under this part and part 22 of this chapter, Form 5150.33 may be annotated to cover both types of withdrawals.

(3) A separate permit is not required for each port of entry. The application, Form 5150.33, may be completed to indicate the applicable ports of entry in which spirits will be withdrawn from customs custody.

(4) A Government agency may specify on its application that it desires a single permit authorizing all sub-agencies under its control to procure and withdraw spirits free of tax under this subpart and subpart N of part 22 of this chapter; or, each Government location may individually file an application for a permit, Form 5150.33.

(5) Each application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign on behalf of the head of an agency or sub-agency shall be furnished with the application.

(c) *Use of spirits.* Spirits withdrawn under this subpart may not be used for non-Government purposes.

(d) *Cancellation of permit.* All permits on Form 5150.33 and previous editions on Form 1444 remain in force until surrendered or canceled. Upon surrender or cancellation, the Government agency must obtain and destroy all photocopies of the permit furnished to port directors of Customs, and forward the original to the appropriate ATF officer for cancellation.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

[50 FR 9200, Mar. 6, 1985, as amended by T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

§ 251.183 Use of permit, Form 5150.33.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When filing an initial customs entry to withdraw spirits free of tax from a port of entry, the agency shall furnish a photocopy of its permit to the district director of customs for retention. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit shall list all locations authorized to withdraw spirits free of tax from customs custody. Any subsequent requests for customs entry from the same port shall refer to the permit number.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.184 Entry documents.

Entry documents for importation of tax-free spirits under this subpart shall

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record the serial numbers or other identifying numbers of the containers and the total quantity in proof gallons of the spirits to be entered.

[T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 251.185 Customs release.

(a) Upon receipt of appropriate customs entry and a photocopy of a permit, Form 5150.33 or previous editions on Form 1444 (5150.33), the district director of customs shall, following an inspection of the shipment, release spirits free of tax to the Government agency named on the permit, or an attachment thereto.

(b) Customs officers shall not release spirits for shipment until the shipment has been inspected for losses in transit. If it appears that a container or containers have sustained losses in transit, the customs officers shall gauge the damaged container and prepare a package gauge record for the entire shipment, according to § 251.139. A copy of the package gauge record will be retained for the customs files and the original forwarded to the consignee agency.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

Subpart N—Requirements for Liquor Bottles

AUTHORITY: Sec. 5301, 72 Stat. 1374; 26 U.S.C. 5301.

SOURCE: T.D. 6954, 33 FR 6819, May 4, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 251.201 Scope of subpart.

The provisions of this subpart shall apply only to liquor bottles having a capacity of 200 ml. or more except where expressly applied to liquor bottles of less than 200 ml. capacity.

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-34, 41 FR 46865, Oct. 26, 1976]

§ 251.202 Standards of fill.

Distilled spirits imported into the United States in containers of 1 gallon (3.785 liters) or less for sale shall be imported only in liquor bottles, including

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liquor bottles of less than 200 ml capacity, which conform to the applicable standards of fill provided in § 5.47a of this chapter. Empty liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the provisions of part 19, or subpart E of part 5 of this chapter, may be imported for packaging distilled spirits in the United States as provided in part 19 of this chapter.

[T.D. ATF-62, 44 FR 71720, Dec. 11, 1979]

§ 251.204 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be imported by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit ATF Form 5100.31 for approval prior to importation of such bottles into the United States. For empty bottles, the bottler shall obtain approval from the appropriate ATF officer on ATF Form 5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle to the front of each copy of ATF Form 5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted ATF Forms 5100.31 to import distinctive liquor bottles (filled), or, properly submitted ATF Forms 5100.31 to use distinctive liquor bottles (empty) which have been imported, shall be approved provided such bottles are found by the 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 decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved ATF Form 5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

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

[T.D. ATF-114, 47 FR 43951, Oct. 5, 1982, as amended by T.D. ATF-242, 51 FR 39526, Oct. 29, 1986; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

§ 251.205 [Reserved]

§ 251.206 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 an approved container for distilled spirits for consumption in the United States.

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

[T.D. ATF-114, 47 FR 43951, Oct. 5, 1982]

§ 251.207 Bottles to be used for display purposes.

Empty liquor bottles may be imported and furnished to liquor dealers for display purposes, provided each bottle is marked to show that it is to be used for such purpose. The importer shall keep records of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles.

[T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 251.208 Liquor bottles denied entry.

Filled liquor bottles, not conforming to the provisions of this subpart, shall be denied entry into the United States: *Provided*, That, upon letterhead appli-

cation, 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 § 251.206, which, through unintentional error, do not conform to the provisions of this subpart, if he finds that such release will not afford a jeopardy to the revenue.

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

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

§ 251.209 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 exportation for reuse. The importer shall keep records of the receipt and disposition of used liquor bottles.

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

[T.D. 6954, 33 FR 6819, May 4, 1968, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

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§ 251.221 Alternate methods or procedures.

(a) *Application*. An importer who desires to use an alternate method or procedure in lieu of a method or procedure prescribed by this part must file an application, in triplicate, with the appropriate ATF officer. Each application must:

(1) Specify the name, address, and permit number of the importer to which it relates;

(2) State the purpose for which filed; and

(3) Specifically describe the alternate method or procedure and set forth the reasons therefor.

No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) *Approval.* When an application for use of an alternate method or procedure is received, the appropriate ATF officer must determine whether 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 such officer finds that:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

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

No alternate method or procedure shall be used until approval has been received from the 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 22743, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-474, 67 FR 11232, Mar. 13, 2002]

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AUTHORITY: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

SOURCE: 25 FR 5734, June 23, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope**§ 252.1 General.**

The regulations in this part relate to exportation, lading for use on vessels and aircraft, and the transfer to a foreign-trade zone or a manufacturing bonded warehouse, class 6, of distilled spirits (including specially denatured spirits), beer, and wine, and in the case of distilled spirits and wine only, transfer to a customs bonded warehouse as provided for in 26 U.S.C. 5066 and 5362, whether without payment of tax, free of tax, or with benefit of drawback, and includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

[T.D. ATF-88, 46 FR 39814, Aug. 5, 1981]

§ 252.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

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

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

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5963, Feb. 27, 1987; T.D. ATF-372, 61 FR 20725, May 8, 1996]

§ 252.3 Related regulations.

Regulations relating to this part are listed below:

- 19 CFR Chapter I—Customs Regulations
- 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
- 27 CFR Part 4—Labeling and Advertising of Wine
- 27 CFR Part 19—Distilled Spirits Plants
- 27 CFR Part 21—Formulas for Denatured Alcohol and Rum
- 27 CFR Part 24—Wine
- 27 CFR Part 25—Beer
- 27 CFR Part 30—Gauging Manual
- 27 CFR Part 194—Liquor Dealers
- 31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety of Sureties on Penal Bonds

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986; as amended by T.D. ATF-299, 55 FR 25033, June 19, 1990]

Subpart B—Definitions**§ 252.11 Meaning of terms.**

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

enumerated which are in the same general class.

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

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

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bonded wine cellar. Premises established under part 240 of this chapter for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxed wine.

Brewer. A proprietor of a brewery.

Brewery. Premises established under part 25 of this chapter for the production of beer.

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

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or any form of package, bottle, can, tank, or pipeline used, or capable of being used, for holding, storing, transferring, or conveying liquors.

Customs bonded warehouse. A customs bonded warehouse, class 2, 3, or 8, established under the provisions of Customs Regulations (19 CFR chapter I).

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

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context.

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

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

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits.

Distilled spirits plant. An establishment qualified under the provisions of part 19 of this chapter for the production, warehousing, or processing of spirits, or for authorized combinations of such operations.

District director. A district director of internal revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration:

I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country and shall include shipments to any possession of the United States. The export character of any shipment shall be determined by the intention with which it is made, and it assumes an export character only when destined for use in a foreign country or in a possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, to the territories of the Virgin Islands, American Samoa and Guam, and to the Panama

Canal Zone shall also be treated as exportations.

Foreign-trade zone or zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

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

Liquor. Distilled spirits, wines, and/or beer.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as "ml".

Manufacturing bonded warehouse. A manufacturing bonded warehouse, class six, established under the provisions of Customs Regulations (19 CFR, chapter I).

Package. Any cask, keg, barrel, drum, or similar portable container.

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

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

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

Proprietor. The person who operates the brewery, distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, or manufacturing bonded warehouse, as the case may be, referred to in this part.

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

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

Secretary. The Secretary of the Treasury or his delegate.

Specially denatured spirits. Alcohol or rum, as defined in part 21 of this chapter, denatured pursuant to the formulas authorized in part 21 for specially denatured alcohol or rum.

Tank truck. A tank-equipped semi-trailer, trailer, or truck.

Tax. The distilled spirits tax, the beer tax, or the applicable wine tax, as the case may be, imposed by 26 U.S.C. chapter 51.

U.S.C. The United States Code.

Wine. All kinds and types of wine having not in excess of 24 percent of alcohol by volume.

Zone operator. The person to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

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

[T.D. ATF-48, 43 FR 13552, Mar. 31, 1978, as amended by T.D. ATF-51, 43 FR 24243, June 2, 1978; 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71720, Dec. 11, 1979; T.D. ATF-199, 50 FR 9201, Mar. 6, 1985; T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

§ 252.20 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application.* An exporter, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the regional director (compliance). The exporter shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

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(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond or the payment of tax.

(4) *Conditions of approval.* An exporter may not employ an alternate method or procedure until the Director has approved its use. The exporter shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements—(1) Application.* When an emergency exists, an exporter may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The exporter shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

- (i) An emergency exists;
- (ii) The variation from the requirements is necessary;
- (iii) It will afford the same security and protection to the revenue as intended by the specific regulations;
- (iv) It will not hinder the effective administration of this part; and
- (v) It is not contrary to law.

(3) *Conditions of approval.* An exporter may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the exporter fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the exporter is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency vari-

ation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

[T.D. ATF–199, 50 FR 9201, Mar. 6, 1985]

§ 252.21 General.

Liquors may be withdrawn without payment of tax for lading, and liquors on which the tax has been paid or determined may be laden with benefit of drawback of tax, subject to this part, for use on vessels and aircraft as follows:

(a) Vessels or aircraft operated by the United States;

(b) Vessels of the United States employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(d) Vessels of war of any foreign nation;

(e) Foreign vessels employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; where such trade by foreign vessels is permitted; or

(f) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States,

where trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found such foreign country allows, or will allow, substantially reciprocal privileges in respect to aircraft registered in the United States.

(46 Stat. 690, as amended; 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 6588, 27 FR 773, Jan. 26, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.22 Vessels employed in the fisheries.

Liquors may be withdrawn or laden under the provisions of paragraphs (b) and (e) of § 252.21 relating to vessels employed in the fisheries, only for use on vessels of the United States documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over if the district director of customs is satisfied by reason of the quantity requested in the light of (a) whether the vessel is employed in substantially continuous fishing activities, and (b) the vessel's complement, that none of the liquors to be withdrawn or laden are intended to be removed from the vessel in, or otherwise returned to, the United States. Such withdrawal or lading shall be conditioned upon compliance with the applicable provisions of this part. Lading of such liquors for use on such vessels shall be subject to approval by the district director of customs of a special written application by the withdrawer or the vessel's master on customs Form 5125 (in duplicate) and a statement by the withdrawer in his application or notice on the required ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, that the liquors are to be laden for use as supplies on a vessel employed in the fisheries. The original application on customs Form 5125, after approval, shall be stamped with the serial number of the ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, and the date thereof, and shall be returned by the district director of customs to the withdrawer or vessel's master for use as prescribed below. Approval of each such application shall be subject to the condition that the original shall be presented thereafter by the

withdrawer or the vessel's master to the district director of customs within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the liquors until the district director of customs is satisfied that they have been consumed on board, or landed under customs supervision, and takes up the authorization. The approval of customs Form 5125 shall be subject to the further condition that any such liquors remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the director of the port or place of arrival shall deem necessary. When such liquors have been accounted for to the satisfaction of the district director of customs, he shall execute his certificate of lading and use on both copies of the ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, and forward the original of the form to the regional director (compliance) designated thereon. In the event of a failure on the part of the withdrawer or the master of the vessel to comply with the conditions of this section or upon receipt of evidence that the liquors were not lawfully used as supplies on the vessel, the district director of customs shall advise the regional director (compliance) of all the facts in the case for determination of any liability incurred. In the case of liquors withdrawn without payment of tax, assessment of tax liability found to have been incurred shall be made against the principal on the bond. In the case of taxpaid or tax determined liquors, the regional director (compliance) shall determine as to whether to make demand upon the principal and the surety on the bond or to disallow the claim as the case may be.

NOTE: As used in this section, the word "withdrawer" shall mean the person executing the application or notice, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.23

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.22, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.23 Reciprocating foreign countries.

Assistant regional commissioners may approve applications relating to the withdrawal or lading of liquors for use on aircraft of those foreign countries which will allow, to aircraft registered in the United States and engaged in foreign trade, privileges substantially reciprocal to the privileges allowed herein to aircraft of a foreign country. Where application is made to withdraw or lade liquors for use on aircraft of other countries, which it is claimed reciprocate similar privileges to aircraft of the United States, the applicant must first establish the right of such withdrawal or lading. In appropriate cases, the applicant should request the Secretary of Commerce to find and advise the Secretary of the Treasury that such foreign country or countries allow, or will allow, substantially reciprocal privileges to aircraft of the United States.

(46 Stat. 690, as amended; 19 U.S.C. 1309)

MANUFACTURING BONDED WAREHOUSES

§ 252.25 General.

The proprietor of a duly constituted manufacturing bonded warehouse, established in accordance with law and the regulations in 19 CFR chapter I, may withdraw distilled spirits or wine from any distilled spirits plant or bonded wine cellar, as the case may be, without payment of tax, for use in the manufacture of products for export, or for shipment in bond to Puerto Rico, or for use by foreign governments, organizations, and individuals, as authorized by 26 U.S.C. 5066, 5214(a)(6) and 5362; and 19 U.S.C. 1311. The proprietor of the manufacturing bonded warehouse shall furnish bond in accordance with the provisions of § 252.63 or § 252.64.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-88, 46 FR 39814, Aug. 5, 1981]

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CUSTOMS BONDED WAREHOUSES

§ 252.26 Entry of distilled spirits into customs bonded warehouses.

(a) *Distilled spirits withdrawn without payment of tax.* (1) Bottled distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry pending withdrawal as provided in § 252.27. Withdrawals from bonded premises under the provisions of this paragraph shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(4).

(2) Distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported. These withdrawals shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(9).

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits eligible for export with benefit of drawback may, subject to this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 252.28, as if such spirits were for exportation.

(c) *Time deemed exported.* For the purpose of this part, distilled spirits entered into a customs bonded warehouse as provided in this section shall be deemed exported at the time so entered.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1381, 1382, (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371; 26 U.S.C. 7805))

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 252.27 Entry of wine into customs bonded warehouses.

Upon filing of the application or notice prescribed by § 252.122(a), wine may be withdrawn from a bonded wine cellar for transfer to any customs bonded warehouse for entry pending withdrawal as provided in § 252.28. Such

withdrawal from bonded wine cellars is governed by the provisions of subpart F of this part. Wine so transferred to customs bonded warehouses shall be entered, stored, and accounted for in such warehouses under the appropriate provisions of 19 CFR chapter I.

(Sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981]

§ 252.28 Withdrawal of wine and distilled spirits from customs bonded warehouses.

Wine and bottled distilled spirits entered into customs bonded warehouses as provided in § 252.26 (a) or (b) and § 252.27 may, under the appropriate provisions of 19 CFR chapter I, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of foreign governments, organizations, and individuals who are entitled to withdraw imported wine and distilled spirits from a warehouse free of tax. Distilled spirits and wine entered into customs bonded warehouses under the provisions of §§ 252.26(a)(2) and 252.27 may be withdrawn for exportation, subject to the provisions of 19 CFR chapter I. Distilled spirits and wine transferred to customs bonded warehouses shall be entered into, stored and accounted for in, and withdrawn from, such warehouses under the appropriate provisions of 19 CFR chapter I. Wine and bottled distilled spirits, originally transferred to customs bonded warehouses for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law, may be withdrawn from such warehouses for domestic use, in which event they shall be treated as American goods exported and returned.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981]

FOREIGN-TRADE ZONES

§ 252.30 Export status.

(a) Distilled spirits and wines manufactured, produced, bottled in bottles packed in containers, or packaged in

casks or other bulk containers in the United States, and beer brewed or produced in the United States may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors deposited in a foreign-trade zone under this part solely for such purposes are considered to be exported. Export status is not acquired until application on Form 214 for admission of the liquors into the zone has been approved by the district director of customs under the appropriate provision of 19 CFR chapter I, and the required certification of deposit has been made on the ATF form prescribed in this part.

(b) The provisions of subpart H of this part do not apply to specially denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of 19 U.S.C. 81c(c). Transfer of domestic specially denatured spirits to a qualified user in a foreign-trade zone is made free of tax under the provisions of part 20 of this chapter. Such transfer does not place the domestic specially denatured spirits in an export status.

(48 Stat. 999, as amended (19 U.S.C. 81c))

[T.D. ATF-274, 53 FR 25157, July 5, 1988]

VOLUNTARY DESTRUCTION OF LIQUORS
AFTER RECEIPT IN A FOREIGN-TRADE
ZONE

§ 252.35 General.

Liquors may not, under the law, be transferred to a foreign-trade zone for the purpose of destruction. However, liquors transported to and deposited in a foreign-trade zone for exportation or for storage pending exportation may be destroyed under the supervision of the district director of customs, where it is shown to the satisfaction of the regional director (compliance) of the region in which the zone is located that the liquors, after deposit in a zone, have become unmerchantable or unfit for export.

(48 Stat. 999, as amended; 19 U.S.C. 81c)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

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§ 252.36 Application.

Liquors deposited in a foreign-trade zone from the United States which have become unmerchantable or unfit for export may be destroyed. The exporter shall prepare a letter application, in duplicate, and submit it to the regional director (compliance) of the region in which the zone is located. The application shall identify the name and address of the exporter and contain the following information:

(a) The kind and quantity of the liquor, the serial numbers, if any, of the containers thereof, and identification of the zone in which the liquor is stored;

(b) The name and address of the producer bottler or packager of the liquor, and the name, registry number, if any, and location of the plant, warehouse or other establishment from which such liquors were withdrawn for transportation to and deposit in the foreign-trade zone;

(c) The date, form, and serial number of the ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be; and, in the case of liquors on which drawback of internal revenue tax has been allowed, the claim number assigned thereto by the regional director (compliance);

(d) Whether the liquor has become unmerchantable or unfit for export after deposit in the zone, together with all the known facts relating thereto; and

(e) Whether the unmerchantable or unfit liquor is covered by valid insurance in excess of the market value thereof, exclusive of tax. If the liquor is insured, the application shall show its market value, the amount and date of each and every policy of insurance, the name and location of the company by which each and every policy was issued, the name and address of the bona fide owner of the liquor, and to the best of the affiant's knowledge, whether any other person or party is indemnified against the loss of the liquor by reason of its spoilage or destruction.

Such application shall be signed by the exporter or his authorized agent and be executed under the penalties of perjury. The regional director (compliance) may require any further evidence

as is deemed necessary. The operator of the foreign-trade zone shall countersign the application or otherwise indicate thereon his knowledge of and concurrence in the application to destroy the liquor. The exporter shall file the application with the district director of customs in whose district the foreign-trade zone is located; at the same time the exporter shall likewise file Zone Form E in accordance with Customs Regulations (19 CFR chapter I). On receipt of the application the district director of customs shall determine the completeness thereof and shall report any facts relating to the condition of the liquor of which he may have knowledge. The original application shall be forwarded to the regional director (compliance) and the district director of customs shall retain the copy for his files.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.36, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.37 Action by regional director (compliance).

The regional director (compliance) shall carefully examine the application to see that all the required information has been furnished and shall cause an investigation to be made or require any additional evidence, including samples, to be submitted if necessary. If the regional director (compliance) finds that the liquors were transported to and deposited in a foreign-trade zone in good faith for the purpose of exportation or storage pending exportation, and that the liquors, after deposit in the zone, have become unmerchantable or unfit for export, he may approve the application and authorize the destruction of the liquor described therein under the supervision of the district director of customs. On approval or disapproval of the application, the regional director (compliance) shall advise the district director of customs of his action.

[T.D. ATF-51,43 FR 24244, June 2, 1978]

§ 252.38 Action by district director of customs.

On receipt of the regional director's (compliance) authorization for destruction of the liquor, or his disapproval of the application for destruction, the district director of customs shall act upon the exporter's application on Zone Form E and dispose of it in accordance with the applicable provisions of Customs Regulations (19 CFR chapter I). Where the regional director (compliance) has authorized the destruction of the liquor, such destruction shall be accomplished under customs supervision.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EVIDENCE OF EXPORTATION AND USE

§ 252.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

- (a) A copy of the export bill of lading (§ 252.250); or
- (b) A copy of the railway express receipt (§ 252.251); or
- (c) A copy of the air express receipt (§ 252.252); or
- (d) A copy of the through bill of lading where exportation is to a contiguous foreign country (§ 252.250); or
- (e) A certificate by the export carrier, as provided for in § 252.253.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

§ 252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.268.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859; 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

§ 252.42 Evidence of deposit.

The deposit of distilled spirits in a customs bonded warehouse or distilled spirits and wines in a foreign-trade zone with benefit of drawback may be evidenced by a copy of the transportation bill of lading obtained under the provisions of § 252.250.

(48 Stat. 999, as amended, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5066)

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

- (1) Customs certification of lading and clearance on Form 1582-B or Form 1689 under subpart M of this part; or
- (2) For shipment to the armed forces, certification by a military officer on Form 1582-B or Form 1689 under § 252.275; or
- (3) A bill of lading (§ 252.250), a railway express receipt (§ 252.251), or an air express or air freight bill of lading (§ 252.252), when such bills of lading or receipt show exportation to a foreign country or possession; or
- (4) A certificate issued by an export carrier under § 252.253 attesting to exportation to a foreign country or possession; or
- (5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or
- (6) Any other evidence of exportation approved by the regional director (compliance).

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

- (1) For fishing vessels only, customs certification of lading and use on Form 1582-B or Form 1689 under § 252.23; or
- (2) Customs certification of lading on Form 1582-B or Form 1689 under §§ 252.264 or 252.282; or

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(3) Any other evidence of exportation approved by the regional director (compliance).

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

RETENTION OF RECORDS

§ 252.45 Retention of records.

File copies of forms required by this part to be retained by any proprietor or claimant, and all records, documents, or copies of records and documents supporting such forms, shall be preserved by such proprietor or claimant for a period of not less than two years, and during such period shall be available, during business hours, for inspection and the taking of abstracts therefrom by ATF officers.

(Approved by the Office of Management and Budget under control number 1512-0385)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1381, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5114, 5367, 5415, 5555); sec. 807, Pub. L. 96-39, 93 Stat. 283 (26 U.S.C. 5207))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

PENALTIES OF PERJURY

§ 252.48 Execution under penalties of perjury.

When a return, form, or other document called for under this part is required by this part or in the instructions on or with the return, form, or other document to be executed under penalties of perjury, it shall be so executed, as defined in subpart B of this part, and shall be signed by the proprietor, or other duly authorized person.

(68A Stat. 749 (26 U.S.C. 6065))

Subpart D—Bonds and Consents of Surety

§ 252.51 General.

Every person required by this part to file a bond or consent of surety shall prepare and execute it on the prescribed form and file it with the re-

gional director (compliance) of the region in which is located the premises from which the withdrawal or removal of spirits or wines is made without payment of tax, or, in the case of taxpaid or tax-determined spirits or wines on which claim for drawback of tax will be filed, with the regional director (compliance) for the region in which the claim will be filed, in accordance with the procedures of this part. The procedures in parts 19, 25 or 240 of this chapter shall govern bonds covering distilled spirits plants, bonded wine cellars and breweries, respectively.

[T.D. ATF-62, 44 FR 71721, Dec. 11, 1979, as amended by T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

§ 252.52 Corporate surety.

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

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

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

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981]

§ 252.52a Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond, may, when he deems it necessary, require additional evidence of the authority of the agent

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or officer to execute the bond or consent.

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

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.52b Execution of powers of attorney.

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

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

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.53 Deposit of securities in lieu of corporate surety.

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

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

§ 252.54 Consents of surety.

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

§ 252.55 Authority to approve bonds and consents of surety.

Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 252.56 Disapproval of bonds or consents of surety.

The regional director (compliance) may disapprove any bond prescribed by this part, or any consent of surety submitted in respect thereto, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously

convicted, in a court of competent jurisdiction, of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such offense shall have been compromised with the person on payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(72 Stat. 1336, 1352, 1353, 1394; 26 U.S.C. 5062, 5175, 5177, 5551)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979]

§ 252.57 Appeal to Director.

Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal from such disapproval to the Director, who will hear such appeal. The decision of the Director shall be final.

(72 Stat. 1394; 26 U.S.C. 5551)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.58 Operations or unit bond—distilled spirits.

(a) *Spirits*. Where spirits are withdrawn without payment of tax, as authorized in §252.91, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the operations or unit bond, given by the proprietor and approved under the provisions of part 19 of this chapter, shall cover such withdrawals.

(b) *Wine*. Where, under the provisions of part 19 of this chapter, an operations or unit bond has been given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond shall cover the withdrawal of wine without payment of tax, as authorized in §252.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

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(c) *Specially denatured spirits.* Where specially denatured spirits are withdrawn free of tax, as authorized in §252.151, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the proprietor shall file a consent of surety extending the terms of the operations or unit bond, which consent shall be in the following form:

The obligors agree to extend the terms of said bond to cover all liability that may be incurred on all specially denatured spirits withdrawn by the principal for exportation or transfer to a foreign-trade zone, for which satisfactory evidence of exportation, or of deposit in a foreign-trade zone, as required by law and regulations, is not submitted to the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended (26 U.S.C. 5175, 5214); Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); Sec. 805, Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF-62, 44 FR 71721, Dec. 11, 1979]

§ 252.59 Bond, Form 700.

Where the operations of a bonded wine cellar are covered by bond, Form 700, as provided in part 24 of this chapter, such bond shall cover the withdrawal of wine without payment of tax, as authorized in §252.121, from such bonded wine cellar by the proprietor of the bonded wine cellar.

(72 Stat. 1379, 1380; 26 U.S.C. 5354, 5362, as amended by T.D. ATF-299, 55 FR 25033, June 19, 1990)

§ 252.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in §252.141, the brewer's bond, Form 5130.22, furnished under the provisions of part 25 of this chapter will cover the removals.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986]

§ 252.61 Bond, Form 2734 (5100.25).

If a specific lot of distilled spirits or wine is to be withdrawn without payment of tax, as authorized in §252.91(a)(1), (2), (3), (5), or §252.121(a), (b), (c), or (d), by a person other than

the proprietor of the bonded premises, a specific bond on ATF Form 2734 (5100.25) shall be filed by the exporter with the regional director (compliance), as provided in §252.51. The penal sum of the bond shall not be less than the tax prescribed by law on the quantity of spirits or wine to be withdrawn. However, the maximum penal sum of the bond shall not exceed \$200,000 but in no case shall the penal sum be less than \$1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1981]

§ 252.62 Bond, Form 2735 (5100.30).

(a) *Requirement for bond.* If a person other than the proprietor of the bonded premises withdraws distilled spirits or wine without payment of tax, as authorized by §252.91(a)(1), (2), (3), (5), or §252.121(a), (b), (c), or (d), the exporter shall file a continuing bond, ATF Form 2735 (5100.30), with the regional director (compliance), as provided in §252.51.

(b) *Penal sum of bond.* The penal sum of the bond shall be sufficient to cover the tax on the maximum quantity of distilled spirits and wine that may remain unaccounted for at any one time. However, the maximum penal sum of the bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000. Distilled spirits and wine withdrawn for exportation, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to and deposit in a foreign-trade zone, shall remain unaccounted for until the evidence of exportation, use, deposit, transfer, or loss in transit has been filed with the regional director (compliance).

(c) *Apportioning bonds.* If the bond, Form 2735 (5100.30), is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The exporter may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, ATF Form 1533 (5000.18), for approval by the Director of Industry Operations (DIO).

(d) *Withdrawal of wine for transfer to a customs bonded warehouse; consent of surety.* An exporter with a bond on Form 2735 (5100.30) executed before April 1, 1981, shall obtain a consent of surety on Form 1533 (5000.18) before withdrawing wine without payment of tax from a bonded wine cellar for transfer to a customs bonded warehouse. The consent shall be executed in accordance with § 252.54 and filed in accordance with instructions on the form. Exporters with bonds executed on or after April 1, 1981, do not need this consent of surety, because such bonds automatically apply to withdrawals for transfer to customs bonded warehouses.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF-88, 46 FR 39815, Aug. 5, 1991, as amended by T.D. ATF-413, 64 FR 46845, Aug. 27, 1999]

§ 252.63 Bond, Form 2736.

Where the proprietor of a manufacturing bonded warehouse desires to withdraw a specific lot of distilled spirits or wines without payment of tax, as authorized in § 252.25, he shall file with the regional director (compliance), as provided in § 252.51, a specific bond, on Form 2736, to cover the transportation of the distilled spirits or wines from the bonded premises from which withdrawn to the manufacturing bonded warehouse. The penal sum of such bond shall be not less than the tax prescribed by law on the quantity of distilled spirits or wines to be withdrawn: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979]

§ 252.64 Bond, Form 2737.

(a) *General.* Where the proprietor of a manufacturing bonded warehouse desires to withdraw distilled spirits and wines from time to time without pay-

ment of tax, as authorized in § 252.25, he shall file with the regional director (compliance), as provided in § 252.51, a continuing bond on Form 2737. The bond shall be executed in a penal sum sufficient to cover the tax at the rates prescribed by law on the maximum quantity of distilled spirits and wines which may remain unaccounted for at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000. Distilled spirits and wines withdrawn for transfer to a manufacturing bonded warehouse shall remain unaccounted for until the evidence of deposit in such warehouse, as required by this part, has been filed with the regional director (compliance). The proprietor shall, at the time of executing Form 2737, designate the premises from which the withdrawals are to be made, provided that, as to any one bond on Form 2737, such premises shall be located in the same internal revenue region.

(b) *Apportioning bonds.* If the bond, Form 2737 is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The principal may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, Form 1533, for approval by the regional regulatory administrator.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979]

§ 252.65 Bond, Form 2738.

Whenever, under the provisions of this part, the claimant desires drawback of tax on distilled spirits or wines to be exported, laden for use on vessels or aircraft, or transferred to and deposited in a foreign-trade zone, or, in the case of distilled spirits, transferred to a customs bonded warehouse, as authorized in §§ 252.171 and 252.211, prior to the receipt by the regional regulatory administrator of the certified copy of ATF Form 5110.30, or 1582-A, as the case may be, as prescribed by this part, he shall file bond on Form 2738 with the regional regulatory administrator

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as provided in § 252.51. The penal sum of the bond shall be sufficient to cover the amount of drawback which will at any time constitute a charge against the bond:

Provided, That the maximum penal sum shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000; *Provided further*, That where the claimant desires to remove distilled spirits to a customs bonded warehouse as provided in § 252.171(d) and the terms of his bond on Form 2738, then in force, do not cover such removals, he shall either file a consent of surety on Form 1533 to extend the terms of such bond to cover such removals or file a new bond on Form 2738.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71721, Dec. 11, 1979; T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 252.66 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(72 Stat. 1352, 1394; 26 U.S.C. 5175, 5551)

§ 252.67 New or superseding bonds.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the regional director (compliance), be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the con-

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sent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 252.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. If the principal does not file a new or superseding bond when required, he shall discontinue the operations intended to be covered by such bond forthwith. New or superseding bonds shall show the current date of execution and the effective date.

(72 Stat. 1336, 1362; 26 U.S.C. 5062, 5214)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

TERMINATION OF BONDS

§ 252.70 Termination of bonds, Forms 2734 and 2736.

Bonds, Forms 2734 and 2736, covering a specific lot of distilled spirits or wines withdrawn without payment of tax under this part, will be canceled by the regional director (compliance) on receipt by him of ATF Form 5100.11 properly executed by the appropriate customs official or armed services officer, as required by this part, evidencing that the distilled spirits or wines have been duly exported, laden for use on vessels or aircraft, deposited in a foreign-trade zone, or deposited in a manufacturing bonded warehouse, as the case may be, or of evidence satisfactory to him that the distilled spirits or wines have been otherwise lawfully disposed of or accounted for: *Provided*, That all liability under the bond to be canceled has been terminated.

(72 Stat. 1352; 26 U.S.C. 5175)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 252.71 Termination of bonds, Forms 2735, 2737, and 2738.

Continuing bonds, Forms 2735 and 2737, covering distilled spirits and/or wines withdrawn from time to time without payment of tax under this part

and Form 2738 covering allowance of claims for drawback on distilled spirits and/or wines removed as authorized in §§ 252.171 and 252.211, may be terminated as to liability for future withdrawals or claims (a) pursuant to application of surety as provided in § 252.72, (b) on approval of a superseding bond, or (c) on written notification to the regional director (compliance) by the principal of his discontinuance of withdrawals or claims, as the case may be, under the bond. When no further withdrawals are to be made under a bond on Form 2735 or 2737, or no further claims for drawback are to be filed under bond Form 2738, the bond shall be canceled by the regional director (compliance) in the manner and subject to the conditions provided in § 252.70.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979; T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 252.72 Application of surety for relief from bond.

A surety on any bond given on Forms 2735, 2737, or 2738, may at any time in writing notify the principal and the regional director (compliance) in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety

shall be relieved from liability to the extent set forth in § 252.73(b).

(68A Stat. 749, as amended (26 U.S.C. 6065); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended (26 U.S.C. 5062, 5175))

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 252.73 Relief of surety from bond.

(a) *Bonds, Forms 2734 and 2736.* The surety on a bond given on Form 2734 or Form 2736 shall be relieved from his liability under the bond when the bond has been canceled as provided for in § 252.70.

(b) *Bonds, Forms 2735, 2737, and 2738.* Where the surety on a bond given on Form 2735, Form 2737, or on Form 2738 has filed application for relief from liability, as provided in § 252.72, the surety shall be relieved from liability for withdrawals or claims, as the case may be, made wholly subsequent to the date specified in the notice, or on the effective date of a superseding bond, if one is given. Notwithstanding such relief, the liability of the surety shall continue until the spirits and/or wines withdrawn without payment of tax or included in a claim for drawback of tax allowed under the bond have been properly accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 252.74 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 252.53, shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the regional director (compliance) until liability under the bond for

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which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as he deems necessary.

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

CHARGES AND CREDITS

§ 252.80 Charges and credits on bonds.

The withdrawal of liquors without payment of tax or of specially denatured spirits free of tax, under the provisions of this part shall constitute a charge against the bond under which the withdrawal is made of (a) the tax on the liquors withdrawn or (b) of an amount equal to the tax on specially denatured spirits withdrawn that will be due in the event of failure to account for the specially denatured spirits as provided in this part. The tax on liquors so withdrawn, or an amount equal to the tax on specially denatured spirits so withdrawn that would be due as set forth above, shall, on the required accounting for such liquors or specially denatured spirits, constitute a credit to the bond of such tax or amount equal to the tax, as the case may be. Provisions regarding charges and credits on drawback bonds are contained in subpart P of this part.

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

§ 252.91 General.

(a) Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to this part, be withdrawn from the bonded premises of a distilled spirits plant without payment of tax for:

- (1) Exportation;
- (2) Use on the vessels or aircraft described in § 252.21;

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(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;

(4) Transportation to and deposit in a manufacturing bonded warehouse; or

(5) Transfer to and deposit in a customs bonded warehouse as provided for in § 252.26.

(b) All withdrawals shall be made under the applicable bond prescribed in subpart D of this part.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–51, 43 FR 24244, June 2, 1978, as amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.92 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone or a customs bonded warehouse.* Application for or notice of the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a customs bonded warehouse or a foreign-trade zone, shall be made by the exporter on ATF Form 5100.11. If the exporter is not the proprietor of the bonded premises of the distilled spirits plant from which the spirits are to be withdrawn, the exporter shall prepare ATF Form 5100.11 as an application, in accordance with the instructions on the form, and shall forward all copies of the form to the regional director (compliance) of the region in which the distilled spirits plant is located. If the exporter is the proprietor of the bonded premises of the distilled spirits plant from which the spirits are withdrawn, the exporter shall prepare ATF Form 5100.11 as a notice in accordance with the instructions on the form.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing bonded warehouse shall be made by the proprietor of such

warehouse on ATF Form 5100.11, in accordance with the instructions on the form.

(Approved by the Office of Management and Budget under control number 152-0190)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 252.93 Carrier to be designated.

The name of the carrier or carriers to be used in transporting the distilled spirits from the bonded premises of the distilled spirits plant to the port of export, or to the customs bonded warehouse, or to the manufacturing bonded warehouse, or to the foreign-trade zone, as the case may be, shall be shown in the application. If the spirits are shipped on a through bill of lading and all carriers handling the spirits while in transit are not known, the name of the carrier to whom the distilled spirits are to be delivered at the shipping premises shall be shown.

(72 Stat. 1362, 84 Stat. 1965; 26 U.S.C. 5214, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 252.94 Containers.

Distilled spirits authorized to be withdrawn without payment of tax from the bonded premises of a distilled spirits plant under the provisions of this subpart may be withdrawn from such establishment in such containers as may be authorized in part 19 of this chapter. Except as otherwise provided in this part, the gauging, packing, bottling, casing, marking, closing and reporting of distilled spirits prior to withdrawal shall be in accordance with the provisions of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979; as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 252.95 Change of packages for exportation.

Whenever the exporter desires to transfer distilled spirits from packages filled in internal revenue bond to such other suitable packages as may be desired for exportation, such change of packages shall be made under the procedures of part 19 of this chapter, prior to the preparation of ATF Form 5100.11 covering the removal of the distilled spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979]

§ 252.96 Approval of application.

When filed as an application, and ATF Form 5100.11 has been properly executed, and the required bond has been filed in a sufficient amount, the regional director (compliance) shall approve the application on all copies of the form and send them to the proprietor of the bonded premises from which the spirits will be withdrawn.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-62, 44 FR 71722, Dec. 11, 1979, as amended by T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 252.97 [Reserved]

§ 252.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to ATF Form 5100.11 and shall regauge all packages, except those which are to be withdrawn on the filling or production gauge as authorized in 27 CFR part 19. If the withdrawal is to be made subject to regauge, the proprietor shall prepare a package gauge record as provided in 27 CFR part 19, enter the total proof gallons regauged on ATF Form 5100.11, and attach a copy of the package gauge record to each copy of ATF Form 5100.11. If a proprietor wishes to reduce the proof of spirits contained in packages to be withdrawn pursuant to ATF Form 5100.11, he shall make such proof

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reduction incident to regauge of the packages.

(Approved by the Office of Management and Budget under control number 1412-0190 and 1512-0250)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF-198, 50 FR 8559, Mar. 1, 1985]

§ 252.100 [Reserved]

§ 252.101 Packages to be stamped.

Each package and authorized bulk conveyance of spirits (including tank cars and tank trucks but not pipelines) withdrawn without payment of tax under the provisions of this subpart shall be marked with the word "EXPORT" in accordance with the provisions of 27 CFR part 19 prior to its removal from the bonded premises.

(Approved by the Office of Management and Budget under control number 1512-0189)

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

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985; as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 252.102 Bottles to have closures affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a closure or other device affixed in accordance with the provisions of part 19 of this chapter.

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

[T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 252.103 Export marks.

(a) *General.* In addition to the marks and brands required to be placed on packages and cases of distilled spirits at the time they are filled under the provisions of part 19 of this chapter, the proprietor shall mark the word "Export" on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart.

(b) *Exception.* When containers are being removed to a contiguous manufacturing bonded warehouse, the proprietor need not place the word "Ex-

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port" on the containers if the regional director (compliance) finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-82, 46 FR 21158, Apr. 9, 1981]

§ 252.104 Certificates of origin.

The entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits. An ATF officer may, on request of the applicant, furnish a certificate showing the origin and age of the spirits described on ATF Forms 5100.11 or 5110.30. The issuing officer may require supporting documentation to be provided by the applicant. Certificates of origin and age shall be furnished on Form 2177. Form 2177 may also be issued for distilled spirits removed to a foreign-trade zone, in which case the number and location of the foreign-trade zone shall be shown on the form in lieu of the name of the foreign country.

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

§ 252.105 Report of inspection and tax liability.

When the spirits are ready for shipment, the proprietor shall execute his report of inspection and tax liability on all copies of ATF Form 5100.11.

(72 Stat. 1362; 26 U.S.C. 5214)

[T.D. ATF-46, 42 FR 44773, Sept. 6, 1977, as amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979]

§ 252.106 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits withdrawn without payment of tax under this subpart shall be made under the provisions of subpart M.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.107 Disposition of forms.

ATF Form 5100.11 and any accompanying package gauge record shall be

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distributed by the proprietor in accordance with the instruction on ATF Form 5100.11.

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

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

LOSSES

§ 252.110 Losses.

Where there has been a loss of distilled spirits while in transit from the bonded premises of a distilled spirits plant to a port of export, a customs bonded warehouse, a manufacturing bonded warehouse, a vessel or aircraft, or a foreign-trade zone, the provisions of subpart O of this part, with respect to losses of spirits after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

RETURN OF SPIRITS TO BONDED PREMISES

§ 252.115 General.

Spirits which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for deposit in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or for use on vessels and aircraft may, subject to the requirements of § 252.116, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises from which withdrawn, pending subsequent removal for lawful purposes. However, such spirits may only be returned before they are exported, deposited in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or laden as supplies upon or

used on vessels or aircraft, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365 as amended (26 U.S.C. 5214, 5223); Sec. 3, Pub. L. 91-659, 84 Stat. 1365, as amended (26 U.S.C. 5066))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

§ 252.116 Notice of return of spirits withdrawn without payment of tax.

If a proprietor of a distilled spirits plant desires to return spirits to his plant as provided in § 252.115, he shall file a notice with the regional director (compliance) for the region in which the plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.117. The notice shall be executed under the penalties of perjury and shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits.

(c) Name, address, and plant number of the distilled spirits plant from which the spirits were withdrawn.

(d) Name and address of the principal on the bond under which the spirits were withdrawn.

(e) Serial number of the ATF Form 5100.11 and the date withdrawn.

(f) Present location of spirits to be returned.

(g) Kind of spirits to be returned.

(h) Number, kind, and serial numbers of the containers to be returned. In case of bottled spirits, the number and size of the bottles in each case.

(i) Total quantity in proof gallons of spirits to be returned.

(j) Reason for return of spirits.

(k) Disposition to be made of returned spirits, i.e., redistillation or return to bonded storage.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979]

§ 252.117 Responsibility for return of spirits.

The principal on the bond under which the spirits were withdrawn without payment of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice required by § 252.116 to the appropriate customs official. If the spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the spirits are eligible for return under § 252.115, accept the notice as authority for the return of the spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 "Canceled", note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional director (compliance) identified on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71723, Dec. 11, 1979]

§ 252.118 Receipt of spirits.

The receipt, gauge, and disposition of the distilled spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart U of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71723, Dec. 11, 1979]

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone or to a Customs Bonded Warehouse, or Transportation to a Manufacturing Bonded Warehouse

§ 252.121 General.

Wine may, subject to this part, be withdrawn from a bonded wine cellar, without payment of tax, for:

- (a) Exportation;
- (b) Use on the vessels and aircraft described in § 252.21;
- (c) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;
- (d) Transfer to and deposit in a customs bonded warehouse as provided in § 252.27; or
- (e) Transportation to and deposit in a manufacturing bonded warehouse.

All such withdrawals shall be made under the applicable bond prescribed in subpart D.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1380; 19 U.S.C. 1309, 81c, 26 U.S.C. 5362, 7805; (sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371)))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71723, Dec. 11, 1979; T.D. ATF-88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982]

§ 252.122 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, transfer to a customs bonded warehouse, and transfer to a foreign-trade zone.* The exporter shall, where he is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, make application on ATF Form 5100.11 to the regional director (compliance) of the region in which the bonded wine cellar is located, for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar

from which the wine is to be withdrawn, he shall, at the time of withdrawal of the wine, prepare a notice of the withdrawal and shipment on ATF Form 5100.11. Prior approval by the regional director (compliance) is not required when the withdrawal is by the proprietor of the bonded wine cellar.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of wine without payment of tax for transportation to and deposit in a manufacturing bonded warehouse, shall be made by the proprietor of such warehouse on ATF Form 5100.11. The proprietor shall forward all copies of the application to the regional director (compliance) of the region in which is located the bonded wine cellar from which the wine is to be withdrawn, for approval prior to withdrawal of the wine.

(c) *Action by regional director (compliance).* Where, under the provisions of paragraphs (a) and (b) of this section, an ATF Form 5100.11 is submitted to the regional director (compliance) for approval, the regional director (compliance) shall, if satisfied that the application is in order and that the applicant has on file a good and sufficient bond, approve the application and forward it to the proprietor of the premises from which the wines are to be withdrawn.

(d) *Restriction on shipment.* Where, under the provisions of paragraphs (a) and (b) of this section, prior approval of ATF Form 5100.11 by the regional director (compliance) is required, the proprietor of the bonded wine cellar may not ship the wine until the approved ATF Forms 5100.11 have been received by him. In such cases, the proprietor of the bonded wine cellar shall, on removal of the wines, execute his certificate of removal on ATF Form 5100.11.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.122, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.123 Export marks.

(a) *General.* In addition to the marks and brands required to be placed on packages or cases of wine at the time they are filled under the provisions of part 24 of this chapter, the proprietor shall mark the word "Export" on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart, including withdrawals under 26 U.S.C. 5362(c)(4).

(b) *Exception.* When containers are being removed to a contiguous manufacturing bonded warehouse, the proprietor need not place the word "Export" on the containers if the regional director (compliance) finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362, 7805))

[T.D. ATF-82, 46 FR 21158, Apr. 9, 1981, as amended by T.D. ATF-88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982; T.D. ATF-299, 55 FR 25033, June 19, 1990]

§ 252.124 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines withdrawn without payment of tax under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.125 Disposition of forms.

On removal of the wines from the premises of the bonded wine cellar, the proprietor shall forward one copy of ATF Form 5100.11 to the regional director (compliance), retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.122, shall be forwarded to the airline company at the airport.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

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§ 252.126 Proprietor's report.

The records of the proprietor of the bonded wine cellar shall reflect the quantity of wine removed without payment of tax under this subpart, and he shall report the quantity of wine so removed on ATF F 5120.17.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-299, 55 FR 25033, June 19, 1990]

§ 252.127 Losses.

Where there has been a loss of wine while in transit from a bonded wine cellar to a port of export, a foreign-trade zone, a vessel or aircraft, a customs bonded warehouse, or a manufacturing bonded warehouse, the provisions of subpart O of this part, with respect to losses of wine after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382, (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

RETURN OF WINES TO BONDED WINE CELLAR

§ 252.130 General.

On application of the proprietor of a bonded wine cellar, wine which has been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for use on vessels and aircraft, or for deposit in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, may for good cause be returned to the bonded wine cellar from which withdrawn, for storage pending subsequent removal for lawful purposes. However, such wine must be returned before being exported, laden as supplies or used aboard vessels or aircraft, or deposited in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, as the case may be.

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

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§ 252.131 Application for return of wines withdrawn without payment of tax.

Where a proprietor of a bonded wine cellar desires to return wines to his bonded wine cellar as provided in § 252.130, he shall submit a written application, in duplicate, to the regional director (compliance) for the region in which his premises are located, for approval of the return of the wines. The application shall show.

(a) Name, address, and registry number of the bonded wine cellar.

(b) Name and address of the principal on the bond under which the wines were withdrawn.

(c) Serial number of the ATF Form 5100.11 and the date withdrawn.

(d) Present location of wines to be returned.

(e) Kind of wines to be returned.

(f) Number, kind, and serial numbers of the containers to be returned. In the case of bottled wines, the number and size of the bottles in each case.

(g) Total quantity in wine gallons for each separate tax class of wines to be returned.

(h) Reason for return of the wines.

The application shall be executed under the penalties of perjury. On approval of the application the regional director (compliance) shall return both copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

§ 252.132 Responsibility for return of wine.

The principal on the bond under which the wines were withdrawn without payment of tax shall be responsible for arranging the return of the wines to the bonded wine cellar from which they were withdrawn. In case of emergency, the principal on the bond may arrange the return of wines to bonded premises without an approved application, but such wines shall be kept separate at the bonded premises and shall not be recorded in the records and reports of

the proprietor until an approved application for such return has been obtained as provided in §252.131. Such principal or his agent shall present to the appropriate customs official the two copies of the approved application authorizing the return unless the wines are returned before the ATF Form 5100.11 has been filed with the customs official. The customs officer shall, if he finds that the wines are eligible for return under §252.130, accept the approved application as authority for the return of the wines to the bonded wine cellar noted on the application and shall mark each copy of ATF Form 5100.11 "Canceled", note the date thereon, affix a copy of the approved application to each of the canceled ATF Forms 5100.11, return both ATF Forms 5100.11 to the principal, and, where the wines are in his custody, release them for return. The canceled ATF Forms 5100.11, with attachments, shall be delivered by such principal or his agent to the proprietor of the bonded wine cellar. When wines have been returned before the ATF Forms 5100.11 were filed with customs officials, the two copies of the approved application shall be submitted, by the principal or his agent, to the proprietor of the bonded wine cellar who shall cancel and date each copy of ATF Form 5100.11 and affix copies of the approved application thereto.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

§ 252.133 Disposition of forms.

On receipt of the wines at the bonded wine cellar, the proprietor shall endorse, on each copy of the approved application to return the wines, the date received, the total amount in wine gallons of each tax class of wine returned, and affix his signature. He shall forward the original ATF Form 5100.11, with attached application, to the regional director (compliance) of the region in which his premises are located, and retain the remaining copy for his files. The storage, disposition, and records pertaining to such returned wines shall be in accordance with the

applicable provisions of part 240 of this chapter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

SOURCE: T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, unless otherwise noted.

§ 252.141 General.

(a) *Beer*. Beer may, subject to this part, be removed from the brewery without payment of tax for:

- (1) Export to a foreign country;
- (2) Use as supplies on the vessels and aircraft described in §252.21; or
- (3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate*. Concentrate, produced from beer under the provisions of subpart R of part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

- (1) Export to a foreign country; or
- (2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond*. All removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in §252.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.142 Notice, Form 1689.

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 for each withdrawal. The brewer shall execute Form 1689 in

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quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked "Consignee's Copy."

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.143 Containers.

(a) *Beer*. Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate*. Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.144 Export marks.

(a) *General Requirement*. In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of part 25 of this chapter, the brewer shall mark the word "Export" on each container or case of beer, or the words "Beer concentrate for export" on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions*. A brewer need not apply the mark "Export" on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

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§ 252.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of subpart M of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the regional director (compliance), retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy," provided for in § 252.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to the brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 252.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 returned by the district director of customs, "Canceled—Returned to Brewery," and

forward one copy to the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

§ 252.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any reporting period will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512-0052)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. ATF-345, 58 FR 40358, July 28, 1993]

§ 252.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of subpart O of this part, with respect to losses are applicable.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 252.150 Charges and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

[T.D. ATF-224, 51 FR 7698, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986]

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone

§ 252.151 General.

Specially denatured spirits may, under this part, be withdrawn from the bonded premises of a distilled spirits plant, free of tax, for:

(a) Exportation; or

(b) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such withdrawals shall be made under a consent of surety on the proprietor's operations or unit bond, as prescribed in § 252.58(c).

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

§ 252.152 Notice, ATF Form 5100.11.

Notice of withdrawal of specially denatured spirits, as authorized in § 252.151 shall be made on ATF Form 5100.11 by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn. Upon removal of the denatured spirits from the bonded premises, a copy of the form shall be submitted to the regional director (compliance).

[T.D. ATF-198, 50 FR 8560, Mar. 1, 1985]

§ 252.153 Withdrawal procedure.

The provisions of §§ 252.93, 252.94, 252.98, 252.105, and 252.117 in respect of method of conveyance, authorized containers, gauging, inspection, approval and shipment, report of removal, and disposition of forms shall be applicable to specially denatured spirits to be withdrawn under the provisions of this subpart.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[T.D. ATF-46, 42 FR 44774, Sept. 6, 1977]

§ 252.154 Export marks.

In addition to the marks and brands required to be placed on packages and cases at the time they are filled under

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the provisions of part 19 of this chapter, the proprietor shall mark the word "Export" on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart.

(Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981]

§ 252.155 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of specially denatured spirits withdrawn free of tax under this subpart shall be made under the provisions of subpart M of this part.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.156 Losses.

Where there has been a loss of specially denatured spirits while in transit from the bonded premises of a distilled spirits plant to a port of export or a foreign-trade zone, the exporter shall file claim for allowance of the loss in accordance with the provisions of subpart O of this part.

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES

§ 252.160 General.

Specially denatured spirits, which have been lawfully withdrawn free of tax under the provisions of this part for exportation, or for deposit in a foreign-trade zone, may, subject to the requirements of § 252.161, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises of any distilled spirits plant pending subsequent lawful withdrawal free of tax. However, such specially denatured spirits may only be returned before they are exported, or deposited in a foreign-trade zone. If the specially denatured spirits are to be returned to bonded premises for storage without redistillation, the proprietor shall also execute a consent of surety Form 1533 to extend the terms of his operations or unit

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bond to cover the return and storage of such specially denatured spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985]

§ 252.161 Notice of return of specially denatured spirits.

If a proprietor of a distilled spirits plant desires to return specially denatured spirits to his plant as provided in § 252.160, he shall file a notice with the regional director (compliance) for the region in which his plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.162. The notice shall be executed under the penalties of perjury and shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the specially denatured spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant from which the specially denatured spirits were withdrawn.

(c) Serial number of the ATF Form 5100.11 and the date withdrawn.

(d) Present location of specially denatured spirits to be returned.

(e) Description of the specially denatured spirits—kind, serial numbers of containers, and quantity in wine gallons.

(f) Reason for return of the specially denatured spirits.

(g) Disposition to be made of specially denatured spirits, i.e. redistillation or return to processing on the bonded premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71724, Dec. 11, 1979; T.D. ATF-198, 50 FR 8561, Mar. 1, 1985]

§ 252.162 Responsibility for return of specially denatured spirits.

The principal on the bond under which the specially denatured spirits were withdrawn free of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice

required by §252.161 to the appropriate customs official. If the specially denatured spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the specially denatured spirits are eligible for return under §252.160, accept the notice as authority for the return of the specially denatured spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 "Canceled", note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional director (compliance) identified on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

§ 252.163 Receipt of specially denatured spirits.

The receipt, gauge, and disposition of the specially denatured spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart U of part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF-62, 44 FR 71724, Dec. 11, 1979]

Subpart I—Exportation of Distilled Spirits With Benefit of Drawback

§ 252.171 General.

Distilled spirits manufactured, produced, bottled in bottles, packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which have been marked under the provisions of 27 CFR part 19 and of this part, as applicable, especially for export with benefit of drawback may be:

- (a) Exported;
- (b) Laden for use on the vessels or aircraft described in §252.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation; or

(d) Transferred to and deposited in a customs bonded warehouse as provided for in §252.26(b).

On receipt by the regional director (compliance) of required evidence of exportation, lading for use, or transfer, there shall be allowed to the bottler (or packager) of the spirits, drawback equal in amount to the tax found to have been paid or determined on the spirits.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[25 FR 5734, June 23, 1960, as amended by T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §252.171, see the List of CFR Sections Affected in the Finding Aids section of this volume.

FILING OF NOTICE AND REMOVAL

§ 252.190 Notice, ATF Form 5110.30.

Notice of shipment of distilled spirits for export, for use as supplies on vessels or aircraft, for deposit in a foreign-trade zone, or for deposit in a customs bonded warehouse, shall be prepared by the exporter on ATF Form 5110.30, in accordance with the instructions on the form.

(48 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985]

§ 252.191 [Reserved]

§ 252.192 Packages of distilled spirits to be gauged.

Except for spirits which may be tax determined on the basis of the original gauge, spirits in packages which are to be removed for export with benefit of drawback, shall be gauged by the distilled spirits plant proprietor prior to preparation of notice on ATF Form 5110.30. When spirits in packages are gauged, a package gauge record shall be prepared by the proprietor, as provided in 27 CFR part 19, and a copy of

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the package gauge record shall be attached to each copy of ATF Form 5110.30 and considered a part of the claim.

(Approved by the Office of Management and Budget under control number 1512-0250 and 1512-0199)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985]

§ 252.193 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of part 19 of this chapter, the exporter shall mark the word "Export" on the Government side of each case or Government head of each container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone or a customs bonded warehouse.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981]

§§ 252.194-252.195 [Reserved]

§ 252.195a Claims on spirits tax determined before January 1, 1980.

The bottler or packager of the spirits shall compute the drawback rate, unless the regional director (compliance) established a standard drawback rate before January 1, 1980. The bottler or packager shall complete parts II and III on both copies of ATF Form 5110.30. If a standard drawback rate was established, the date of approval of the formula and the number shall be shown in any available space in part II of ATF Form 5110.30. The bottler or packager shall file one copy as the claim for drawback of tax with the regional director (compliance) of the region in which the claimant's premises are located, and retain one copy on file. Each

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claim on ATF Form 5110.30 shall be supported by applicable records and supporting documents are required by the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512-0250 and 1512-0199)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985]

§ 252.195b Claims on spirits tax determined on and after January 1, 1980.

(a) *Preparation.* Claims for drawback of tax on spirits tax determined on and after January 1, 1980, and withdrawn for any purpose authorized by § 252.171, shall be prepared in duplicate by the bottler or packager on parts II and III of ATF Form 5110.30.

(b) *Supporting documents.* Each claim shall be supported by an invoice, bill of lading or other document which identifies the date of tax determination, unless the bill of lading required by § 252.250 identifies this date. Additional supporting documents are required if the claim covers distilled spirits products on which the claimed drawback rate exceeds the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States (e.g., a product containing alcoholic flavoring materials on which drawback has been claimed by the manufacturer of the material under 26 U.S.C. 5131-5134). For each such product, the additional supporting documents shall consist of a copy of each related dump and batch record, package gauge record as prescribed in 27 CFR part 19, and/or bottling and packaging record. The regional director (compliance) may also require these or other supporting documents for any distilled spirits product.

(c) *Filing.* One copy of the claim, with supporting documents, if required, shall be filed with the regional director

(compliance). The bottler or packager shall retain the other copy on file.

(Approved by the Office of Management and Budget under control number 1512-0198)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF-212, 50 FR 34123, Aug. 23, 1985]

§ 252.196 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits removed under this subpart for export, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to a foreign-trade zone, shall be in accordance with the applicable provisions of subpart M of this part.

(72 Stat. 1336, 84 Stat. 1965; 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.197 Return of spirits withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.198, spirits on which the tax has been paid or determined, and which were withdrawn especially for export with benefit of drawback as provided in § 252.171, but which spirits have not been laden for export, laden for use, or deposited in a customs bonded warehouse or foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 19:

(a) To the bonded premises of the distilled spirits plant for purposes authorized under 26 U.S.C.; or

(b) To a wholesale liquor dealer; or

(c) To a taxpaid storeroom.

The export marks on spirits returned under this section shall be removed by obliteration, relabeling or recasing.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF-206, 50 FR 23956, June 7, 1985]

§ 252.198 Notice of return.

If an exporter desires to return spirits to a distilled spirits plant, wholesale liquor dealer or taxpaid storeroom,

as provided in § 252.197, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.199. The notice shall show the:

(a) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits;

(b) Date and serial number of the ATF Form 5110.30 on which the spirits were withdrawn;

(c) Present location of the spirits to be returned;

(d) Number, size and identification of the containers;

(e) Proof of spirits;

(f) Reason for the return; and

(g) Planned disposition of the returned spirits.

(Approved by the Office of Management and Budget under control number 1512-0206)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985]

§ 252.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of the spirits under this subpart to the proprietor or wholesale liquor dealer who will receive them. The exporter or his agent shall submit the original and copies of the notice required by § 252.198 to the appropriate customs official. If the spirits are returned before ATF Form 5110.30 has been filed with the customs official, the exporter shall submit Form 5110.30 with the notice. The customs officer shall, if the spirits are eligible for return under § 252.197, accept the notice as authority for the return of the spirits to the premises identified in the notice. The customs official shall acknowledge receipt on the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy of the notice and file the original of the notice with the regional

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director (compliance) identified thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985]

Subpart J [Reserved]

Subpart K—Exportation of Wine With Benefit of Drawback

§ 252.211 General.

Wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are filled on premises qualified under this chapter to package or bottle wines, may, subject to this part, be:

(a) Exported;

(b) Laden for use on the vessels or aircraft described in § 252.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

On receipt by the regional director (compliance) of required evidence of exportation, lading for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid or determined on the wines.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-51, 43 FR 24245, June 2, 1978]

§ 252.212 Persons authorized.

Persons who have qualified under this chapter as proprietors of distilled spirits plants, bonded wine cellars, or taxpaid wine bottling houses, and persons who are wholesale liquor dealers as defined in section 5112, I.R.C., and have paid the required tax as a wholesale liquor dealer, are authorized to remove wines under the provisions of this subpart.

(72 Stat. 1336; 26 U.S.C. 5062)

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§ 252.213 [Reserved]

§ 252.214 Notice and claim, Form 1582-A.

Claim for allowance of drawback of internal revenue taxes on wines removed under the provisions of § 252.211 and § 252.212, shall be prepared by the exporter on Form 1582-A, in quadruplicate: *Provided*, That where the withdrawal is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. Each Form 1582-A shall be given, by the exporter, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(46 Stat. 690, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 26 U.S.C. 5062)

§ 252.215 Certificate of tax determination, Form 2605.

Every claim for drawback of tax on Form 1582-A shall be supported by a certificate, Form 2605, which shall be executed, in duplicate, (a) by the person who withdrew the wine from bond on tax determination, certifying that all taxes have been properly determined on such wine, or (b) where the wine was bottled or packaged after tax determination, by the person who did such bottling or packaging, certifying that the wines so bottled or packaged were received in taxpaid status and specifying from whom they were so received. The regional director (compliance) may require other evidence of tax payment whenever he deems it necessary. It shall be the responsibility of the exporter to secure Form 2605, properly executed, and to submit the original of such form to the regional director (compliance) with whom the claim, Form 1582-A, is filed. The exporter shall retain the copy of Form 2605 for his files.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.216 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of parts 24 of this chapter, the exporter shall mark the word "Export" on the Government side of each case or Government head of each

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container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF-299, 55 FR 25034, June 19, 1990; T.D. ATF-372, 61 FR 20725, May 8, 1996]

§ 252.217 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.218 Disposition of Forms 1582-A.

On removal of the wines from the premises, the exporter shall forward one copy of Form 1582-A to the regional director (compliance), retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.214, shall be forwarded to the airline company at the airport.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.219 Return of wine withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.220, wine on which the tax has been paid or determined, and which was withdrawn especially for export with benefit of drawback as provided in § 252.211, but which wine has not been laden for export, laden for use, or deposited in a foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 24:

- (a) To a taxpaid storeroom at a bonded wine cellar; or
- (b) To a wholesale liquor dealer.

The export marks on wines returned under this section shall be removed from the containers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985, as amended by T.D. ATF-344, 58 FR 40355, July 28, 1993]

§ 252.220 Notice of return.

If an exporter desires to return wine to a bonded wine cellar or wholesale liquor dealer as provided in § 252.219, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.220a. The notice shall show the:

- (a) Name, address, and registration number of the bonded wine cellar from which withdrawn;
- (b) Date and serial number of the Form 1582-A on which the wine was withdrawn;
- (c) Present location of the wine to be returned;
- (d) Number, size and identification of the containers;
- (e) Total wine gallons for each tax class of wine; and
- (f) Reason for the return.

(Approved by the Office of Management and Budget under control number 1512-0292)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 252.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of wine under this subpart to the proprietor or wholesale liquor dealer receiving the wine. The exporter or his agent shall submit the original and copies of the notice required by § 252.220 to the appropriate customs official. If the wine is returned before Form 1582-A has been filed with the customs official, the exporter shall submit ATF Form 1582-A with the notice. The customs officer shall, if the wine is eligible for return under § 252.219, accept the notice as authority

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for the return of the wine to the premises identified in the notice. The customs officer shall acknowledge receipt of the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy and file the original of the notice with the regional director (compliance) identified thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985]

Subpart L—Exportation of Beer With Benefit of Drawback

§ 252.221 General.

Beer brewed or produced in the United States and on which the internal revenue tax has been paid may, subject to this part, be:

- (a) Exported;
- (b) Delivered for use as supplies on the vessels and aircraft described in § 252.21; or
- (c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

Claim for drawback of taxes found to have been paid may be filed only by the producing brewer or his duly authorized agent. On receipt by the regional director (compliance) of required evidence of such exportation, delivery for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid on such beer.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.222 Claim, Form 1582-B.

Claim for allowance of drawback of internal revenue taxes on beer brewed or produced in the United States shall be prepared on Form 1582-B, in quadruplicate, as required by this part. Each Form 1582-B shall be given, by the person initiating the form, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(72 Stat. 1335; 26 U.S.C. 5055)

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§ 252.223 Export marks.

In addition to the marks and brands required to be placed on kegs, barrels, cases, crates or other packages under the provisions of part 25 of this chapter, the exporter shall mark the word "Export" on each container or case before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5055))

[T.D. ATF-82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF-224, 51 FR 7700, Mar. 5, 1986]

EXECUTION OF CLAIMS

§ 252.225 Removals of beer by brewer.

Where a brewer removes taxpaid beer from the brewery or from its place of storage elsewhere for exportation, for lading for use as supplies on vessels or aircraft, or for deposit in a foreign-trade zone, he shall execute the notice and claim on Form 1582-B. On removal of the beer for shipment the brewer shall file one copy of Form 1582-B with the regional director (compliance) of his region, retain one copy for his files, and immediately forward the original and one copy of the form:

- (a) In case of shipments for export or for use as supplies on vessels or aircraft, to the district director of customs at the port of export; or
- (b) In the case of shipments to the armed services of the United States for export, to the commanding or supply officer to whom the shipment is consigned; or
- (c) In the case of shipments to a foreign-trade zone, to the customs officer in charge of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.226 Removals of beer by agent on behalf of brewer.

Where proper power of attorney authorizing an agent to execute a claim

on behalf of the brewer has been filed with the regional director (compliance), such agent may, for any of the purposes authorized in § 252.221, remove taxpaid beer from the brewery where produced or from its place of storage elsewhere, and execute the notice and claim on Form 1582-B on behalf of the brewer. On removal of the beer, such agent shall dispose of Form 1582-B in accordance with the applicable procedure set forth in § 252.225.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.227 Removals of beer by persons other than the brewer or agent of the brewer.

Where there is a removal of taxpaid beer by a person other than the brewer or the agent of the brewer for any of the purposes authorized in § 252.221, such person shall execute the notice, only, on Form 1582-B. Where the removal consists of the products of more than one brewer, separate Forms 1582-B shall be prepared for the products of each brewer. On removal of the beer for shipment such person shall forward two copies of Form 1582-B to the producing brewer, and immediately forward the original and one copy of the form as prescribed in § 252.225(a), (b), or (c), as the case may be. On receipt of the two copies of Form 1582-B from the exporter, the brewer shall, if he wishes to claim drawback on the beer covered thereby, execute the claim for drawback on both copies of the form, file one copy of the claim with the regional director (compliance) of his region, and retain the remaining copy for his files.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

CONSIGNMENT, SHIPMENT, AND DELIVERY

§ 252.230 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of taxpaid beer removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1335; 26 U.S.C. 5055)

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

§ 252.241 Shipment for export, or for use on vessels.

All liquors and specially denatured spirits intended for export or liquors intended for use as supplies on vessels shall be consigned to the district director of customs at the port of exportation, or port of lading for supplies on vessels, except that when the shipment is for export to a contiguous foreign territory it shall be consigned to the foreign consignee at destination in care of the district director of customs at the port of export.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.242 Shipment for use on aircraft.

(a) *Distilled spirits and wine.* All distilled spirits and wines intended for use on aircraft shall be consigned to the airline at the airport from which the aircraft will depart in international travel, in care of the district director of customs. On receipt of the distilled spirits or wines they shall be stored at the airport under customs custody until laden on aircraft.

(b) *Beer.* Beer intended for use on aircraft shall be consigned to the district director of customs at the port of lading.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1969, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.243 Shipment to armed services.

On removal of distilled spirits, wines, or beer for export to the armed services of the United States, the shipment shall be consigned to the commanding officer or supply officer at the supply base or other place of delivery.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

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§ 252.244 Shipment to manufacturing bonded warehouse.

Distilled spirits and wines withdrawn for shipment to a manufacturing bonded warehouse shall be consigned to the proprietor of such warehouse in care of the customs officer in charge of the warehouse.

(72 Stat. 1362, 1380; 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71725, Dec. 11, 1979]

§ 252.244a Shipment to a customs bonded warehouse.

Distilled spirits and wine withdrawn for shipment to a customs bonded warehouse shall be consigned in care of the customs officer in charge of the warehouse.

(Sec. 3, Pub. L. 91-659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

§ 252.245 Shipment to foreign-trade zone.

Where distilled spirits (including specially denatured spirits), wines, or beer, are transferred to a foreign-trade zone for exportation or for storage pending exportation, the shipment shall be consigned to the Zone Operator in care of the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 81c, 26 U.S.C. 5214, 5362)

§ 252.246 Delivery for shipment.

The proprietor or exporter may deliver the shipment directly to the consignees designated in §§ 252.241 through 252.245, or he may deliver it to a carrier for transportation and delivery to such consignees, or, when the exportation is to a contiguous foreign country, to the foreign consignee.

(72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1599, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.247 Change in consignee.

Where a change of consignee is desired after the liquors (including specially denatured spirits) have been removed from the shipping premises, the

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exporter shall notify the appropriate officer to whom the shipment is required by §§ 252.241-252.245 to be consigned or in whose care it is required to be shipped, and forward a copy of such notification to the appropriate regional director (compliance). Such notice shall identify the withdrawal or claim form, as the case may be, covering the shipment.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

BILLS OF LADING

§ 252.250 Bills of lading required.

A copy of the export bill of lading covering transportation from the port of export to the foreign destination, or a copy of the through bill of lading to the foreign destination, if so shipped, covering the acceptance of the shipment by a carrier for such transportation, shall be obtained and filed by the claimant or exporter with the regional director (compliance) with whom the application, notice, or notice and claim is filed. Where the shipment consists of distilled spirits for deposit in a customs bonded warehouse, or distilled spirits or wines, for deposit in a foreign-trade zone, with benefit of drawback, and the principal has filed bond, Form 2738, a copy of the transportation bill of lading covering the shipment shall be obtained and filed by the claimant or exporter with the regional director (compliance) with whom the notice and claim is filed: *Provided*, That such transportation bill of lading will not be required when delivery is made directly to the foreign-trade zone or the customs bonded warehouse by the shipper. Bills of lading shall be signed by the carrier or by an agent of the carrier and shall contain the following minimum information:

(a) As to spirits specially denatured spirits, and wines:

(1) The name of the exporter (if different from the shipper),

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading),

(3) The number of packages or cases,

(4) The serial number of the ATF Form 5100.11, 5110.30, or 1582-A, as the case may be, and

(5) The total quantity in wine gallons or liters.

(b) As to beer:

(1) The name of the shipper,

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading), and

(3) The number and size of containers.

Where a copy of an export bill of lading or a copy of the through bill of lading is required and is not obtainable, a certificate given by an agent of such carrier, as prescribed in § 252.253, may be procured and transmitted by the claimant or exporter to the regional director (compliance) with whom the application, notice, or notice and claim is filed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380, (26 U.S.C. 5053, 5055, 5062, 5214, 5362); sec. 3(a), Pub. L. 91-659, 84 Stat. 1965 (26 U.S.C. 5066))

[T.D. 7002, 34 FR 1599, Feb. 1, 1969, as amended by 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.250, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.251 Railway express receipts.

Where the exportation is to a contiguous foreign country and the shipment is by railway express, a receipt issued by the railway express agency may be accepted in lieu of an export bill of lading if the receipt furnishes all of the information required in an export bill of lading.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.252 Air express or freight bills of lading.

Where the exportation is made by air express or air freight, a bill of lading issued by the conveying airline is considered for the purpose of this part to be an export bill of lading if it otherwise conforms to the requirements of § 252.250.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.253 Certificate by export carrier.

A certificate, executed under the penalties of perjury, by an agent or rep-

resentative of the export carrier, showing actual exportation of the liquors (including specially denatured spirits) may be furnished by an exporter as evidence of exportation. The certificate shall contain a description of the shipment, including the serial number of the withdrawal form, or the claim and entry form, as the case may be, the name of the exporter, the name of the consignee, the date received, the place where received by such carrier, and the name of the carrier from which received.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

Subpart N—Proceedings at Ports of Export

§ 252.261 Notice to district director of customs.

On arrival at the port of exportation, of distilled spirits (including specially denatured spirits), wines, or beer, withdrawn or shipped for exportation or for use on vessels or aircraft, the exporter or his agent shall immediately notify the director of the port. At the same time, or prior thereto, the exporter or his agent shall file with the director two copies of the application, claim, or notice, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, covering the shipment: *Provided*, That where the shipment is for direct exportation, such forms shall be filed at least six hours prior to lading.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.261, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.262 Delay in lading at port.

If, on arrival of a shipment withdrawn for export without payment of tax or free of tax, the exporting vessel is not prepared to receive the shipment, the district director of customs may permit such shipment to remain in possession of a carrier for a period

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not exceeding 30 days. Storage elsewhere for a like cause, and not exceeding the same period, may be approved by the district director of customs. In the event of further delay, the facts shall be reported to the regional director (compliance) of the region from which the shipment was made, who shall issue appropriate instructions concerning the disposition of the shipment.

(72 Stat. 1334, 1362, 1380; 26 U.S.C. 5053, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.263 [Reserved]

§ 252.264 Lading for exportation.

On receipt of the notification required in § 252.261, the district director of customs shall deliver both copies of the application, claim, or notice, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, covering the shipment, together with any forms which may be attached thereto, to a customs officer for inspection and supervision of lading. Such shipment shall be subject to the same requirements for inspection and supervision of lading at the port of exportation as may be required by Customs Regulations (19 CFR chapter I) in the case of similar shipments of imported merchandise to be exported in customs bond. When an inspection of the shipment is made before it is laden on board the exporting carrier and such inspection discloses any discrepancy, the customs officer shall make note of the nature and extent of the discrepancy on each copy of the application, claim, or notice, ATF Form 5110.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, and where the discrepancy involves one or more packages of distilled spirits or wine, he shall prepare customs Form 6001 in accordance with the instructions in § 252.291, and attach the original and copy of customs Form 6001 to the original and copy of the appropriate transaction

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form. The forms shall be disposed of according to the instructions thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended, 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5053, 5055, 5062, 5214, 5362))

[T.D. ATF-198, 50 FR 8562, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.264, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.265 Evidence of fraud.

If the customs inspection discloses evidence of fraud, the customs officer shall detain the merchandise and notify the district director of customs who shall report the facts forthwith to the regional director (compliance) within whose region the port of export is located. The regional director (compliance) shall make investigation and take such action as the facts may warrant. Where the detained merchandise has been withdrawn for transfer and deposit in a manufacturing bonded warehouse, the merchandise shall be deemed not to have been deposited in said warehouse, and the designated officer shall hold in abeyance the processing of ATF Form 5100.11 until advised by the district director of customs that the detained merchandise may be entered for deposit. Where the detained merchandise has been withdrawn or entered for deposit in a foreign-trade zone or a customs bonded warehouse, it shall be deemed not to have been deposited in the zone or the warehouse and the customs officer shall hold in abeyance the processing of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, and Zone Form D, until advised by the district director of customs that the detained merchandise may be entered for deposit.

(48 Stat. 999, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5053, 5055, 5062, 5214, 5362, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71725, Dec. 11, 1979]

§ 252.266 Release of detained merchandise.

When any merchandise has been detained under the provisions of § 252.265, the district director of customs shall not release such merchandise until he is advised so to do by the regional director (compliance).

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may, subject to approval of the district director of customs, be entered for exportation at an interior customs port. Subject to such approval, the inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of U.S. Customs regulations (19 CFR chapter I). On completion of the lading, the seals shall be affixed and the customs officer shall execute the certificate of lading on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582-A, 1582-B or 1689, as the case may be, and forward them, with attachments (if any), to the district director of customs at the interior port of entry. The district director of customs shall forward both copies of the form, with attachments (if any), to the customs officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the district director of customs at the interior port of entry.

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985]

§ 252.268 Receipt for liquors for use on vessels or aircraft.

Where liquors are withdrawn or removed for use on vessels or aircraft,

the exporter shall procure and forward to the regional director (compliance) with whom the application, notice, or notice and claim is filed, a receipt executed under the penalties of perjury by the master or other authorized officer of the vessel, steamship company, or airline, as the case may be. The receipt shall give the number of containers, the serial numbers of the containers (if any), and the quantity received, and shall show that the liquors are in customs custody and have been or will be laden on board the vessel or aircraft, that they will be lawfully used on board the vessel or aircraft, and that no portion of the shipment has been or will be unladen in the United States or any of its territories or possessions. A receipt is not required, in the case of any shipment for use on vessels, when the liquors are laden on vessels of war, or, in cases other than supplies for vessels employed in the fisheries, where the amount of the tax on the liquors does not exceed \$200. In the case of supplies for vessels employed in the fisheries, compliance with the provisions of § 252.22 is also required.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1600, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.269 Certification by district director of customs.

(a) *Exportation.* When the district director of customs is satisfied that merchandise described on the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, has been laden and cleared for export, he shall execute his certificate of lading and clearance on both copies of the form.

(b) *Distilled spirits and wines as supplies on vessels and aircraft.* When the district director of customs is satisfied that the distilled spirits and wines described on ATF Form 5100.11, 5110.30, or 1582-A, as the case may be, have been duly laden for use on vessels and aircraft, and that proper accounting for such spirits or wines has been submitted to him as required by this part, he shall execute his certificate of lading for use on both copies of the form.

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(c) *Disposition of forms.* After executing his certificate, the district director of customs shall forward the original of ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be, with attachments (if any), to the regional director (compliance) designated on the form, and retain the remaining copy, with any attached forms, for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.269, see the List of CFR Sections Affected in the Finding Aids section of this volume.

RECEIPT BY ARMED SERVICES

§ 252.275 Receipt by armed services.

When liquors which have been withdrawn or removed for export to the armed services of the United States are received at the supply base or other designated place of delivery, the officer to whom consigned, or other authorized supply officer, at the supply base or other place of delivery shall enter the quantity of liquors received on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be. After signing the form, he shall forward the original with attachments, if any, to the regional director (compliance) designated on the form, and retain the other copy for his records.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

LADING FOR USE ON AIRCRAFT

§ 252.280 Distilled spirits and wines.

When an airline desires to withdraw distilled spirits or wines from its stock being held at the airport under customs custody, for use on a particular aircraft, a requisition in triplicate shall be prepared for presentation to the customs officer. The requisition shall show the flight number, the registry number of the aircraft on which

the distilled spirits or wines are to be laden, the country for which the aircraft is to be cleared, the date of departure of the aircraft, and the brand, kind, and quantity of distilled spirits or wines. Where the distilled spirits or wines are contained in kits which have been previously prepared while under customs custody, the kit number shall also be shown on the requisition. Where the kits are not prepared and the distilled spirits or wines are withdrawn for direct lading on aircraft, the requisition shall be serially numbered in lieu of the insertion of the kit number. When the distilled spirits or wines are withdrawn and laden aboard the aircraft, the lading shall be verified by the customs officer by an appropriate stamp or notation on the requisition. One copy of the requisition shall be retained by the customs officer who certifies to the lading for attachment to the outgoing manifest. The other two copies shall be delivered to the airline which shall retain both copies until the return of the flight. In case any of the distilled spirits or wines are removed from the aircraft on its return, they shall be returned to customs custody, appropriate notation made on both copies of the requisition retained by the airline and one copy shall be delivered to the customs officer for attachment to the incoming manifest. The remaining copy shall be retained by the airline.

(Approved by the Office of Management and Budget under control number 1512-0384)

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

§ 252.281 Certificate of use for distilled spirits and wines.

When all of the distilled spirits or wines represented by a single application, notice, or claim, ATF Form 5100.11, 5110.30, or 1582-A, as the case may be, have been withdrawn from customs custody and laden and used on aircraft, the airline shall prepare a certificate of use on which are itemized all the requisitions pertaining to such distilled spirits or wines. The certificate shall be executed under the penalties of perjury by an officer of the

airline and shall show the name of the exporter, the entry number, the brand and kind of distilled spirits or wines, and the number of bottles to be accounted for; and, as to each requisition, the requisition (or kit) number, the date laden, the registry number of the aircraft, the country for which the aircraft was cleared, and the number of bottles used. When completed, the certificate shall be presented to the customs officer at the airport who shall then execute his certificate on both copies of the appropriate application, notice, or claim, ATF Form 5100.11, 5110.30, or 1582-A, as the case may be, noting thereon any exception, such as shortages or breakage. The customs officer shall then attach the certificate of use to the copy of the appropriate form and forward both copies of the form to the district director of customs.

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.281, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.282 Beer.

When beer has been laden on board the aircraft for use as supplies, the customs officer shall execute his certificate on both copies of the Form 1582-B or Form 1689, as the case may be, forward the original to the regional director (compliance) designated on the form, and retain the copy for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055)

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

§ 252.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines, the related ATF Form 5100.11 (with any attachments), such inspection as is necessary will be made to establish that the shipment corresponds with its description on ATF Form 5100.11 (and any attachments) and customs Form 6001 will be prepared according to § 252.291. Any discrepancy

disclosed by the inspection and gauge will be noted on each copy of ATF Form 5100.11. When the shipment corresponds with the description of ATF Form 5100.11 (and any attachments), the certificate of deposit will be executed on both copies of ATF Form 5100.11 and the original of ATF Form 5100.11 (and any attachments) and the original of his customs Form 6001 will be forwarded to the regional director (compliance). The remaining copies shall be kept on file.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985]

RECEIPT IN CUSTOMS BONDED WAREHOUSE

§ 252.286 Receipt in customs bonded warehouse.

On receipt of the distilled spirits or wine and the related ATF Form 5100.11 or 5110.30 as the case may be, the customs officer in charge of the customs bonded warehouse shall make such inspection as is necessary to establish to his satisfaction that the shipment corresponds with the description thereof on the appropriate form. The customs officer shall note on each copy of the Form 5100.11 or 5110.30, as the case may be, any deficiency in quantity or discrepancy between the merchandise inspected and that described on the form. Where the inspection discloses no loss, or where a loss is disclosed and there is no evidence to indicate fraud, the officer shall execute his certificate of deposit on both copies of the form, forward the original to the regional regulatory administrator, and retain the remaining copy for his files.

(Sec. 3(a), Pub. L. 91-659, 84 Stat. 1965 (26 U.S.C. 5066); sec. 2, Pub. L. 96-601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

RECEIPT IN FOREIGN-TRADE ZONE

§ 252.290 Receipt in foreign trade zone.

On receipt at the zone, the shipment shall be inspected by the customs officer in charge of the zone who shall determine if the shipment agrees with

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the description thereof on the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be. If the customs officer regauges spirits or wine in the course of his inspection, he shall prepare customs Form 6001 according to § 252.291. The customs officer shall note on both copies of the ATF Form 5100.11, 5110.30, 1582-A, 1582-B, or 1689, as the case may be any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the form. Where the inspection or gauge discloses no loss, or where a loss is disclosed by such inspection or gauge and there is no evidence to indicate fraud, the officer shall execute his certificate on both copies of the form covering the deposit, and forward to the regional director (compliance):

(a) Original of the deposit from (with any attachments); and

(b) Original of the officer's customs Form 6001, if any. The remaining copy of the deposit form (with any attachments), and the copy of any customs Form 6001, shall be retained by the customs officer for his files.

(48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5062, 5214, 5362))

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985]

CUSTOMS GAUGE

§ 252.291 Customs Form 6001.

When spirits or wines are gauged as required in §§ 252.264, 252.285, or 252.290, the customs officer shall prepare in duplicate customs Form 6001 to show:

(a) Date;

(b) Name of exporter;

(c) Serial number and designation of the related transaction form;

(d) Kind of liquor (show whether alcohol, whiskey, brandy, rum, gin, vodka, wine, etc.);

(e) Name and registry number of producer;

(f) If gauged under § 252.264, the location of the port;

(g) If gauged under § 252.285, the location and number of the manufacturing bonded warehouse;

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(h) If gauged under 252.290, the location and number of the foreign-trade zone;

(i) Kind and serial numbers or lot identification numbers of containers; and

(j) For each container:

(1) Proof of spirits, or percent of alcohol by volume in wine;

(2) Proof gallons, if spirits;

(3) Wine gallons, if wine; and

(4) Variation from the last gauge (proof, percent of alcohol by volume or wine gallons).

[T.D. ATF-198, 50 FR 8563, Mar. 1, 1985]

ALTERNATE PROCEDURES

§ 252.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 252.43. Brewers and exporters shall prepare Forms 1582-B or 1689, as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

[LT.D.ATF-224, 51 FR 7700, Mar. 5, 1986]

Subpart O—Losses

DISTILLED SPIRITS

§ 252.301 Loss of distilled spirits in transit.

The tax on distilled spirits withdrawn without payment of tax under this part and which are lost during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, (b) the manufacturing bonded warehouse, (c) the vessel or aircraft, (d) the foreign-trade zone, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the regional director (compliance) establishes that such distilled spirits have not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignee, consignee, bailee, or carrier or the employees or agents of any of

them: *Provided*, That such remission in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.302 Notice to exporter.

If, on examination of the ATF Form 5100.11 (and attached gauge reports, if any) received from the officer required to certify the same under the provisions of subpart N of this part, the regional director (compliance) is of the opinion that the distilled spirits reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;
- (d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5008 (a) and (f), and (2) claim for remission of the tax on the spirits so lost; and
- (e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which distilled spirits are lost during transportation, as described in § 252.301, whether by theft or otherwise, the regional director (compliance) may require the exporter to file a claim for relief in accordance with § 252.303. When circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the regional director (compliance). Where such proof and claim are not filed within the 30-day period, or such extensions as the regional director (compliance) may grant, the tax on the distilled spirits diverted or lost will be assessed, or li-

ability asserted against the bond covering the shipment, as the case may be. (Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

§ 252.303 Filing of claims.

Claims, for remission of tax on the distilled spirits under § 252.301, shall be filed on Form 2635, in duplicate, with the regional director (compliance), and shall set forth the following:

- (a) Name, address, and capacity of the claimant;
- (b) Identification (including serial numbers, if any) and location of the container or containers from which the spirits were lost;
- (c) Quantity of spirits lost from each container, and the total quantity of spirits covered by the claim;
- (d) Total amount of tax for which the claim is filed;
- (e) The date, penal sum, and form number of the bond under which withdrawal and shipment were made;
- (f) Name, number, and address of the distilled spirits plant from which withdrawn without payment of tax;
- (g) Date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;
- (j) In the case of a loss by theft, whether the claimant is indemnified or recompensed in respect of the tax on the spirits lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

The claim shall be executed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal

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knowledge of the loss. The regional director (compliance) may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1323; 26 U.S.C. 6065, 5008)

§ 252.304 Action on claim.

The regional director (compliance) will allow or disallow claims filed under § 252.303 in accordance with existing law and regulations. If the regional director (compliance) finds that there has been a diversion or theft of the distilled spirits as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them, the tax on the distilled spirits diverted or lost by theft will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(68A Stat. 867, 72 Stat. 1323; 26 U.S.C. 7302, 5008)

SPECIALLY DENATURED SPIRITS

§ 252.310 Loss of specially denatured spirits in transit.

Losses of specially denatured spirits withdrawn free of tax under this part during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, or (b) the foreign-trade zone, as the case may be, may be allowed if evidence satisfactory to the regional director (compliance) establishes that such specially denatured spirits have not been unlawfully diverted, or lost by theft as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The giving of notice to the exporter, filing claims for allowance of loss, and action on the claims shall be, insofar as applicable, in accordance with the procedure prescribed in §§ 252.302 through 252.304.

WINE

§ 252.315 Loss of wine in transit.

The tax on wine withdrawn without payment of tax under this part and which is lost during transportation

from the bonded wine cellar from which withdrawn to (a) the port of export, (b) the vessel or aircraft, (c) the foreign-trade zone, (d) the manufacturing bonded warehouse, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the regional director (compliance) establishes that such wine has not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them. However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981]

§ 252.316 Notice to exporter.

If, on examination of the ATF Form 5100.11 received from the officer required to certify the same under the provisions of subpart N, the regional director (compliance) is of the opinion that wine reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;
- (d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5370, and (2) claim for remission of the tax on the wine so lost; and
- (e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which wines are lost during transportation, as described in § 252.315, whether by theft or otherwise, the regional director (compliance) may require the exporter to file a claim for relief in accordance with § 252.317. Where circumstances may warrant, extensions of additional time for submission of the proof and claim may be

granted by the regional director (compliance). Where such proof and claim are not filed within the 30-day period, or such extensions as the regional director (compliance) may grant, the tax on the wine diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

§ 252.317 Filing of claims.

Claims, for remission of tax on the wine under § 252.315, shall be filed on Form 2635, in duplicate, with the regional director (compliance), and shall set forth the following:

- (a) The name, address, and capacity of the claimant;
- (b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;
- (c) The date, penal sum, and form number of the bond under which withdrawal and shipment was made;
- (d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;
- (e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;
- (f) The total amount of tax for which the claim is filed;
- (g) The date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and
- (j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax.

The claim shall be signed by the exporter or his authorized agent under

the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The regional director (compliance) may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

§ 252.318 Action on claim.

Action on claims filed under § 252.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 252.304.

(72 Stat. 1381; 26 U.S.C. 5370)

BEER AND BEER CONCENTRATE

§ 252.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the regional director (compliance) of Form 1689 from the officer required to certify it under the provisions of subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the regional director (compliance) will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the regional director (compliance) will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the regional director (compliance) will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986]

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§ 252.321 Tax assessed on loss not accounted for.

The regional director (compliance) shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on; (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986]

Subpart P—Action on Claims

§ 252.331 Claims supported by bond, Form 2738.

On receipt of a claim for drawback of tax on distilled spirits or wines on which the tax has been determined, and of the evidence of exportation required by § 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone or of deposit of distilled spirits in a customs bonded warehouse, as required by § 252.42, as the case may be, the regional director (compliance) shall, if a good and sufficient bond has been filed as provided in § 252.65, and the notice of removal has been properly completed, allow the claim in accordance with the rate of drawback established in respect of the particular spirits or wines on which claim is based and charge the amount allowed against the bond. On receipt of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, and, in the case of claims on Form 1582-A, the certificate of tax determination, Form 2605, the regional director (compliance) shall give appropriate credit to the bond.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.332 Claim against bond.

When any claim supported by a bond has been allowed and changed against

the bond under the provisions of § 252.331, and the original of the claim properly executed by the appropriate customs official or armed services officer as required by this part is not received by the regional director (compliance) within three months of the date the claim was allowed, or where the distilled spirits or wines are not otherwise accounted for in accordance with this part, the regional director (compliance) shall advise the claimant of the facts, and notify him that unless the original of the claim, properly executed as required by this part, is received by the regional director (compliance) within 30 days, a written demand will be made upon the principal and the surety for repayment to the United States of the full amount of the drawback, plus interest at the rate prescribed by law from the time the drawback was paid. However, the regional director (compliance) may, if in his opinion the circumstances warrant it, grant the claimant any additional extension of time beyond 30 days as may be necessary to accomplish the required filing.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336 as amended, (26 U.S.C. 5062))

[T.D. ATF-70, 45 FR 33981, May 21, 1980]

§ 252.333 Where no bond is filed.

Where a claim for drawback of tax on distilled spirits or wines on ATF Form 5110.30 or 1582-A, is not supported by a bond on Form 2738, and in all cases where claim for drawback of tax on beer is made on Form 1582-B, the regional director (compliance) shall, on receipt by him of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, examine the claim to determine that it has been properly completed. He shall then, on receipt of the evidence of exportation required by § 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone or a customs bonded warehouse as required by § 252.42, as the case may be, and, in the case of claims on Form 1582-A, the certificate of tax determination, Form 2605, allow the claim in the amount of the tax paid on the beer or the tax paid or determined

on the distilled spirits or wines on which the claim is based and which were exported, laden as supplies on vessels or aircraft, or deposited in a foreign-trade zone or a customs bonded warehouse, as the case may be.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336, 84 Stat. 1965; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5055, 5062, 5066)

[T.D. 7112, 36 FR 8584, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

§ 252.334 Credit allowance.

Where the claimant has indicated that he desires the amount of drawback allowed to be credited against internal revenue taxes determined by him but not yet paid, the regional director (compliance) shall prepare ATF Form 5620.2, in triplicate, and forward the original to the claimant. Where the credit relates to tax determined distilled spirits, procedure for taking the credit shall be in accordance with the procedures set forth in part 19 of this chapter. Where the credit relates to tax-determined wines, procedure for taking the credit shall be in accordance with the procedures set forth in part 240 of this chapter. No credit may be given for drawback of the tax on beer nor may one class of tax be credited to another.

(72 Stat. 1336; 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

§ 252.335 Disallowance of claim.

If a claim for drawback of tax is not allowed in full, the regional director (compliance) shall notify the claimant in writing of the reasons for any disallowance.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055, 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-62, 44 FR 71726, Dec. 11, 1979]

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

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AUTHORITY: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

EDITORIAL NOTE: Nomenclature changes to part 275 appear at T.D. ATF-460, 66 FR 39093, July 27, 2001.

Subpart A—Scope of Regulations

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

This part contains regulations relating to tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing ware-

house, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

[T.D. ATF-421, 64 FR 71924, Dec. 22, 1999]

Subpart B—Definitions

§ 275.11 Meaning of terms.

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

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.16A, Delegation Order—Delegation of the Director’s Authorities in 27 CFR Part 275, Importation of Tobacco Products and Cigarette Papers and Tubes and ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR Parts 270, 275 and 296.

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

ATF. The Bureau of Alcohol, Tobacco and Firearms.

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

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying

on substantially all its banking functions.

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

Bonded manufacturer. A manufacturer of tobacco products in Puerto Rico who has an approved bond, in accordance with the provisions of this part, authorizing him to defer the payment in Puerto Rico on the internal revenue tax imposed on such products by 26 U.S.C. 7652(a) as provided in this part.

CFR. The Code of Federal Regulations.

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

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

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

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

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

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

Cigarette 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 Ac-

count at the Federal Reserve Bank in New York.

Computation or computed. When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco) of tobacco products and the sale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

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

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before 1/1/2000 or sale price of large cigars), that information must also be established as part of tax determination.

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

District director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds effected by a bonded manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications

System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

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

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

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

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

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

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

Manufacturer of cigarette papers and tubes. Any person who 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 or the importer for delivery to the consumer.

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

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

Port Director of Customs. The director of any port or port of entry as defined in 19 CFR 101.1. A list of ports is set forth in 19 CFR 101.3.

Records. Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (e.g., magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents that:

(1) Pertain to any importation of tobacco products or cigarette papers or tubes, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the importation or shipment into the United States from Puerto Rico of merchandise; and

(2) Are of the type normally kept in the ordinary course of business; and

(3) Are sufficiently detailed to:

(i) Establish the right to make the importation or shipment into the United States from Puerto Rico;

(ii) Establish the correctness of any importation or shipment into the United States from Puerto Rico;

(iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;

(iv) Determine the liability of any person for fines, penalties, and forfeitures; and

(v) Determine whether the person has complied with the laws and regulations administered by ATF and the Customs

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Service, and any other documents required under laws or regulations administered by ATF and the Customs Service.

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

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

Relanding. Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States.

Removal or Remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from internal revenue bond under 26 U.S.C. 5704, or release from customs custody, including conditional release in accordance with 19 CFR 141.0a(i), and shall also include the smuggling or other unlawful importation of such articles into the United States.

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Sale price. The price for which large cigars are sold by the importer or manufacturer, determined in accordance with § 275.39 and used for computation of the excise tax.

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

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

Smokeless tobacco. Any chewing tobacco or snuff.

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

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

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

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

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

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U.S.C. The United States Code.

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

[T.D. ATF-48, 43 FR 13554, Mar. 31, 1978; 44 FR 55855, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3009, Jan. 13, 1981; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-421, 64 FR 71924, Dec. 22, 1999; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71942, Dec. 22, 1999; T.D. ATF-422, 64 FR 71948, Dec. 22, 1999; T.D. ATF-422c, 65 FR 63545, Oct. 24, 2000; T.D. ATF-444, 66 FR 13850, Mar. 8, 2001; T.D. ATF-465, 66 FR 45618, Aug. 29, 2001; T.D. ATF-467, 66 FR 49532, Sept. 28, 2001]

Subpart C—General

§ 275.21 Forms prescribed.

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

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

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

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

§ 275.22 Retention of records.

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

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of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any ATF officer upon his request.

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

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

§ 275.23 Authority of ATF officers to enter premises.

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

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

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

§ 275.24 Interference with administration.

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

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

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

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

When any Federal, State, or local officer having custody of forfeited, con-

demned, or abandoned tobacco products or cigarette papers or tubes, upon which the Federal tax has not been paid, is of the opinion that the sale thereof will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, he shall not sell, nor cause to be sold, such articles for consumption in the United States. Where the articles are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such articles are sold, they shall not be released by the officer having custody thereof until they are properly packaged and taxpaid, which tax shall be considered as a portion of the sales price. Except where the tax is to be paid to the Port Directors of Customs or other authorized customs officer in accordance with Customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on such articles must be evidenced by presentation, to the officer having custody of the articles, of a receipt from the appropriate ATF officer showing such payment. In the case of such articles held by or for the Federal Government, the sale thereof shall be subject to the applicable provisions of the Regulations of the General Services Administration, Title 1, Personal Property Management.

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

[T.D. 6871, 31 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-422, 64 FR 71948, Dec. 22, 1999]

§ 275.26 Alternate methods or procedures.

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

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

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(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

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

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

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

§ 275.27 Emergency variations from requirements.

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

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

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

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

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

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

§ 275.28 Penalties and forfeitures.

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

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

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

§ 275.29 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to “appropriate ATF officers”. The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.16A, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.16A, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia

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22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Subpart D—Taxes

TAX RATES

[T.D. ATF-420, 64 FR 71942, Dec. 22, 1999, as amended by T.D. ATF-444, 66 FR 13850, Mar. 8, 2001]

§ 275.30 Pipe tobacco and roll-your-own tobacco.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound ¹ for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	\$0.675	\$0.9567	\$1.0969
Roll-your-own tobacco	No tax	0.9567	1.0969

¹ Prorate tax for fractions of a pound.

[T.D. ATF-420, 64 FR 71942, Dec. 22, 1999]

§ 275.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Product	Tax rate for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars (per thousand)	\$1.125	\$1.594	\$1.828
Large cigars ¹			
percentage of sale price	12.75%	18.063%	20.719%
but not to exceed per thousand	\$30	\$42.50	\$48.75

¹ For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294.

(b) See §275.39 of this part for rules concerning determination of sale price of large cigars.

same rate as similar cigars removed for sale.

[T.D. ATF-420, 64 FR 71942, Dec. 22, 1999]

(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

§ 275.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	\$12	\$17	\$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Use tax rates for small cigarettes, but count each ¾ inches or fraction thereof of the length of each as one cigarette.		

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

§ 275.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

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Product	Tax rate per pound ¹ for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff	\$0.36	\$0.51	\$0.585
Chewing tobacco	\$0.12	\$0.17	\$0.195

¹ Prorate tax for fractions of a pound.

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

§ 275.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers ¹ for removals during the years		
	1993 to 1999 ²	2000 or 2001	2002 and after
Cigarette papers up to 6½" long	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

¹ Tax rate for less than 50 papers is the same. The tax is not prorated.

² Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

§ 275.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes ¹ for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½" long	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

¹ Tax rate for less than 50 tubes is the same. The tax is not prorated.

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

§ 275.37 Statistical classification of large cigars.

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

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

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

cable 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,

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

(h) *Class H.* Large cigars with a wholesale price or sale price, as applicable of more than \$235.294 per thousand.

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

§ 275.38 Cigarettes.

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

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

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

§ 275.39 Determination of sale price of large cigars.

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See § 40.22(b) of this chapter for information on determining the sale price in special cases.

[T.D. ATF-420, 64 FR 71944, Dec. 22, 1999; T.D. ATF-422, 64 FR 71948, Dec. 22, 1999; T.D. ATF-422a, 65 FR 15058, Mar. 31, 2000; T.D. ATF-460, 66 FR 39093, July 27, 2001]

LIABILITY FOR AND PAYMENT OF TAXES

§ 275.40 Persons liable for tax.

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That tobacco products or cigarette papers or tubes (other than those previously exported and returned) imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 275.11). Under these circumstances the trans-

feree will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

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

[T.D. ATF-422, 64 FR 71948, Dec. 22, 1999]

§ 275.41 Determination and payment of tax.

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

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

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

EXEMPTIONS FROM TAXES AND PERMITS

§ 275.50 Exemptions.

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

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

ASSESSMENT OF TAXES

§ 275.60 Assessment.

Whenever any person required by law to pay internal revenue tax on tobacco products or cigarette papers or tubes fails to pay such tax, the tax shall be

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

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

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

CUSTOMS' COLLECTION OF TAXES

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

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

§ 275.63 Payment of tax by electronic fund transfer.

(a) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 40 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or

money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including similar products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

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

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

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

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

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

[T.D. ATF-245, 52 FR 534, Jan. 7, 1987, as amended by T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

Subpart E—Packages

§ 275.71 Package.

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

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

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

§ 275.72 Notice for smokeless tobacco.

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

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

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

(Approved by the Office of Management and Budget under control number 1512-0502)

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

[T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-446, 66 FR 16602, Mar. 27, 2001]

§ 275.72a Notice for pipe tobacco.

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

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

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

§ 275.72b Notice for roll-your-own tobacco.

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation “roll-your-own tobacco” or “cigarette tobacco” or “Tax Class J.”

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on,

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or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512-0502)

[T.D. ATF-429, 65 FR 57547, Sept. 25, 2000]

§ 275.72c Package use-up rule.

(a) An importer must have used such packaging for roll-your-own tobacco before January 1, 2000.

(b) An importer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of § 275.72b(b) until April 1, 2000.

(c) An importer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the requirements of § 275.72b(a) until October 1, 2000.

[T.D. ATF-427, 65 FR 40051, June 29, 2000]

§ 275.73 Notice for cigars.

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

(a) The designation “cigars”;

(b) The quantity of cigars contained in the package; and

(c) For small cigars, the classification of the product for tax purposes (i.e., either “small” or “little”).

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

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

§ 275.74 Notice for cigarettes.

Every package of cigarettes, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “cigarettes”, the quantity of such product contained therein; and the classification for tax purposes, i.e., for small cigarettes either “small” or “Class A”, and for large cigarettes, either “large” or “Class B”.

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

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

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§ 275.75 Exemptions.

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

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

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

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

§ 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under §§ 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and tax paid to Customs.

(c) *Required information.* When tobacco products, cigarette papers, or

cigarette tubes enter the United States for consumption, or when they are removed for consumption, the importer must include on the customs form or authorized electronic transmission the following internal revenue tax information.

(1) *For cigarette papers:* For cigarette papers imported on or after January 1, 2000, the importer will show the total number of cigarette papers, the rate of tax, and the amount of tax due. For cigarette papers imported prior to January 1, 2000, the importer will show the number of books or sets, the number of papers in each book or set, the rate of tax, and the amount of tax due.

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

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

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

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

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

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

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

(v) The tax due.

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

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

(7) *For roll-your-own tobacco:* The importer will show the designation "roll-your-own" or "Tax Class J", the number of pounds and ounces, the rate of tax and the amount of tax due.

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

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

products or cigarette papers and tubes (see §§ 275.85, 275.85a, or 275.135);

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

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

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

[T.D. ATF-27, 41 FR 23951, June 14, 1976, as amended by T.D. ATF-40, 42 FR 5005, Jan. 26, 1977; T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-307, 55 FR 52744, Dec. 21, 1990; T.D. ATF-421, 64 FR 71924, Dec. 22, 1999; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71944, Dec. 22, 1999; T.D. ATF-422a, 65 FR 15059, Mar. 21, 2000]

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

§ 275.82 Restrictions on tobacco products labeled for export.

(a) The provisions of this section apply to tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under parts 44 and 270 of this chapter.

(b) Articles described in paragraph (a) of this section may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax as provided in this part.

(c) Articles described in paragraph (a) of this section may only be imported or brought into the United States, after their exportation, under the provisions of 26 U.S.C. 5704(d), by release from Customs custody for delivery to the original manufacturer of such tobacco products or cigarette papers or tubes or to the proprietor of an export warehouse authorized by such manufacturer to receive such articles. These products are transferred in bond and are released from Customs custody without payment of that part of the duty attributable to internal revenue tax.

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(d) Articles described in paragraph (a) of this section that are not put up in packages may be imported or brought into the United States under 26 U.S.C. 5704(c) by release from Customs custody without payment of tax for delivery to the original manufacturer of such articles. However, because such articles are also eligible for release under 26 U.S.C. 5704(d), such articles will be treated as though released under section 5704(d), due to the penalty provisions in section 5761(c).

(e) Articles described in paragraph (a) of this section 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. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

(f) The provisions of this section shall apply 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) any export label.

(g) For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required by § 44.185 of this chapter.

(h) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

(i) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export under parts 44 and 270 of this chapter, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U. S. Customs Service

at the time of entry any excess of such quantity without incurring the penalty under section § 275.83.

(j) For civil penalties and forfeiture provisions related to violations of this section, see § 275.83. For a criminal penalty applicable to any violation of this section see 26 U.S.C. 5762(b).

[T.D. ATF-465, 66 FR 45618, Aug. 29, 2001]

§ 275.83 Penalties and forfeiture for products labeled or shipped for export.

Except for the return of exported products that are specifically authorized under § 275.82(b) and (c):

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under parts 44 and 270 of this chapter;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in title 26 U.S.C., be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.

(d) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U. S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under this section.

(e) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

[T.D. ATF-465, 66 FR 45619, Aug. 29, 2001]

§ 275.85 Release from customs custody of imported tobacco articles.

(a) The provisions of this section apply only to tobacco products, cigarette papers, and cigarettes tubes, which are not put up in packages, *i.e.*, not placed by the manufacturer or importer in packages in which the products will be sold to consumers. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer to the factory of any manufacturer of tobacco products under the internal revenue bond of the manufacturer to whom such articles are released. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer, under the internal revenue bond of the manufacturer to whom such articles are released, to the factory of a manufacturer of cigarette papers and tubes; or a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section must be in accordance with § 275.86: *Provided, however*, that in the case of products exported from the Virgin Islands, in order for a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes to remove such products from customs custody in the United States under the manufacturer's internal revenue bond without payment of internal revenue tax, the manufacturer must file an extension of coverage of the internal revenue bond on ATF Form 2105, and receive a notice of approval from the appropriate ATF officer. The extension of coverage must be executed by the principal and the surety and must be in the following form:

“Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond.”

“Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest, for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provision of law and regulations with respect thereto.”

(b) Articles received into the factory of a manufacturer under the provision of this section are subject to the provisions of part 40 of this chapter.

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

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

§ 275.85a Release from customs custody of returned articles.

(a) Domestically produced tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released, under the bond of the manufacturer or export warehouse proprietor to whom such articles are released, from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery to the factory of any tobacco products manufacturer or to the permit premises of an export warehouse proprietor.

(b) Domestically produced cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery, under the bond of the manufacturer to whom such articles are released, to the factory of:

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(1) A manufacturer of cigarette papers and tubes; or

(2) A manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(c) Releases under this section must be in accordance with the procedures set forth in § 275.86. Once released, the tobacco products and cigarette papers and tubes will be subject to the tax and all other provisions of 26 U.S.C. chapter 52, and, as applicable, subject to the provisions of the regulations in part 40 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

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

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

§ 275.86 Procedure for release.

(a) Every manufacturer of tobacco products and cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under its internal revenue bond, as provided in §§ 275.85 or 275.85a, must prepare a notice of release, Form 5200.11, in triplicate, and file the three copies of the form with the appropriate ATF officer. The appropriate ATF officer will not certify Form 5200.11 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 40 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form.

(b) Importers who are either manufacturers of tobacco products and cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request such release until they have received the ATF Form 5200.11 certified by the appropriate ATF officer. Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF

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Form 5200.11 along with a copy of the electronic filing and customs release to the appropriate ATF officer at the address shown thereon. The importer will retain one copy of the ATF Form 5200.11 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers and tubes from customs custody in the United States under any other authorized procedure will submit all copies of the ATF Form 5200.11 to the appropriate customs officer along with their request for release. The customs officer will verify that the ATF Form 5200.11 has been certified by the appropriate ATF officer and return all copies to the importer or the importer's authorized representative.

(d) Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 5200.11 along with a copy of the customs release to the appropriate ATF office at the address shown thereon. The importer will retain one copy of the ATF Form 5200.11 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

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

[T.D. ATF-422, 64 FR 71950, Dec. 22, 1999]

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

§ 275.101 General.

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

(b) The excise taxes collected on tobacco products and cigarette papers and tubes manufactured in Puerto Rico

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

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

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

[T.D. ATF-206, 50 FR 15888, Apr. 23, 1985, as amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987; T.D. ATF-422, 64 FR 71950, Dec. 22, 1999]

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

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper must file, or cause to be filed, a tax return, ATF Form 5000.25, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes.

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

[T.D. ATF-444, 66 FR 13850, Mar. 8, 2001]

§ 275.106 Examination and record of shipment by taxpayer.

(a) *Shipments other than noncommercial mail shipment.* The taxpayer will ensure that the tax has been prepaid on the tobacco products and cigarette papers and tubes in each shipment. The taxpayer will identify the tobacco

products or cigarette papers or tubes on the bill of lading or similar record to accompany the shipment with the following information:

(1) The marks and numbers on shipping containers;

(2) The number of containers;

(3) The kind of taxable article and the rate of tax, as specified by 275.30 through 275.35;

(4) The number of small cigarettes, large cigarettes or small cigars to be shipped;

(5) The number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped;

(6) The number of large cigars with a sale price of more than \$235.294 per thousand to be shipped;

(7) The pounds and ounces of chewing tobacco or snuff to be shipped;

(8) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;

(9) The number of cigarette papers or tubes to be shipped;

(10) The amount of the tax paid on such articles under the provisions of this subpart; and

(11) The name and address of the consignee in the United States to whom such products are being shipped. The taxpayer will note such bills of lading or similar records to identify the particular ATF Form 5000.25 on which taxes have been prepaid.

(b) *Noncommercial mail shipments.* Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of paragraph (a) of this section, except that the taxpayer will provide a copy of the ATF Form 5000.25 upon request of an appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512-0560)

[T.D. ATF-444, 66 FR 13850, Mar. 8, 2001]

§§ 275.107-275.108 [Reserved]

DEFERRED PAYMENT OF TAX IN PUERTO
RICO ON TOBACCO PRODUCTS

§ 275.109 Bond required for deferred taxpayment.

Where a manufacturer of tobacco products in Puerto Rico desires to

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

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

§275.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.

Where tobacco products or cigarette papers or tubes are to be shipped to the United States involving deferred taxpayment, the bonded manufacturer must calculate the tax from the information contained in the bill of lading or a similar record. The bonded manufacturer will identify each shipment on such record with the following information:

- (a) The marks and numbers on shipping containers;
- (b) The number of containers;
- (c) The kind of taxable article and the rate of tax as specified in 275.30 through 275.35;
- (d) The number of small cigarettes, large cigarettes or small cigars to be shipped;
- (e) The number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped;
- (f) The number of large cigars with a sale price of more than \$235.294 per thousand to be shipped;

(g) The pounds and ounces of chewing tobacco or snuff to be shipped;

(h) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;

(i) The number of cigarette papers or tubes;

(j) The amount of the tax to be paid on such articles under the provisions of this subpart; and

(k) The name and address of the consignee in the United States to whom such products are being shipped. The date of completing such record will be treated as the date of computation of the tax. Tobacco products or cigarette papers or tubes may be shipped to the United States in accordance with the provisions of this section only after computation of the tax.

(Approved by the Office of Management and Budget under control number 1512-0560)

[T.D. ATF-444, 66 FR 13851, Mar. 8, 2001]

§275.111 Agreement to Pay Tax.

Upon shipment of tobacco products and cigarette papers or tubes the bonded manufacturer agrees:

- (a) To pay the tax on the shipment;
- (b) That there is no default in payment of tax chargeable against the manufacturer's bond on ATF Form 2986 (5210.12); and
- (c) That the amount of the manufacturer's bond is sufficient or in the maximum penal sum to cover the tax due on the shipment.

[T.D. ATF-444, 66 FR 13851, Mar. 8, 2001]

§275.112 Tax return.

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

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

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

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

§ 275.113 Return periods.

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

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

§ 275.114 Time for filing.

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

(b) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semi-monthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 16-26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic

fund transfer as prescribed by § 275.115a, the second semi-monthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 16-25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 26-30, no later than October 14.

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

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

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

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

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

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the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

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

[T.D. ATF-246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-365, 60 FR 33675, June 28, 1995; T.D. ATF-444, 66 FR 13851, Mar. 8, 2001]

§ 275.114a Qualification for extended deferral.

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

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

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

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

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

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

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

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

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

§ 275.115 Remittance with return.

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

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

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

§ 275.115a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 40 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes by cash, check, or money order, as described in § 275.115, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this

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

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

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

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 40 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

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

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

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

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

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

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

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

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close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate ATF officer will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part.

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

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

[T.D. ATF-185, 49 FR 37583, Sept. 25, 1984, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-245, 52 FR 534, Jan. 7, 1987; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-262, 52 FR 47560, Dec. 15, 1987; T.D. ATF-277, 53 FR 45269, Nov. 9, 1988; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996; T.D. ATF-422, 64 FR 71951, Dec. 22, 1999]

§ 275.116 Default.

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

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

§§ 275.117-275.118 [Reserved]

§ 275.119 Corporate surety.

(a) Surety bonds, required under the provisions of this subpart, may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as ac-

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

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

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

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

§ 275.120 Deposit of securities in lieu of corporate surety.

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

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

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

§ 275.121 Amount and Account of bond.

(a) *Bond amount.* Except for the maximum and minimum amounts stated in this paragraph, the total amount of the bond or bonds for tobacco products or cigarette papers or tubes under the provisions of this subpart must be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond. A manufacturer who will defer payment of tax for a shipment of tobacco products or cigarette papers or tubes under the provisions of this subpart must have sufficient credit in this account to cover the taxes prior to making the shipment to the

United States. The maximum and minimum amounts of such bond or bonds are as follows:

Taxable article	Bond amount maximum	Bond amount minimum
(1) Cigarettes	\$250,000	\$1,000
(2) Any combination of taxable articles	250,000	1,000
(3) One kind of taxable article other than cigarettes	150,000	1,000

(b) *Bond Account.* Where the amount of a bonded manufacturer's bond is less than the maximum amount prescribed in paragraph (a) of this section, a bonded manufacturer must maintain an account reflecting all outstanding taxes with which the manufacturer's bond is chargeable. A manufacturer must debit such account with the amount of tax that was agreed to be paid under §275.111 or is otherwise chargeable against such bond and then must credit the account for the amount paid on Form 5000.25 or other ATF-prescribed document, at the time it is filed.

(Approved by the Office of Management and Budget under control number 1512-0560)

[T.D. ATF-444, 66 FR 13851, Mar. 8, 2001]

§ 275.122 Strengthening bond.

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

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

§ 275.123 Superseding bond.

A bonded manufacturer shall immediately file a new bond to supersede his current bond when (a) the corporate surety on the current bond becomes insolvent, (b) the regional director (compliance) approves a request from the surety on the current bond to terminate his liability under the bond, (c)

the payment of any liability under a bond is made by the surety thereon, (d) the amount of the bond is no longer sufficient under the provisions of §275.121 and a strengthening bond has not been filed, or (e) the regional director (compliance) considers a superseding bond necessary for the protection of the revenue.

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

§ 275.124 Extension of coverage of bond.

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

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

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

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

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shall be made available for inspection by any ATF officer upon his request.

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

§ 275.126 Termination of bond.

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

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

§ 275.127 Application of surety for relief from bond.

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

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

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§ 275.128 Relief of surety from bond.

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

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

§ 275.129 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 275.120, shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the regional director (compliance) until the liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as he deems necessary.

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

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

§§ 275.135-275.138 [Reserved]

§ 275.139 Records.

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

(a) Date, quantity, kind of cigars, cigarettes, smokeless tobacco, pipe tobacco and roll-your-own tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing

tobacco—snuff; pounds and ounces of pipe tobacco—roll-your-own tobacco).

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

(c) Cigarette papers:

(1) Before January 1, 2000, the date and number of books or sets of cigarette papers of each numerical content.

(2) On and after January 1, 2000, the date and number of cigarette papers.

(d) The date and number of cigarette tubes.

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

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

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-420, 64 FR 71944, Dec. 22, 1999]

§ 275.140 Taxpayment in the United States.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products or cigarette papers or tubes without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, must pay the tax imposed on such products by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on the basis of a return under the provisions of part 40 of this chapter applicable to the taxpayment of tobacco products. Similarly, every manufacturer of cigarette papers and tubes in the United States who receives Puerto Rican cigarette papers and tubes and subsequently removes such articles, shall pay the tax imposed on such articles by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on the basis of a return under the provisions of part 40 of this chapter applicable to taxpayment of cigarette papers and tubes. Such tobacco products and cigarettes papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on Form 5000.24. The amount of tax paid

on such articles shall be separately stated on Form 5000.24.

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-422, 64 FR 71951, Dec. 22, 1999]

§ 275.141 Reports.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products, or cigarette papers or tubes without payment of internal revenue tax, under his bond, must report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. Such supplemental reports shall be made on Form 5210.5 or Form 2138 and shall have inserted thereon the heading, "Cigars and Cigarettes of Puerto Rican Manufacture" or "Cigarette Papers and Tubes of Puerto Rican Manufacture," as the case may be. The original of such supplemental report shall be attached to the manufacturer's regular monthly report when filed.

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

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-422, 64 FR 71951, Dec. 22, 1999]

Subpart H [Reserved]

§§ 275.151-275.153 [Reserved]

Subpart I—Claims

GENERAL

§ 275.161 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be

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

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

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

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

Claims involving internal revenue tax paid or determined and customs duty paid on tobacco products and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" occurring in the United States after September 2, 1958, shall be filed in accordance with the provisions of subpart C of part 46 of this chapter.

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

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-457, 66 FR 32220, June 14, 2001]

§ 275.163 Refund of tax.

The taxes paid on tobacco products and cigarette papers and tubes imported or brought into the United States may be refunded (without interest) to the taxpayer on proof satisfactory to the regional director (compliance) that the taxpayer has paid the tax on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such taxpayer, or withdrawn by him from the market. Any claim for refund of tax under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall include

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

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

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

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

§ 275.165 Action by taxpayer.

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

necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

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

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

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

§ 275.170 Reduction of tobacco products to materials; ATF action.

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

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

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the

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

(See 26 U.S.C. 5705)

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-420, 64 FR 71944, Dec. 22, 1999]

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

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

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

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

§ 275.172 Return to nontaxpaid status, action by taxpayer.

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

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to the articles, and shall prepare a schedule of the articles, on Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the tobacco products and cigarette papers and tubes are assembled.

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

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

(See 26 U.S.C. 5705)

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-420, 64 FR 71944, Dec. 22, 1999]

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

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

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of tobacco products and cigarette papers and tubes has been verified, such articles shall be treated by the receiving manufacturer as nontaxpaid and shall be covered by the manufacturer's bond.

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

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

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

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

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

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

Subpart J—Records and Reports

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

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States must keep such records as are necessary to establish and verify the sale

price that applies to large cigars removed (entered or withdrawn).

(a) *Basic record.* The importer must keep a record to show each sale price (as determined under §275.39), which is applicable to large cigars removed. No later than the tenth business day in January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) *Copies of price announcements.* The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy does not show the actual date when issued it must be annotated to show this information.

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

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are in-

adequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

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

[T.D. ATF-420, 64 FR 71944, Dec. 22, 1999]

§ 275.182 Availability of records.

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

§ 275.183 [Reserved]

Subpart K—Tobacco Products Importers

SOURCE: T.D. ATF-422, 64 FR 71951, Dec. 22, 1999, unless otherwise noted.

§ 275.190 Persons required to qualify.

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with the provisions of this part. Any person eligible for the exemption in §275.50 is not engaged in the business as an importer of tobacco products.

Persons importing tobacco products and cigarette papers and tubes for personal use, in such quantities as may be allowed by Customs without payment of tax, do not require an importer's permit.

§ 275.191 Application for permit.

Except as provided in §275.192, every person, before commencing business as an importer of tobacco products as defined in §275.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on ATF Form 5230.4, according to the instructions for the form. All documents required under this part to be furnished with such application must be made a part thereof.

§ 275.192 Transitional rule.

Any person who—

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(a) Was engaged in the business as an importer of tobacco products before January 1, 2000, and

(b) Who files an application with ATF before January 1, 2000, may continue to import tobacco products and cigarette papers and tubes pending action on their application by ATF. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 will apply to such applicant.

§ 275.193 Corporate documents.

Every corporation, before commencing business as an importer of tobacco products, must furnish with its application for permit, required by § 275.191, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate ATF officer, and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 275.194 Articles of partnership or association.

Every partnership or association, before commencing business as an importer of tobacco products, must furnish with its application for permit required by § 275.191 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate ATF officer and such documents are currently complete and

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accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 275.195 Trade name certificate.

Every person, before commencing business under a trade name as an importer of tobacco products, must furnish with his application for a permit, required by § 275.191, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such true copy of the certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

§ 275.196 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate ATF officer. (For power of attorney in connection with conference and practice requirements see subpart E, part 70 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 275.194. Form 1534 does not have to be filed again with the appropriate ATF officer if such form has previously been submitted to ATF and is still in effect.

§ 275.197 Additional information.

The appropriate ATF officer may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant must, when required by the appropriate ATF officer, furnish as a part of his application for such permit such additional information as the appropriate ATF officer deems necessary to determine whether the applicant is entitled to a permit.

§ 275.198 Investigation of applicant.

Appropriate ATF officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether the applicant has disclosed all material information required, or whether the applicant has made any material false statement in the application for such permit.

§ 275.199 Notice of contemplated disapproval.

If the appropriate ATF officer has reason to believe that the applicant is not entitled to a permit, the appropriate ATF officer will promptly give to the applicant a notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter. If, after such notice and opportunity for hearing, the appropriate ATF officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999, as amended by T.D. ATF-463, 66 FR 42734, Aug. 15, 2001]

§ 275.200 Issuance of permit.

If the application for permit, together with the required supporting documents, is approved, the appropriate ATF officer will issue a permit on ATF F 5200.24 to the applicant as an importer of tobacco products.

§ 275.201 Duration of permit.

(a) Permits other than temporary permits issued under paragraph (b) of this section will be valid for a period of three years from the effective date shown on the permit, ATF F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 275.192.

§ 275.202 Renewal of permit.

Importers wishing to continue operations beyond the expiration of their

current permit must renew their permit by making application within 30 days of such expiration on ATF F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is taken by ATF on the application for renewal, provided a timely application for renewal is filed.

§ 275.203 Retention of permit and supporting documents.

The importer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this part are kept. The permit and supporting documents must be made available for inspection by any appropriate ATF officer upon request.

REQUIRED RECORDS AND REPORTS

§ 275.204 General.

Every tobacco products importer must keep such records and, when required by this part, submit such reports, of the physical receipt and disposition of tobacco products. Records and reports will not be required under this part with respect to tobacco products while in customs custody.

§ 275.205 Recordkeeping requirements.

Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any tobacco product or cigarette papers or tubes must make and keep records. A person purchasing a tobacco product from the importer in a domestic transaction and who does not knowingly cause merchandise to be imported is not required to make and keep records unless:

(a) The terms and conditions of the importation are controlled by the person placing the order with the importer (*e.g.*, the importer is not an independent contractor but the agent of the person placing the order).

(b) The tobacco products purchased from the importer include more than 60,000 cigarettes, in which case the importer and the person placing the order with the importer must keep the records required by 27 CFR Part 46, Subpart F, Distribution of Cigarettes. Dividing a single shipment of more

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than 60,000 cigarettes into smaller components of 60,000 cigarettes or less does not exempt any person from the recordkeeping requirements of this subpart.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999, as amended by T.D. ATF-457, 66 FR 32220, June 14, 2001]

FILING AND RETENTION OF RECORDS AND REPORTS

§ 275.206 Reports.

(a) Importers must file a monthly report on ATF F 5220.6 in accordance with the format and instructions for the form.

(b) The first report(s) must be submitted by the 15th day of the month following the month in which the permit is issued; all previous months beginning January 1, 2000, must also be reported at that time.

For example:

An importer who is issued a permit with a date of August 17, 2000, would be required to submit by September 15, 2000, a total of eight reports for the months January–August, 2000.

(c) Reports with the notation “No Activity” must be made for those months in which no activity occurs.

(d) When a transfer of ownership of the business of an importer of tobacco products described in § 275.224, or when a change in control of a corporation described in § 275.226 occurs, a concluding report with the notation “Concluding Report” must be made for the month or partial month during which the transfer of ownership or change in control becomes effective.

§ 275.207 Filing.

All records and reports required by this part will be maintained separately, chronologically by transaction or reporting date, at the importer’s place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

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§ 275.208 Retention.

(a) All records and reports required by this part, documents or copies of documents supporting these records or reports, and file copies of reports required by this part to be submitted to ATF must be retained for not less than three years following the close of the calendar year in which filed or made, and during this period must be available for inspection and copying by ATF during business hours.

(b) Furthermore, the appropriate ATF officer may require these records to be kept for an additional period of not more than three years in any case where it is determined that such record retention is necessary to protect the revenue. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

Subpart L—Changes After Original Qualification of Importers

SOURCE: T.D. ATF-422, 64 FR 71953, Dec. 22, 1999, unless otherwise noted.

CHANGES IN NAME

§ 275.220 Change in individual name.

Where there is a change in the name of an individual operating as an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

§ 275.221 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must make application on ATF Form 5230.5 for an amended permit to reflect such change within 30 days of such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or statement in lieu thereof, required by § 275.195.

§ 275.222 Change in corporate name.

Where there is a change in the corporate name of an importer of tobacco

products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

CHANGES IN OWNERSHIP AND CONTROL

§ 275.223 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an importer of tobacco products, as a continuing operation, such fiduciary must make application for permit, before commencing operations as required by subpart K of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of tobacco products will not be required if the fiduciary promptly files with the appropriate ATF officer a written statement to that effect.

§ 275.224 Transfer of ownership.

If a transfer is to be made in ownership of the business of an importer of tobacco products (including a change of any member of a partnership or association), such importer must give notice, in writing, to the appropriate ATF officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor must qualify as an importer of tobacco products, before commencing operations, in accordance with the applicable provisions of subpart K of this part. The importer must give such notice of transfer, and the proposed successor must make application for permit in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with the provisions of § 275.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 275.206.

§ 275.225 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of an importer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer must, within 30 days of such action, so notify the appropriate ATF officer in writing, giving the identity of such person. In the event that the acquisition of ten or more percent in aggregate of the outstanding stock of such corporation results in a change of control of such corporation, the provisions of § 275.226 will apply. When there is any change in the authority furnished under § 275.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate ATF officer in writing.

§ 275.226 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must make application on ATF Form 5230.4 for a new permit within 30 days after the change occurs. Otherwise, the present permit will be automatically terminated at the expiration of such 30-day period, and the importer will dispose of all tobacco products on hand, in accordance with this part, make a concluding report, in accordance with the provisions of § 275.206, and surrender his permit with such report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

CHANGES IN LOCATION OR ADDRESS

§ 275.227 Change in location.

Whenever an importer of tobacco products intends to relocate the principal business office, the importer must, before commencing operations at

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the new location, make application on ATF Form 5230.5 for, and obtain, an amended permit.

§ 275. 228 Change in address.

Whenever any change occurs in the address, but not the location, of the principal business office of an importer

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of tobacco products, as a result of action of local authorities, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

PART 285 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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