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the instructions, on the form. All copies of the schedule shall be forwarded to the appropriate TTB officer.

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

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. ATF-424, 64 FR 71932, Dec. 22, 1999]

§ 40.477 Action by the appropriate TTB officer.

Upon receipt of a schedule of cigarette papers and tubes withdrawn from the market, the appropriate TTB officer may assign a TTB officer to verify the schedule and supervise disposition of the cigarette papers and tubes, or may authorize the manufacturer to dispose of the articles without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

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

§ 40.478 Disposition of cigarette papers and tubes and schedule.

When so authorized, as evidenced by the appropriate TTB officer's statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the articles are disposed of, the manufacturer shall execute a certificate on both copies of the schedule received from the appropriate TTB officer, to show the disposition and the date of disposition of the articles. In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim for credit or refund, TTB Form 2635 (5620.8), filed under § 40.473. When an appropriate TTB officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of the assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for the record, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the

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manufacturer shall attach to the claim filed under § 40.473.

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

PART 41—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, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: Redesignated by T.D. TTB–16, 69 FR 52424, Aug. 26, 2004, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 41 (formerly part 275) appear at T.D. ATF–460, 66 FR 39093, July 27, 2001.

Subpart A—Scope of Regulations

§ 41.1 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 cus-

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toms bonded manufacturing warehouse, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

[T.D. ATF–421, 64 FR 71924, Dec. 22, 1999]

Subpart B—Definitions

§ 41.11 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.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.41, Delegation of the Administrator’s Authorities in 27 CFR Part 41, Importation of Tobacco Products and Cigarette Papers and Tubes.

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.

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

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

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

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

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

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

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 a TTB 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.

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 TTB and the Customs Service, and any other documents required under laws or regulations administered by TTB and the Customs Service.

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 § 41.39 and used for computation of the excise tax.

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

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

Smokeless tobacco. Any chewing tobacco or snuff.

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

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

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

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

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

U.S.C. The United States Code.

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

[T.D. ATF-48, 43 FR 13554, Mar. 31, 1978; 44 FR 55855, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3009, Jan. 13, 1981; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-421, 64 FR 71924, Dec. 22, 1999; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71942, Dec. 22, 1999; T.D. ATF-422, 64 FR 71948, Dec. 22, 1999; T.D. ATF-422c, 65 FR 63545, Oct. 24, 2000; T.D. ATF-444, 66 FR 13850, Mar. 8, 2001; T.D. ATF-465, 66 FR 45618, Aug. 29, 2001; T.D. ATF-467, 66 FR 49532, Sept. 28, 2001; T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

Subpart C—General

§ 41.21 Forms prescribed.

(a) The Administrator 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) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

(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; T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.22 Retention of records.

All records required to be kept under this part, including copies of claims and schedules, authorizations, notices of release, reports, and returns, shall be retained for three years following the close of the year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any appropriate TTB 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, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.23 Authority of TTB officers to enter premises.

Any appropriate TTB 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 appropriate TTB officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any appropriate TTB officer or permit him to examine such articles

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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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.24 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any appropriate TTB 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, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

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

When any Federal, State, or local officer having custody of forfeited, condemned, or abandoned tobacco products or cigarette papers or tubes, upon which the Federal tax has not been paid, is of the opinion that the sale thereof will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, he shall not sell, nor cause to be sold, such articles for consumption in the United States. Where the articles are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such articles are sold, they shall not be released by the officer having custody thereof until they are properly packaged and taxpaid, which tax shall be considered as a portion of the sales price. Except where the tax is to be

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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 TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.26 Alternate methods or procedures.

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

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

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

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

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. When an importer desires to

employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the appropriate TTB officer. 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 appropriate TTB officer 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 appropriate TTB officer under this section.

[26 FR 8190, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.27 Emergency variations from requirements.

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

- (a) Will afford the security and protection to the revenue intended by the prescribed specifications,
- (b) Will not hinder the effective administration of this part, and
- (c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith 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 appropriate

TTB officer 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 appropriate TTB officer. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The importer shall retain, as part of his records, any authorization of the appropriate TTB officer under this section.

[26 FR 8190, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

§ 41.28 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]

§ 41.29 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.41, Delegation of the Administrator's Authorities in 27 CFR Part 41, Importation of Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-16, 69 FR 52424, Aug. 26, 2004]

Subpart D—Taxes

TAX RATES

§ 41.30 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:

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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]

§ 41.31 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 § 41.39 of this part for rules concerning determination of sale price of large cigars.

same rate as similar cigars removed for sale.

(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

[T.D. ATF-420, 64 FR 71942, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	\$12	\$17	\$19.50
Large cigarettes up to 6½" long	25.20	35.70	40.95
Large cigarettes over 6½" long	Use tax rates for small cigarettes, but count each 2¾ inches or fraction thereof of the length of each as one cigarette.		

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

§ 41.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound ¹ for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff	\$0.36	\$0.51	\$0.585
Chewing tobacco	\$0.12	\$0.17	\$0.195

¹ Prorate tax for fractions of a pound.

[T.D. ATF-420, 64 FR 71943, Dec. 22, 1999]

§ 41.34 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]

§ 41.35 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

§ 41.37 [Reserved]

§ 41.38 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]

§ 41.39 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

§ 41.40 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

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not put up in packages (see §41.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

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

[T.D. ATF-422, 64 FR 71948, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.41 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

§41.50 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]

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ASSESSMENT OF TAXES

§41.60 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

§41.62 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]

§41.63 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 §41.11 for use elsewhere in this part.

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

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

[T.D. ATF-245, 52 FR 534, Jan. 7, 1987, as amended by T.D. ATF-384, 61 FR 54095, Oct. 17, 1996. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Subpart E—Packages

§41.71 Package.

All tobacco products, cigarette papers and tubes, except as provided in §41.75, 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.72 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

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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]

§ 41.72a 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. Re-designated by T.D. ATF-381, 61 FR 37004, July 16, 1996]

§ 41.72b 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 state-

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ment must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512-0502)

[T.D. ATF-429, 65 FR 57547, Sept. 25, 2000]

§ 41.72c 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 § 41.72b(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 § 41.72b(a) until October 1, 2000.

[T.D. ATF-427, 65 FR 40051, June 29, 2000. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.73 Notice for cigars.

Before removal subject to internal revenue tax, every package of cigars, except as provided in § 41.75, 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.74 Notice for cigarettes.

Every package of cigarettes, except as provided in § 41.75, 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

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“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, further redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.75 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 §41.50, 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

§41.81 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 41.82.

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under §§41.85 and 41.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the to-

bacco 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 §41.31; 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 §§ 41.85, 41.85a, or 41.135);

(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 § 41.151).

(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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

§41.82 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.

(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 §41.185 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 § 41.83.

(j) For civil penalties and forfeiture provisions related to violations of this section, see § 41.83. 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.83 Penalties and forfeiture for products labeled or shipped for export.

Except for the return of exported products that are specifically authorized under § 41.82(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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.85 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 § 41.86: *Provided, however*, that in the

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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 TTB Form 2105, and receive a notice of approval from the appropriate TTB 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.85a Release from customs custody of returned articles.

(a) Domestically produced tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released, under the bond of the manufacturer or export warehouse proprietor to whom such articles are released, from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery to the

factory of any tobacco products manufacturer or to the permit premises of an export warehouse proprietor.

(b) Domestically produced cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned to the United States without change to the product or the shipping container may be released from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery, under the bond of the manufacturer to whom such articles are released, to the factory of:

(1) A manufacturer of cigarette papers and tubes; or

(2) A manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(c) Releases under this section must be in accordance with the procedures set forth in §41.86. 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.86 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 §§41.85 or 41.85a, must prepare a notice of release, Form 5200.11, in triplicate, and file the three copies of the form with the appropriate TTB officer. The appropriate TTB 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 TTB Form 5200.11 certified by the appropriate TTB 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 TTB Form 5200.11 along with a copy of the electronic filing and customs release to the appropriate TTB officer at the address shown thereon. The importer will retain one copy of the TTB Form 5200.11 to meet TTB 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 TTB Form 5200.11 to the appropriate customs officer along with their request for release. The customs officer will verify that the TTB Form 5200.11 has been certified by the appropriate TTB 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 TTB Form 5200.11 along with a copy of the customs release to the appropriate TTB office at the address shown thereon. The importer will retain one copy of the TTB Form 5200.11 to meet TTB 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

§ 41.101 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 § 41.105. 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. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

§ 41.105 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

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file, or cause to be filed, a tax return, TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.106 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 41.30 through 41.35;
- (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 TTB Form 5000.25 on which taxes have been prepaid.

(b) *Noncommercial mail shipments.* Noncommercial mail shipments of tobacco products and cigarette papers

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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 TTB Form 5000.25 upon request of an appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1512-0560)

[T.D. ATF-444, 66 FR 13850, Mar. 8, 2001. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§§ 41.107-41.108 [Reserved]

DEFERRED PAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS

§41.109 Bond required for deferred taxpayer.

Where a manufacturer of tobacco products in Puerto Rico desires to defer payment in Puerto Rico of the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products of Puerto Rican manufacture coming into the United States, he shall file a bond, Form 2986, with the appropriate TTB officer, 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 §41.112. 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayer.

Where tobacco products or cigarette papers or tubes are to be shipped to the United States involving deferred taxpayer, 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 41.30 through 41.35;
- (d) The number of small cigarettes, large cigarettes or small cigars to shipped;
- (e) The number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped;
- (f) The number of large cigars with a sale price of more than \$235.294 per thousand to be shipped;
- (g) The pounds and ounces of chewing tobacco or snuff to be shipped;
- (h) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;
- (i) The number of cigarette papers or tubes;
- (j) The amount of the tax to be paid on such articles under the provisions of this subpart; and
- (k) The name and address of the consignee in the United States to whom such products are being shipped. The date of completing such record will be treated as the date of computation of the tax. Tobacco products or cigarette papers or tubes may be shipped to the United States in accordance with the provisions of this section only after computation of the tax.

(Approved by the Office of Management and Budget under control number 1512-0560)

[T.D. ATF-444, 66 FR 13851, Mar. 8, 2001. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.111 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 TTB Form 2986 (5210.12); and
- (c) That the amount of the manufacturer's bond is sufficient or in the max-

imum penal sum to cover the tax due on the shipment.

[T.D. ATF-444, 66 FR 13851, Mar. 8, 2001. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.112 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 TTB Form 5000.25 in duplicate, and file the original with the appropriate TTB officer, and maintain one copy for the file for each semimonthly return period. The bonded manufacturer shall execute the return, TTB Form 5000.25, under the penalties of perjury. He shall file a return for each return period at the time specified in §41.114, regardless of whether tax is due for that return period. However, where the appropriate TTB officer, 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.113 Return periods.

Except as provided by §41.114, the periods to be covered in the semimonthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

[T.D. ATF-365, 60 FR 33675, June 28, 1995. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.114 Time for filing.

- (a) *General rule.* Semimonthly tax returns under this subpart shall be filed by the bonded manufacturer, for each

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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 §41.115 or §41.115a.

(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 §41.115a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 16-25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.25, and make remittance, for the period September 26-30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (b)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the 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 un-

derpayment 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 appropriate TTB officer, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return, and remittance as the case may be, were mailed shall be treated as the date of delivery.

(d) *Weekends and holidays.* Except as provided in paragraph (b)(4) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

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

[T.D. ATF-246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-365, 60 FR 33675, June 28, 1995; T.D. ATF-444, 66 FR 13851, Mar. 8, 2001. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.114a 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 §41.114 shall file with the appropriate TTB officer 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 41.114.

If the bond on Form 2986 is in an amount insufficient to cover an extended deferral period, according to the requirements of §41.121, 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 §41.114 (unless found in default as provided in §41.116). Such bonds must be executed in an amount sufficient to cover an extended deferral period, according to the requirements of §41.121.

(c) *Commencement of extended deferral.* Bonded manufacturers may file returns with benefit of extended deferral only after the applicable bonds and extensions of coverage required by this section have been filed with and approved by the appropriate TTB officer.

(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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.115 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 §41.115a. Such remittance may be in any form the appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.115a 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 §41.115, 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 appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §41.105 or §41.114. 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 §41.115. 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

appropriate TTB officer by attaching a written notification to the tax return, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the tax return, information about remitting the tax for that return by EFT and shall file the return with the appropriate TTB officer.

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

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

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

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer an TTB Procedure entitled, Payment of Tax by

Alcohol and Tobacco Tax and Trade Bureau, Treasury

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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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.116 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 appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§§ 41.117-41.118 [Reserved]

§ 41.119 Corporate surety.

(a) Surety bonds, required under the provisions of this subpart, may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Limitations concerning corporate sureties are prescribed by the Secretary in the current revision of Treasury De-

partment 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]

§ 41.120 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]

§ 41.121 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 § 41.111 or is otherwise chargeable against such bond and then must credit the account for the amount paid on Form 5000.25 or other TTB-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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.122 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 41.121, 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 § 41.123. 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, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.123 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 appropriate TTB officer 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 § 41.121 and a strengthening bond has not been filed, or (e) the appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.124 Extension of coverage of bond.

An extension of coverage of the bond of a bonded manufacturer shall be required (a) as provided in § 41.114a, 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, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.125 Approval of bond and extension of coverage of bond.

The appropriate TTB officer is authorized to approve all bonds and extensions of coverage of bonds (except under § 41.136) filed under this subpart. No manufacturer of tobacco products in Puerto Rico shall defer taxes under this subpart until he receives from the appropriate TTB officer 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 appropriate TTB officer, such copy of the bond or extension of coverage of bond shall be retained by the bonded manufacturer and shall be made available for inspection by the

appropriate TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.126 Termination of bond.

Any bond given under the provisions of this subpart may be terminated as to future transactions, by the appropriate TTB officer, (a) pursuant to application of surety as provided in § 41.127; (b) on approval of a superseding bond; (c) on notification by the bonded manufacturer to the appropriate TTB officer that he has discontinued the deferral of taxes under the bond; or (d) on notification by the bonded manufacturer to the appropriate TTB officer that he has discontinued business. When any bond is terminated, the appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.127 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 appropriate TTB officer that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the appropriate TTB officer. The surety shall also file with the appropriate TTB officer 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 § 41.128.

[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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.128 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 § 41.127, 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, and further redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.129 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 41.120, shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the appropriate TTB officer until the liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the appropriate TTB officer may extend the date of release for such additional length of time as he deems necessary.

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

[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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§§ 41.135–41.138 [Reserved]

§ 41.139 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

§41.140

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]

§41.140 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

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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 cigarette 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]

§41.141 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]

§§ 41.151-41.153 [Reserved]

Subpart I—Claims

GENERAL

§41.161 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on

tobacco products and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.162 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]

§41.163 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 appropriate TTB officer that the taxpayer has paid the tax on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty,

or act of God, while in the possession or ownership of such taxpayer, or withdrawn by him from the market. Any claim for refund of tax under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall include a statement that the tax imposed on tobacco products and cigarette papers and tubes by 26 U.S.C. 7652 or chapter 52, as applicable, has been paid in respect to the articles covered in the claim, and that the articles were lost, destroyed, or withdrawn from the market, within six months preceding the date the claim is filed and shall be executed under the penalties of perjury. A claim for refund relating to articles lost or destroyed shall be supported as prescribed in §41.165, and a claim relating to articles withdrawn from the market shall include a schedule prepared and verified as prescribed in §§41.170 and 41.171 or §§41.172 and 41.173. The original of the claim shall be filed with the appropriate TTB officer. 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

§41.165 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 §41.163, 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

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necessary to establish to the satisfaction of the appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

§41.170 Reduction of tobacco products to materials; TTB 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 §41.163, 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 TTB Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the appropriate TTB officer.

(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 §41.22) 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 TTB Form 5200.7 or TTB 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

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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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.171 Reduction of tobacco products to materials, action by appropriate TTB officer.

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 appropriate TTB officer may verify the schedule and supervise destruction of the articles (and stamps, if any) or the reduction of tobacco products to tobacco, or the appropriate TTB officer 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.172 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 §41.163, assemble the articles in or adjacent to the factory in which the articles are to be retained or received in a nontaxpaid status. The taxpayer shall group the articles according to the rates of tax applicable

to the articles, and shall prepare a schedule of the articles, on Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the appropriate TTB officer.

(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 §41.22) 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 TTB Form 5200.7 or TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§41.173 Return to nontaxpaid status, action by appropriate TTB officer.

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 appropriate TTB officer may verify the schedule and supervise disposition of the articles (and destruction of the stamps, if any) or the appropriate TTB officer may authorize the receiving manufacturer to verify the schedule and disposition of the articles (and destruction of the stamps, if any) covered therein, without supervision, by so stating on the original and one copy of the schedule returned to the manufacturer. Where the receipt in a factory of tobacco products and cigarette papers and tubes has been

verified, such articles shall be treated by the receiving manufacturer as nontaxpaid and shall be covered by the manufacturer's bond.

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

[T.D. 6871, 31 FR 47, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

When the appropriate TTB 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 appropriate TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Subpart J—Records and Reports

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

§41.181 Records of large cigars.

Every person who imports large cigars for sale within the United States

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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 § 41.39), 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 § 41.81.

(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 TTB officer

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finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

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

[T.D. ATF-420, 64 FR 71944, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.182 Availability of records.

The records required under § 41.181 shall be kept by the importer at his usual place of business unless otherwise authorized in writing by the appropriate TTB officer, and shall be made available for inspection by the appropriate TTB officer upon his request. (For retention period, see § 41.22.)

[T.D. ATF-40, 42 FR 5007, Jan. 26, 1977. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.183 [Reserved]

Subpart K—Tobacco Products Importers

SOURCE: T.D. ATF-422, 64 FR 71951, Dec. 22, 1999, unless otherwise noted.

§ 41.190 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 § 41.50 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.191 Application for permit.

Except as provided in § 41.192, every person, before commencing business as

an importer of tobacco products as defined in § 41.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on TTB 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.192 Transitional rule.

Any person who—

(a) Was engaged in the business as an importer of tobacco products before January 1, 2000, and

(b) Who files an application with TTB before January 1, 2000, may continue to import tobacco products and cigarette papers and tubes pending action on their application by TTB. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 will apply to such applicant.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.193 Corporate documents.

Every corporation, before commencing business as an importer of tobacco products, must furnish with its application for permit, required by § 41.191, 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 TTB officer, and such information is currently complete and accurate, a written statement to that ef-

fect, in duplicate, will be sufficient for the purpose of this section.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.194 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 § 41.191 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 TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.195 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 § 41.191, 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.196 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

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otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate TTB 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 § 41.194. Form 1534 does not have to be filed again with the appropriate TTB officer if such form has previously been submitted to TTB and is still in effect.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.197 Additional information.

The appropriate TTB 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 TTB officer, furnish as a part of his application for such permit such additional information as the appropriate TTB officer deems necessary to determine whether the applicant is entitled to a permit.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.198 Investigation of applicant.

Appropriate TTB 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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§ 41.199 Notice of contemplated disapproval.

If the appropriate TTB officer has reason to believe that the applicant is not entitled to a permit, the appropriate TTB 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 TTB 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. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.200 Issuance of permit.

If the application for permit, together with the required supporting documents, is approved, the appropriate TTB officer will issue a permit on TTB F 5200.24 to the applicant as an importer of tobacco products.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.201 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, TTB F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 41.192.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.202 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 TTB F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is

taken by TTB on the application for renewal, provided a timely application for renewal is filed.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.203 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 TTB officer upon request.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

REQUIRED RECORDS AND REPORTS

§ 41.204 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.

§ 41.205 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

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

§ 41.206 Reports.

(a) Importers must file a monthly report on TTB 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 § 41.224, or when a change in control of a corporation described in § 41.226 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.207 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 TTB 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

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TTB or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.208 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 TTB 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 TTB during business hours.

(b) Furthermore, the appropriate TTB 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.

[T.D. ATF-422, 64 FR 71951, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

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

§ 41.220 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 TTB Form 5230.5 for an amended permit within 30 days of such change.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.221 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

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products in connection with operations authorized by the permit, the importer must make application on TTB 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 § 41.195.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.222 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 TTB 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.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

CHANGES IN OWNERSHIP AND CONTROL

§ 41.223 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 TTB officer a written statement to that effect.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.224 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 TTB 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 § 41.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 41.206.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.225 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or re-appointment) 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 TTB 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 § 41.226 will apply. When there is any change in the authority furnished under § 41.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate TTB officer in writing.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.226 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 TTB 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 § 41.206, 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.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

CHANGES IN LOCATION OR ADDRESS

§ 41.227 Change in location.

Whenever an importer of tobacco products intends to relocate the principal business office, the importer must, before commencing operations at the new location, make application on TTB Form 5230.5 for, and obtain, an amended permit.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41. 228 Change in address.

Whenever any change occurs in the address, but not the location, of the principal business office of an importer of tobacco products, as a result of action of local authorities, the importer must make application on TTB Form 5230.5 for an amended permit within 30 days of such change.

[T.D. ATF-422, 64 FR 71953, Dec. 22, 1999. Re-designated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]