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## **Preface**

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau, which are of public record.

The Bureau publishes rulings and procedures to promote uniform application of the laws and regulations it administers. Rulings interpret the requirement of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such laws and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

## Definitions

**Rulings and procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:**

**AMPLIFIED** is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth in the new ruling. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified.

**CLARIFIED** is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

**DECLARED OBSOLETE** is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

**MODIFIED** is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling hold that it applies to both A and B, the prior ruling is modified.

**REVOKED** is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

**SUPERSEDED** is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling if both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code–26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code–Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

**SUPPLEMENTED** is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several items, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

## Treasury Decisions – I

### Subpart B – TOBACCO PRODUCTS

TITLE 27–ALCOHOL, TOBACCO PRODUCTS AND FIREARMS–CHAPTER I– BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

#### **Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R-88P]**

##### **T.D. ATF-420**

##### **27 CFR Parts 270, 275, 290, 295 and 296**

**ACTION:** Treasury decision, final rule.

**SUMMARY:** This document implements the January 1, 2000 and January 1, 2002 tax increases on tobacco products and cigarette papers and tubes imposed by section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). ATF is amending existing regulations to show the new tax rates. This document also makes additional changes of a technical nature.

**EFFECTIVE DATE:** January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8202, mdruh@atfhq.atf.treas.gov.

##### **SUPPLEMENTARY INFORMATION:**

###### **Tax Increases**

Public Law 105-33, entitled “The Balanced Budget Act of 1997” (the Act) was enacted on August 5, 1997. Section 9302 (a) through (f) (111 Stat. 671) increases the tax imposed by the Internal Revenue Code of 1986 relating to tobacco products and cigarette papers and tubes in two increments. The first tax increase applies to articles removed from ATF or customs bond on or after January 1, 2000. The second tax increase applies to such articles removed on or after January 1, 2002. Section 9302(g) imposes a new tax on “roll-your-own” tobacco. In this document, we are simply listing the new tax rates in the appropriate sections of the regulations. In separate rulemaking documents, we will make other changes to the tobacco regulations to administer the new tax on “roll-your-own” tobacco, the floor stocks tax, and other provisions of section 9302.

Tobacco regulations in 27 CFR parts 270, 275, 290, 295 and 296 that specified only the pre-2000 tax rates are amended to show the new rates. Examples of calculations in these regulations have been amended to show the current and future tax rates.

###### **Excise Tax on Cigarette Papers**

The Act modifies the tax imposed on cigarette papers manufactured in or imported into the United States. Sections 9302(c) of the Act raises the rate of tax. Section 9302(h)(3) of the Act revises how the

excise tax on cigarette papers is applied. Previously, the excise tax only applied to books or sets of cigarette papers that contained more than 25 papers. As of January 1, 2000, all cigarette papers manufactured in or imported into the United States must be taxed without regard to the size of the book or set. The tax continues to be computed on each 50 papers or fractional part thereof, so in the following examples of tax computation, fractions of 50 papers are treated as a full 50 papers:

Quantity	Computation using tax rate applicable:		
	Prior to 1/1/2000	1/1/2000 to 12/31/2001	1/1/2002 and after
1,000 books of 20 papers each....	No tax.....	\$4.24 (20,000 papers /50 = 400); (400 x 1.06 cents = \$4.24).	\$4.88 (20,000 papers/50 = 400) (400 x 1.22 cents = \$4.88)
1,007 books of 30 papers each....	\$4.5375 (30,210 papers/50 = 605); (605 x 0.75 cents = \$4.5375)	\$6.413 (30,210 papers/50 = 605); (605 x 1.06 cents = \$6.413).	\$7.381 (30,210 papers/50 = 605); (605 x 1.22 cents = \$7.381)
1,007 books of 60 papers each....	\$9.0675 (60,420 papers/ 50 = 1209); (1209 x 0.75 cents = \$9.0675).	\$12.8154 (60,420 papers/ 50 = 1209); (1209 x 1.06 cents = \$12.8154).	\$14.7498 (60,420 papers/50 = 1209) (1209 x 1.22 cents = \$14.7498).

### Sale Price for Large Cigars

Regulations that refer to the wholesale price of large cigars have been removed or amended to refer to the sale price. Before January 1, 1991, the excise tax on large cigars was based on the wholesale price, but after that date, Public Law 101-508 changed the tax so it was based on the sale price. Since it is unlikely ATF or industry members will need to compute tax at the pre-1991 rates, we are deleting all references to those rates in the regulations. Should the need arise, we will refer to regulations that were in force at the time of removal. In this document, we have expanded the sale price regulations to include information contained in the old wholesale price regulations where this information is applicable to sale price. For example, we adopt rules for pricing of combination packages and cigars sold as “seconds.”

### Delegations of Authority

Pursuant to Treasury Decision 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of ATF, the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by ATF delegation orders, regional directives, or similar delegation documents. In addition, the Secretary has placed delegations to specific ATF officials in some of the regulations issued pursuant to the IRC. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 52, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all redelegations of the Director's authority in the revised or amended sections of the regulations. The regulations, which specified an ATF officer by title,

are being replaced with delegations to the “appropriate ATF officer.” Along with this final rule, ATF is publishing a delegation order, in which we give the organizational titles of the individuals who have authority to carry out each of the specified duties. The effect of these changes is to consolidate all delegations of authority into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the event of a change in delegation or in the event of a restructuring. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition to the above, this final rule also eliminates all references in the affected regulatory sections which identify the ATF officer with whom an ATF form is filed. Thus, in lieu of identifying the authorized officer in the regulations, the form itself will indicate the officer with whom it must be filed. Similarly, this final rule also amends the affected sections of the various parts to provide that documents other than ATF forms (such as letterhead applications, notices and reports) will be filed with the “appropriate ATF officer.” The “appropriate ATF officer” is the Director's delegate and will be identified in the accompanying Delegation Order. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed in the event that authority to receive such submissions, or the title of the officer, changes.

Consistent with the above, this final rule makes various technical amendments to the affected parts of 27 CFR. Specifically, new sections are added to recognize the authority of the Director to delegate regulatory authorities in each part and to identify the appropriate delegation order as the instrument reflecting such delegations. Also, each part affected by this document is amended to provide that the instructions on an ATF form identify the ATF officer with whom it is filed.

Since ATF is issuing this Treasury decision to implement Public Law 105-33, we are amending only the sections that were affected by the law change. We intend to make similar changes in delegations to the remainder of parts 270, 275, 290, 295 and 296 in future technical correction documents. We plan to amend each part of Title 27 of the Code of Federal Regulations through a separate rulemaking. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

**Administrative Corrections**

Minor changes are also made to remove references to obsolete OMB Control Number 1512-0362 and to reflect current ATF form numbers. The locations in the regulations regarding the form changes are as follows:

Regulation citation in 27 CFR	Old Form No.	New Form No.
270.431.....	2132	5230.2
270.422, 275.141.....	2138	5230.3

**“Plain Language” Changes**

When we were revising the regulations to make the changes in the tax rates, we also tried to simplify and clarify the language of the affected regulations. We did not change any requirements of these

sections. Although we are not making a formal request for comments as part of this rulemaking, we welcome suggestions for improving the readability of these regulations at any time.

### **Administrative Procedure Act**

This document merely implements parts of section 9302 of the Balanced Budget Act of 1997 that are effective on January 1, 2000. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

### **Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to section 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **Executive Order 12866**

This document is not a significant regulatory action within the meaning of Executive Order 12866.

### **Paperwork Reduction Act**

This document does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document. Three sections of the regulations that contain paperwork requirements are amended, but there are no changes of burden as a result of these changes:

- 27 CFR 275.181 is revised to eliminate the requirement for records of wholesale price; the requirement for records of sale price is retained (1512-0368).
- 27 CFR 295.51 is revised to change “wholesale” price to “sale” price, and the section is reorganized to make it easier to read (1512-0363).
- 27 CFR 296.74 is amended to give current and future tax rates, to clarify the wording, and to display the number of the current OMB approval (1512-0492).

### **Drafting Information**

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document.

### **List of Subjects**

*27 CFR Part 270*

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

*27 CFR Part 275*

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco, Warehouses.

*27 CFR Part 290*

Administrative practice and procedure, Aircraft, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

*27 CFR Part 295*

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

*27 CFR Part 296*

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

**Issuance**

Title 27 CFR is amended as follows:

**PART 270--MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

**Paragraph 1.** The heading of part 270 is revised to read as set forth above.

**Pars. 2-3.** The authority citation for part 270 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 4.** Section 270.11 is amended by removing the definitions for the terms “Determined or determination” and “Wholesale price,” and adding definitions for the terms “Appropriate ATF officer,” “ATF,” “Determine” and “Sale price” to read as follows:

**§ 270.11 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

\* \* \* \* \*

*ATF.* The Bureau of Alcohol, Tobacco and Firearms.

\* \* \* \* \*

*Determine.* To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

\* \* \* \* \*

*Sale price.* The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 and used for computation of the tax.

\* \* \* \* \*

**Par. 5.** Section 270.21 is revised to read as follows:

**§ 270.21 Cigar tax rates.**

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

Type and amount	Tax rate for removals during the years:		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars per thousand.....	\$1.125	\$1.594	\$1.828
Large cigars per thousand *			
• percentage of sale price.	12.75%	18.063%	20.719%
• but not to exceed →	\$30	\$42.50	\$48.75

\*For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand.

(b) See § 270.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

**§ 270.22 [Removed]**

**Par. 6.** Section 270.22 is removed.

## § 270.22a [Redesignated as § 270.22 and revised]

**Par. 7.** Section 270.22a is redesignated as § 270.22, and newly redesignated § 270.22 is revised to read as follows:

### § 270.22 Determination of sale price of large cigars.

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases.*--(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price.*--(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by ATF's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as “imperfects”, “seconds”, “throw-outs”, or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

**Par. 8.** Section 270.23 is revised to read as follows:

**§ 270.23 Cigarette tax rates.**

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

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes.....	\$12	\$17	\$19.50
Large cigarettes up to 6 ½ ” long.....	25.20	35.70	40.95
Large cigarettes over 6 ½ ” long.....	Taxed at the rate for small cigarettes, counting each 2 ¾ inches or fraction thereof of the length of each as one cigarette.		

**Par. 9.** Section 270.25 is revised to read as follows:

**§ 270.25 Smokeless tobacco tax rates.**

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

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

\* Prorate tax for fractions of a pound.

**Par. 10.** Section § 270.25a is revised to read as follows:

**§ 270.25a Pipe tobacco and roll-your-own tobacco tax rates.**

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound * for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco.....	\$0.675	\$0.9567	\$1.0969
Roll-your-own tobacco.....	* No tax	0.9567	1.0969

\* Prorate tax for fractions of a pound.

**Par. 11.** A new § 270.49 is added to read as follows:

**§ 270.49 Delegations of the Director.**

The Director has general authority to take action on all matters under the regulations in this part 270. Some of the authorities in this part are redelegated to “appropriate ATF officers.” The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order-Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

**Par. 12.** Section 270.183 is amended by revising paragraph (e) to read as follows:

**§ 270.183 Record of tobacco products.**

\* \* \* \* \*

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22, except cigars that cost more than \$235.294 may optionally be shown as if the price were \$236 per thousand);

\* \* \* \* \*

**Par. 13.** Section 270.184 is revised to read as follows:

**§ 270.184 Record of removals subject to tax.**

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

- (1) The date of removal,
- (2) The name and address of the person to whom shipped or delivered,
- (3) The kind and quantity of tobacco products removed, and

(4) For large cigars, show the sale price (If the sale price is more than \$235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an ATF officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

**§ 270.187 [Removed]**

**Par. 14.** Section 270.187 is removed. and adding, in its place, a reference to § 270.22.

**§ 270.187 Record of sales prices of large cigars.**

**Par. 16.** Section 270.311 is amended by revising paragraph (b) to read as follows:

**§ 270.311 Action by claimant.**

\* \* \* \* \*

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 270.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

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

(See 26 U.S.C. 5705)

**Par. 17.** Section 270.351 is revised to read as follows:

**§ 270.351 Cigarette papers.**

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

---

Product	Tax rate for each 50 papers <sup>1</sup> for removals during the years:		
	1993 to 1999 <sup>2</sup>	2000 and 2001	2002 and after

---

Cigarette papers up to 6 ½” long.....	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6 ½” long.....	Use rates above, but count each 2 ¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

<sup>1</sup> Tax rate for less than 50 papers is the same. The tax is not prorated.

<sup>2</sup> 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.

**Par. 18.** Section 270.352 is revised to read as follows:

**§ 270.352 Cigarette tubes.**

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6 ½ ” long.....	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6 ½ ” long.....	Use rates above, but count each 2 ¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

\*Tax rate for less than 50 tubes is the same. The tax is not prorated.

**Par. 19.** Section 270.421 is revised to read as follows:

**§ 270.421 General.**

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the date and number of cigarette papers and the date and number of cigarette tubes:

- (1) Manufactured;
- (2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;
- (3) Removed, subject to tax;
- (4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to § 270.451; or
- (5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

**Par. 20.** Section 270.422 is revised to read as follows:

**§ 270.422 General.**

Every manufacturer of cigarette papers and tubes must prepare a report on ATF Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) *Reports for periods on or after January 1, 2000.* Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) *Reports for periods prior to January 1, 2000.* Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

**Par. 21.** Section 270.431 is revised to read as follows:

**§ 270.431 General.**

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on ATF Form 5230.2 in accordance with instructions for the form. Such inventory is subject to verification by an ATF officer. The manufacturer must retain a copy of each inventory completed on ATF Form 5230.2 in accordance with this subpart.

(a) Reports of inventory for periods on or after January 1, 2000. Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) Reports of inventory for periods prior to January 1, 2000. Reports of inventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

( 26 U.S.C. 5721)

**PART 275--[AMENDED]**

**Par. 22.** The authority citation for part 275 continues to read as follows:

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

**Par. 20.** Section 275.11 is amended by removing the definitions for the terms “Determined or determination” and “Wholesale price” and by adding definitions for the terms “Appropriate ATF officer,” “ATF,” “Determine” and “Sale price” to read as follows:

**§ 275.11 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

\* \* \* \* \*

*ATF.* The Bureau of Alcohol, Tobacco and Firearms.

\* \* \* \* \*

*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.

\* \* \* \* \*

*Sale price.* The price for which large cigars are sold by the importer or manufacturer, determined in accordance with § 275.39 and used for computation of the excise tax.

\* \* \* \* \*

**Par. 23.** A new § 275.29 is added to read as follows:

**§ 275.29 Delegations of the Director.**

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to “appropriate ATF officers.” The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

**Par. 24.** Section 275.30 is revised to read as follows:

**§ 275.30 Pipe tobacco and roll-your-own tobacco.**

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

---

Product	Tax rate per pound <sup>1</sup> 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

<sup>1</sup> Prorate tax for fractions of a pound.

**Par. 25.** Section 275.31 is revised to read as follows:

**§ 275.31 Cigar tax rates.**

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

Product	Tax rate for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars (per thousand).....	\$1.125	\$1.594	\$1.828
Large cigars <sup>1</sup>			
percentage of sale price.....	12.75%	18.063%	20.719%
but not to exceed per thousand....	\$30	\$42.50	\$48.75

<sup>1</sup> For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294.

(b) See § 275.39 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

**Par. 26.** Section 275.32 is revised to read as follows:

**§ 275.32 Cigarette tax rates.**

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

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes.....	\$12	\$17	\$19.50
Large cigarettes up to 6 ½ ” long.....	25.20	35.70	40.95
Large cigarettes over 6 ½ ” long.....	Use tax rates for small cigarettes, but count each 2 ¾ inches or fraction thereof of the length of each as one cigarette.		

**Par. 27.** Section 275.33 is revised to read as follows:

**§ 275.33 Smokeless tobacco tax rates.**

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

Product	Tax rate per pound <sup>1</sup> 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

<sup>1</sup> Prorate tax for fractions of a pound.

**Par. 28.** Section 275.34 is revised to read as follows:

**§ 275.34 Cigarette papers.**

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers <sup>1</sup> for removals during the years		
	1993 to 1999 <sup>2</sup>	2000 or 2001	2002 and after
Cigarette papers up to 6 ½ ” long.....	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6 ½ ” long.....	Use rates above, but count each 2 ¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

<sup>1</sup> Tax rate for less than 50 papers is the same. The tax is not prorated.

<sup>2</sup> 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.

**Par. 29.** Section 275.35 is revised to read as follows:

**§ 275.35 Cigarette tubes.**

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Tax rate for each 50 tubes<sup>1</sup> for removals

Product	during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6 ½” long.....	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6 ½” long.....	Use rates above, but count each 2 ¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

<sup>1</sup> Tax rate for less than 50 tubes is the same. The tax is not prorated.

**Par. 30.** Section 275.39 is amended to read as follows:

**§ 275.39 Determination of sale price of large cigars.**

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See § 270.22(b) of this chapter for information on determining the sale price in special cases.

**Par. 31.** Section 275.81 is amended by revising paragraphs (c)(1), (c)(4)(ii) and (c)(4)(iii) to read as follows:

**§ 275.81 Taxpayment.**

\* \* \* \* \*

(c) \* \* \*

(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.

\* \* \* \* \*

(4) \* \* \*

(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;

\* \* \* \* \*

**Par. 32.** Section 275.107 is amended by revising paragraph (c)(4) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) The number of cigarette papers. If imported prior to January 1, 2000, the number of books or sets of cigarette papers of each different numerical content.

\* \* \* \* \*

**Par. 33.** Section 275.110 is amended by revising paragraphs (b) and (c) to read as follows:

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

\*\*\* (b) the number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped; (c) the number of large cigars with a sale price of more than \$235.294 per thousand to be shipped.

\*\*\*\*\*

**Par. 34.** Section 275.117 is amended by revising paragraphs (b) and (c) to read as follows:

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

\*\*\* (b) the number and sale price of large cigars with a sale price of not more than \$235.294 per thousand, (c) the number of large cigars with a sale price of more than \$235.294 per thousand, \*\*\*

\*\*\*\*\*

**Par. 35.** Section 275.139 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 275.139 Records.**

\*\*\*\*\*

(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.

\*\*\*\*\*

**Par. 36.** Section 275.170 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 275.170 Reduction of tobacco products to materials; ATF action.**

\*\*\*\*\*

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

The amounts claimed relating to large cigars are based on the lowest 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)

**Par. 37.** Section 275.172 is amended by revising paragraph (b) to read as follows:

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

\* \* \* \* \*

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

The amounts claimed relating to large cigars are based on the lowest 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)

**Par. 38.** Section 275.181 is revised to read as follows:

**§ 275.181 Records of large cigars.**

Every person who imports large cigars for sale within the United States must keep such records as are necessary to establish and verify the sale price that applies to large cigars removed (entered or withdrawn).

(a) *Basic record.* The importer must keep a record to show each sale price (as determined under § 275.39), which is applicable to large cigars removed. No later than the tenth business day in January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) *Copies of price announcements.* The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy does not show the actual date when issued it must be annotated to show this information.

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

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

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

**PART 290--[AMENDED]**

**Par. 39.** The authority citation for part 290 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 40.** Section 290.11 is amended by removing the definition for the term “wholesale price” and adding a definition for the term “sale price” to read as follows:

**§ 290.11 Meaning of terms.**

\* \* \* \* \*

*Sale price.* The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 or § 275.39.

\* \* \* \* \*

**PART 295--[AMENDED]**

**Par. 41.** The authority citation for part 295 continues to read as follows:

**Authority:** 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

**Par. 42.** Section 295.11 is amended by removing the definition for the term “Wholesale price” and adding a definition for the term “Sale price” to read as follows:

**§ 295.11 Meaning of terms.**

\* \* \* \* \*

*Sale price.* The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or § 275.39 and used in computation of the tax.

\* \* \* \* \*

**Par. 43.** Section 295.51 is revised to read as follows:

**§ 295.51 Supporting records.**

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 270 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

- (1) The date of removal;
- (2) The name and address of the Federal agency to which shipped or delivered;
- (3) The kind and quantity and,
- (4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512-0363)

(See 26 U.S.C. 5741)

## **PART 296--[AMENDED]**

**Par. 44.** The authority citation for part 296 continues to read as follows:

**Authority:** 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

**Par. 45.** The heading of subpart C is revised to read as follows:

### **Subpart C--Disaster Loss Claims**

**Par. 46.** Section 296.72 is amended by removing the definition for the term “Wholesale price” and adding definitions for the terms “Appropriate ATF officer” and “Sale price” to read as follows:

#### **§ 296.72 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296.

\* \* \* \* \*

*Sale price.* The price for which large cigars are sold by the manufacturer or importer, determined in accordance with § 270.22 or 275.39 and used in computation of the tax.

\* \* \* \* \*

**Par. 47.** Sections 296.74 through 296.77 are revised to read as follows:

#### **§ 296.74 Execution of claims.**

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim--Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the

form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

**§ 296.75 Required information for claim.**

The claim should contain the following information:

- (a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;
- (b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;
- (c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;
- (d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;
- (e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,
- (f) That the claimant is entitled to payment under this subpart, and
- (g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993-1999 Rates]

Quantity	Article	Rate of tax	Amount
20,000.....	Small cigars.....	\$1.125 per thousand.....	\$22.50
1,000.....	Large cigars--sale price \$100/thousand	12.75% of sale price.....	12.75
500.....	Large cigars--sale price \$236/thousand	\$30 per thousand.....	15.00
10,000.....	Small cigarettes.....	\$12 per thousand.....	120.00
5,000.....	Large cigarettes.....	\$25.20 per thousand.....	126.00
2,000 sets.....	Cigarette papers--50 per set..	\$0.0075 per set.....	15.00
1,000 sets.....	Cigarette papers--100 per set.	\$0.015 per set.....	15.00
1,000.....	Cigarette tubes.....	\$0.015 per 50 tubes.....	0.30
100 lbs.....	Chewing tobacco.....	\$0.12 per pound.....	12.00
200 lbs.....	Snuff.....	\$0.36 per pound.....	72.00
100 lbs.....	Pipe tobacco.....	\$0.675 per pound.....	67.50
300 lbs.....	Roll-your-own tobacco.....	\$0 per pound.....	.....
Total claimed.....	.....	.....	478.05

[Example using 2000-2001 Rates]

Quantity	Article	Rate of tax	Amount
20,000.....	Small cigars.....	\$1.594 per thousand.....	\$31.88
1,000.....	Large cigars--sale price \$100/thousand	18.063% of sale price.....	18.06

500.....	Large cigars--sale price \$236/thousand	\$42.50 per thousand.....	21.25
10,000.....	Small cigarettes.....	\$17.00 per thousand.....	170.00
5,000.....	Large cigarettes.....	\$35.70 per thousand.....	178.50
199,975.....	Cigarette papers.....	\$0.0106 per 50 papers.....	42.40
1,000.....	Cigarette tubes.....	\$0.0213 per 50 tubes.....	0.43
100 lbs.....	Chewing tobacco.....	\$0.17 per pound.....	17.00
200 lbs.....	Snuff.....	\$0.51 per pound.....	102.00
100 lbs.....	Pipe tobacco.....	\$0.9567 per pound.....	95.67
300 lbs.....	Roll-your-own tobacco.....	\$0.9567 per pound.....	287.01
Total claimed.....	.....	.....	964.20

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000.....	Small cigars.....	\$1.828 per thousand.....	36.56
1,000.....	Large cigars--sale price \$100/thousand	20.719% of sale price.....	20.72
500.....	Large cigars--sale price \$236/thousand	\$48.75 per thousand.....	24.38
10,000.....	Small cigarettes.....	\$19.50 per thousand.....	195.00
5,000.....	Large cigarettes.....	\$40.95 per thousand.....	204.75
199,975.....	Cigarette papers.....	\$0.0122 per 50 papers.....	48.80
1,000.....	Cigarette tubes.....	\$0.0244 per 50 tubes.....	0.49
100 lbs.....	Chewing tobacco.....	\$0.195 per pound.....	19.50
200 lbs.....	Snuff.....	\$0.585 per pound.....	117.00
100 lbs.....	Pipe tobacco.....	\$1.0969 per pound.....	109.69
300 lbs.....	Roll-your-own tobacco.....	\$1.0969 per pound.....	329.07
Total claimed.....	.....	.....	1,105.96

**§ 296.76 Supporting evidence.**

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

**296.77 Time and place of filing.**

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

**Par. 48.** A new undesignated centerheading and § 296.81 are added to the end of subpart C to read as follows:

### **Administrative Provisions**

#### **§ 296.81 Delegations of the Director.**

The Director has general authority to take action on all matters under this subpart. Some of the authorities in this subpart are redelegated to “appropriate ATF officers.” The title of the appropriate ATF officer for each section is listed in ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Signed: October 5, 1999.

**John W. Magaw,**  
*Director.*

Approved: October 27, 1999.

**John P. Simpson,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 99-32605 Filed 12-21-99; 8:45 am]

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I— BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

### **Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R-369P)**

**T.D. ATF-421**

**27 CFR Parts 200, 270, 275 and 290**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule implements several provisions of the Balanced Budget Act of 1997. Section 9302 of the new law: places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers

and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit.

The temporary rule implements these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Additionally, the Bureau of Alcohol, Tobacco and Firearms (ATF) has made several other clarifying changes to the tobacco regulations. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking that invites comments on this temporary rule for a 60-day period following the publication of this temporary rule.

**DATES:** These temporary regulations are effective January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8210, or alcohol/tobacco@atfhq.atf.treas.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This temporary rule implements several provisions in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105-33, 111 Stat. 672. Section 9302 amends the Internal Revenue Code of 1986 (IRC) at sections 5704(b), 5712, 5754 and 5761(c). These new provisions relate to tobacco products, cigarette papers and tubes importation restrictions, markings, minimum manufacturing requirements and penalty provisions concerning tobacco products, and cigarette papers and tubes.

Congress amended the IRC so that the Secretary of the Treasury can more effectively enforce the collection of Federal excise taxes on such products. These provisions protect the Federal excise tax revenues derived from tobacco products, and cigarette papers and tubes. The Joint Committee on Taxation's "General Explanation of Tax Legislation Enacted in 1997" stated that the purpose of the amendments was to impose "expanded compliance measures designed to prevent the diversion of non-taxpaid tobacco products nominally destined for export to use within the United States." As the delegate of the Secretary of the Treasury (See Treasury Department Order 120-01 (formerly 221), dated June 6, 1972) ATF is implementing these new provisions by regulation.

### **Marks, Labels and Notices**

#### *Current Law*

The Federal excise tax on tobacco products, and cigarette papers and tubes is due on their removal from bonded premises. See 26 U.S.C. 5703. There are several exemptions from the Federal excise tax, under section 5704. Section 5704(b) allows a manufacturer of tobacco products, cigarette papers or tubes, or an export warehouse proprietor to transfer tobacco products and cigarette papers and tubes, without payment of tax to the bonded premises of another manufacturer or export warehouse proprietor. As defined in section 5702, a manufacturer of

tobacco products means any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco. This term does not include a person who produces such products solely for the person's own consumption or use, or a proprietor of a customs bonded warehouse. A manufacturer of cigarette papers and tubes means a person who makes up cigarette paper and tubes, except for personal consumption. 26 U.S.C. 5702(h). An export warehouse proprietor means one who operates an export warehouse, which is a bonded internal revenue warehouse for the storage of tobacco products, and cigarette papers and tubes. See 26 U.S.C. 5702(i), (j).

Section 5704(b) also allows a manufacturer of tobacco products, and cigarette papers and tubes, or an export warehouse proprietor to remove tobacco products, and cigarette papers and tubes for shipment to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. In addition, manufacturers may remove such articles for use of the United States without payment of the excise tax. Current ATF regulations which implement these provisions are located in 27 CFR part 290.

Furthermore, under 26 U.S.C. 5723(b), ATF is authorized to require certain marks, labels and notices on every package of tobacco products or cigarette papers. Based on this authority, for those products that are intended for export, 27 CFR 290.185 requires that every package of tobacco product that is deemed for export be marked with the words "Tax-exempt. For use outside U.S." or the words, "U.S. Tax-exempt. For use outside U.S." or a stamp, sticker or notice required by a foreign country or a possession of the United States, which identifies such country or possession. In addition, where taxpaid tobacco products are to be exported and a drawback of the tax paid to the manufacturer, 27 CFR 290.222 requires these packages to be marked with the words, "For Export with Drawback of Tax". These regulations serve two purposes. They enable us to clearly and easily identify packages of tobacco product that have been removed tax-free under section 5704(b) or subject to drawback under section 5706. In addition, the export marking requirement helps us to determine which tobacco products are intended for export. The regulations are a valuable enforcement mechanism that helps to prevent jeopardy of the revenue, because we can easily determine which products have been exempt from taxation and intended for export. When we identify a package of tobacco product in the U.S. market with tax-exempt export markings, we become concerned as to whether it has been Federally taxpaid.

### *New Law*

Congress specifically requires, under section 9302(h)(1)(A) of the Act, that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. 5704(b) unless they bear the proper marks, labels and notices as required by the Secretary of the Treasury. Thus, the Secretary of the Treasury is authorized to prescribe the type of marks, labels and notices required on products that are exempt from taxation under 26 U.S.C. 5704(b). Congress wanted to specifically authorize ATF to determine, for products exempt from taxation under section 5704(b), required marks, labels and notices to ensure protection of the Federal excise tax revenue. Congress wanted to ensure that non-taxpaid products intended for exportation bear the proper markings. Congress also wanted to require that taxpaid products that are ultimately sold on the domestic market must not bear exportation markings. Allowing products with export markings on the domestic U.S. market would hinder ATF enforcement of lawfully due taxes, and cause confusion as to whether the product has been taxpaid.

Thus, based on this authority, ATF has amended three sections of the regulations. We are now requiring that tobacco products, and cigarette papers and tubes bear the required marks, labels and notices in order to qualify for transfer or removal of the product without payment of tax. Accordingly, we have amended 27 CFR 270.233, 290.61 and 290.181. Thus, under amended § 270.233, tobacco products may not be transferred in bond unless they bear all required marks, labels and notices. In addition, under amended § 290.61, tobacco products, and cigarette papers and tubes may not be removed for exportation without payment of tax unless they bear all required marks, labels and notices. We have also amended § 290.181 to require that all tobacco products, cigarette papers and tubes must, before removal or transfer, bear the required marks, labels, or notices.

Finally, we have amended § 290.181 to clarify that the “package”, upon which the marking, labeling and notice requirements are to appear, does not include any cellophane wrapping material that may enclose a package. A package, thus, is only intended to include the actual material that holds and encloses the tobacco products, and cigarette papers or tubes. This amended definition clarifies placement of the marking, labeling and notice requirements. In keeping with Congressional intent to prevent diversion of tobacco products, we wanted to ensure that markings, labels and notices on products destined for export are clear and not easily destroyed.

## **Minimum Manufacturing Activity Requirements**

### *Current Law*

Section 5712 currently requires that every person, before commencing business as a manufacturer of tobacco products or as an export warehouse proprietor, shall apply for and obtain a permit to engage in such business. See also 26 U.S.C. 5713. (Effective January 1, 2000 importers will also be required to obtain a permit.) Under current law, the application may be rejected and the permit denied if, after notice and opportunity for hearing, we find that: (1) The proposed premises are not adequate to protect the revenue, (2) the applicant's business experience, financial standing or trade connections demonstrates that the applicant is not likely to comply with the law or (3) the applicant failed to disclose required material information or made a material false statement on the application. These factors enable ATF to ensure that those engaged in the business of manufacturing tobacco products will adequately protect the revenue and comply with the law and regulations.

### *New Law*

In section 9302 of the Act, Congress amended 26 U.S.C. 5712 by adding an additional factor for rejecting and denying an application for a permit. The new law provides that the an application may also be denied if “the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe.” Based on this new language, ATF is authorized to establish minimum capacity or activity requirements, and will deny a permit application based on a failure to meet such minimum capacity or activity requirements. Congress enacted this provision to ensure that those who apply for a permit actually intend to engage in the bona fide business of manufacturing tobacco products in a way that will adequately protect the revenue and comply with the law and regulations.

In promulgating regulations that establish minimum capacity or activity requirements, ATF has considered several issues. ATF does not want to establish criteria that would effectively exclude small

tobacco products manufacturers from obtaining a permit. In addition, ATF wants to establish criteria that will ensure that only those actually engaged in the business of manufacturing tobacco products are able to obtain a permit. Thus, ATF wants to establish criteria that would effectively exclude any persons who are not legitimate manufacturers and whose primary interest in obtaining a manufacturer's permit is to obtain the tax deferral benefits that a permit might facilitate.

### *Small Manufacturers*

Section 5712 requires that prior to engaging in the business of manufacturing tobacco products, a person must obtain a permit from ATF. We believe that any manufacturer who proposes to engage in the business of manufacturing of tobacco products, regardless of size, should be eligible to receive a permit, so long as they meet the definition of a manufacturer as defined in section 5702(d) and have fulfilled the other conditions in the law and regulations. In the past, ATF has issued permits to some small manufacturers of tobacco products, such as those who manufacture hand-rolled cigars. Thus, we did not want to establish minimum capacity or activity criteria that would exclude small tobacco products manufacturers.

### *Downstreaming of Taxes*

As stated, ATF needs to ensure that only those persons who fit within the definition of manufacturer at section 5702(d) are eligible to receive a permit. We would like to ensure that permits are not issued to persons who intend to use the permit to delay tax payment. In recent years, ATF has received inquiries from those who would like to obtain a permit and establish bonded premises for the primary purpose of receiving tobacco products in bond and delaying payment of Federal excise taxes.

The Federal excise tax on tobacco products attaches to the products as soon as they are produced. The manufacturer is liable for the tax on tobacco products held in bond. The manufacturer actually pays the tax when the tobacco product is removed from bond. See 26 U.S.C. 5703. Generally, tobacco products are distributed under a three-tier distribution system. Once the manufacturer pays Federal excise tax after removal from bonded premises, the products are transferred to a wholesaler, which is the second level in the distribution system. The retailer is the third level in this tier system, and is a customer of the wholesaler.

As discussed previously, section 5704 provides that tobacco products may be transferred from a manufacturer or export warehouse proprietor to another manufacturer or export warehouse proprietor without payment of tax. Because of this exemption from taxation, a business could attempt to set up one or more wholesale warehouses with some de minimis production capability, and obtain a manufacturer's permit for each wholesale warehouse. Using the in bond transfer provision provided by section 5704, each warehouse would then be eligible to receive tobacco products in bond at each wholesale warehouse, without payment of the excise tax. The taxes on the product would not be due until the product was distributed from the wholesale level to the retail level. This approach is referred to as "downstreaming of taxes," since it moves the collection point for the excise tax from the production level to the wholesale level. This is potentially beneficial for manufacturers, since they can effectively delay taxpayment until the product is removed from essentially the wholesale level. At the same time, it has an adverse effect on Federal tax receipts, since it delays payment of the Federal excise tax.

We would like to prevent the downstreaming of taxes. It undermines the effect and purpose of obtaining a permit to engage in the business of manufacturing tobacco products. It also contravenes the safeguards in obtaining a permit: to protect and collect the Federal excise tax revenue. ATF is also concerned with the potential number of new taxpayers (i.e., wholesalers qualifying as manufacturers) and the proliferation of tax payment points, if this approach becomes widely used. We have found that the collection of excise taxes is best achieved at the highest level within the distribution chain--the manufacturer level. Collected at the manufacturer level, we have fewer taxpayers to monitor, and thus have more efficient tax collections and fewer administrative costs. By ensuring that tax payment is made at the true manufacturing level, we can decrease the likelihood that taxable product will evade proper tax payment.

Recognizing these concerns, ATF wants to ensure that the new minimum manufacturing criteria would prevent issuance of a permit to businesses that want to receive tobacco products in bond and delay Federal excise tax payments. In summary, we have amended the regulations whereby we will continue to issue permits to small manufacturers of tobacco products, despite limited production capacity, and to deny permits to persons who seek a permit for the principal purposes of receiving in-bond untaxed cigarettes.

#### *Minimum Manufacturing Activity Criteria for Tobacco Products Manufacturers*

Accordingly, ATF has amended the regulations at 27 CFR 270.61, by requiring that a permit will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose proposed principal activity under such permit will be to receive or transfer non-taxpaid tobacco products in-bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in-bond under such permit. For example, a person who only manufactures 1,000 cigarettes per month, may receive a maximum of 999 cigarettes in bond during the month under that permit. Likewise, a person who manufactures 10,000,000 cigarettes a month could receive up to 9,999,999 cigarettes in bond during the month under that permit. As stated, the quantity of tobacco products received or transferred in bond under a particular permit may not exceed the quantity of tobacco products manufactured under that permit for any given month.

Again, this criteria is intended to ensure that only those persons, whose primary activity is the manufacture of tobacco products, receive a manufacturer's permit. We believe that these changes to the regulations effectively accommodate small producers, while protecting the timely assessment and collection of the Federal excise tax revenue. We have also amended regulations in 27 CFR 200.49b to include this new activity criterion as a basis for rejecting an application for a permit. We have not amended 27 CFR 200.46, regarding revocation or suspension of tobacco permits, because we already require compliance with regulations issued under the IRC.

#### *Importers and Export Warehouse Proprietors*

Effective January 1, 2000, the IRC also requires that importers obtain a permit prior to engaging in the business. See 26 U.S.C. 5712. We have considered the issue very carefully, and have decided that we will not impose minimum capacity or activity criteria for importers at this time. In addition, we will not impose this type of requirement on export warehouse proprietors. We do not think that either of these permittees will, or can engage in possible similar misuse of their permits. However, ATF will consider

imposing minimum manufacturing or activity criteria on importers and export warehouse proprietors if the need should arise.

### **Import Restrictions on Previously Exported Tobacco Products, Cigarette Papers and Tubes**

Section 9302 of the Act also added new section 26 U.S.C. 5754, entitled “Restriction on importation of previously exported tobacco products.” This new section places severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. This new section states that such products may only be imported or brought into the United States as provided in section 5704(d).

Section 5704(d) allows previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. We note that section 5704(d) allows previously exported tobacco products to be lawfully transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law does not mandate that the previously exported products return to its original manufacturer or export warehouse proprietor.

Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes may be imported or brought into the United States is by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. New section 5754 precludes the importation and tax payment of such products by an importer. The law is very clear and leaves no discretion to ATF in this regard. Section 5754 clearly states that such products may only be imported or brought into the United States by the method provided in section 5704(d); that is, a transfer, without payment of tax, to a manufacturer or export warehouse.

Based on the restrictive language of section 5754, ATF has amended several sections of the regulations in 27 CFR Part 275. Specifically, new or amended regulations now appear at 27 CFR 275.1, 275.81 and 275.82.

Under amended 27 CFR 275.1, the importation of tobacco products, and cigarette papers and tubes is generally discussed. In addition, 27 CFR 275.81 distinguishes between tobacco products and cigarette papers and tubes that are imported, and those that have been previously exported from the United States and returned to the US. Furthermore, 27 CFR 275.82 discusses the new restrictions on the return of exported products.

### **Penalty and Forfeiture Provisions**

In addition to the above restrictions on importations, section 9302 of the Act also imposes a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. The civil penalty is the greater of \$1,000 or five times the amount of tax imposed on the product. Thus, a larger penalty is imposed where the amount of the Federal excise tax on the product is greater than \$200. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product may be imposed. See 26 U.S.C. 5761(c).

#### *Exemptions*

The civil penalties do not apply to a manufacturer or export warehouse proprietor qualified under Chapter 52 of the IRC. See 26 U.S.C. 5704(b), 5704(d).

### *Application of Effective Dates*

Section 9302(i) of the Act provides that the amendments to the IRC apply to “articles removed” after December 31, 1999. The Act amends the term “removed” to mean: “the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such article into the United States.”

The new civil and forfeiture penalty in section 5761(c) applies only to tobacco products, and cigarette papers and tubes bearing export markings that have been “removed” on or after January 1, 2000. Accordingly, section 5761(c) applies to these products that are marked for export and removed from a manufacturer or export warehouse proprietor, released from Customs custody, or smuggled into the United States on or after January 1, 2000.

Articles that are removed on or before December 31, 1999 are not subject to the new penalty in section 5761(c). Tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 are lawful products and not subject to the civil penalty under section 5761(c), or other criminal provisions of Chapter 52 of the IRC. These new penalty provisions have been added to 27 CFR 275.83.

ATF has carefully considered ways to enforce section 5761(c), since the domestic market will contain tobacco products that have been lawfully removed on or before December 31, 1999, and products marked for export that have been unlawfully introduced into the domestic market after December 31, 1999 and subject to the civil penalty. To differentiate between the products that have been lawfully removed and unlawfully removed, we considered whether or not to change the export marking requirements under 27 CFR 290.185 for products manufactured after December 31, 1999. We have initially rejected this possibility, since it would impose major burdens on tobacco manufacturers. ATF has decided that voluntary commercial marks placed on packages by the tobacco industry will enable us to distinguish between these products. However, we will, under section 5704(b) authority, change the export marking on products manufactured after December 31, 1999 to differentiate between products removed if future investigations disclose the need to do so.

### **Repackaging**

As noted, Congress enacted a new section 5754 in the IRC. Under this section, tobacco products and cigarette papers and tubes previously exported from the United States may only be imported or brought into the United States as provided in section 5704(d). Section 5704(d) provides that tobacco products and cigarette papers and tubes exported and returned may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes or to an export warehouse proprietor. Except for a qualified manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor, section 5761(c) imposes penalties for the selling, relanding, and receiving of tobacco products that are labeled or shipped for export. In effect, section 5761(c) prohibits the sale of relanded tobacco product bearing export markings.

Although manufacturers and export warehouse proprietors are authorized to receive relanded tobacco products or cigarette papers or tubes from customs custody without payment of the Federal excise tax,

there are limitations on what manufacturers and export warehouse proprietors may do with such product. As discussed below, the products may be destroyed, re-exported, or in the case of a manufacturer, the product may be repackaged and removed for sale in the domestic market.

## **Export Warehouses**

Section 5702 defines “export warehouse” to mean “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.” An export warehouse proprietor is one who owns an export warehouse. Export warehouse proprietors are authorized to store non-taxpaid tobacco products, and cigarette papers and tubes for subsequent exportation. Under the IRC, an export warehouse proprietor is not authorized to pay excise tax on tobacco products, including relanded tobacco products for distribution into the domestic U.S. market. Export warehouses are specifically established under the law to facilitate the exportation of tobacco products without payment of the excise tax. Thus, by definition, an export warehouse can only receive tobacco products in bond and export them or return them to a manufacturer. Because there is no authority for the export warehouse proprietor to pay the excise tax and distribute tobacco products onto the domestic U.S. market, an export warehouse proprietor may lawfully receive relanded tobacco products, transfer relanded tobacco products to a qualified manufacturer, or re-export the relanded tobacco products. Export warehouse proprietors may also destroy these relanded tobacco products.

## **Manufacturers**

Manufacturers are authorized under the IRC to pay excise tax on and distribute tobacco products into the domestic market. See 26 U.S.C. 5703. However, the IRC also requires that before removal from a manufacturer's factory, tobacco products must be put up in packages and bear the marks, labels, and notices required by the Secretary.

As stated above, the Secretary has the general authority to prescribe packaging and marking requirements for tobacco products. See 26 U.S.C. 5723(a) and (b). Under this authority, ATF has prescribed regulations under 27 CFR 290.185 which require that products removed for exportation exempt from taxation must bear export markings. Again, such markings include the words, “Tax-exempt. For use outside of U.S.” or “U.S. Tax-exempt. For use outside U.S.” These export markings signify that the product is not subject to Federal taxes and that it is not intended for distribution within the United States. We rely on these markings to identify these products as a tax-exempt export for enforcement purposes. In addition, ATF has prescribed regulations under 27 CFR 290.222 which require that tobacco products and cigarette papers and tubes on which tax has been paid and a drawback claim has been made must have a label affixed reading “For Export With Drawback of Tax.”

However, previously exported products that are relanded in the United States also bear the export markings required under § 290.185 and § 290.222 and may be intended for distribution in the domestic market. Because we cannot tell if a particular product on the market has been lawfully taxpaid and removed from Customs custody, or if it was smuggled into the U.S., the efficacy of the export marking requirements is severely reduced if these products are allowed in the domestic market. ATF has concluded that since relanded tobacco products are marked in accordance with the tobacco export regulations at 27 CFR 290.185 and bear a statement that says “Tax-exempt. For use outside of U.S.” or

“U.S. Tax-exempt. For use outside U.S.” or in accordance with 290.222 and bear a statement that says “For Export With Drawback of Tax,” they are not properly marked for distribution on the domestic U.S. market. Further, if products with export markings were allowed on the domestic market, this practice would hinder ATF enforcement of the IRC and pose a jeopardy of the revenue. Our goal is to protect the revenue, and to determine whether the Federal excise tax on a relanded product has been paid. ATF has considered various options for removing these export markings and bringing relanded products into compliance with the domestic marking and labeling requirements. We have considered allowing such products to be over-stamped, allowing the obliteration of the tax-exempt marking, or allowing stickers to be placed over the markings. However these options of over-stamping, obliteration or stickers would negate the value of these markings as a tax enforcement tool. Over-stamping, obliteration, or placing stickers over the tax-exempt notice would not necessarily mean that the Federal excise tax had been paid on the relanded product. Any person could obtain product that had not been Federally taxpaid, and place stickers over the “tax exempt” notice on packages and distribute them in the domestic market.

After careful consideration of the issue, we have concluded that a manufacturer who distributes relanded tobacco products onto the domestic market, must remove the product from its original packages (bearing export markings) and repackage them into new packages with the proper mark and notice requirements for domestic U.S. distribution as prescribed in 27 CFR part 270. ATF has determined that in order to protect the Federal excise tax revenue, it is essential to require the repackaging of these reimported products before they are introduced in domestic commerce.

Thus, under 26 U.S.C. 5761(c), products labeled for export may not be sold on the domestic U.S. market. However, manufacturers are eligible to receive relanded tobacco products, and cigarette papers and tubes and sell them on the domestic market if they are completely repackaged under the laws and regulations for products not intended for exportation. Accordingly, amended 27 CFR 275.82(b) prescribes requirements for repackaging under these circumstances. Also, regulations have been added at 27 CFR 270.213 which notify manufacturers that tobacco products marked for export are not eligible for distribution on the domestic market, and the need to repackage such products.

Finally, similar to an export warehouse proprietor, a manufacturer may also transfer the tobacco products to another manufacturer or export warehouse proprietor, re-export the relanded tobacco products, or destroy these relanded tobacco products.

## **Miscellaneous Changes**

### *Form Numbers*

In addition to the changes to the regulations necessitated by Public Law 105-33, ATF is making several miscellaneous administrative changes that update the references to ATF Form numbers within the regulations. The regulations at 27 CFR 290.61a, 290.142, 290.198 through 290.208, 290.210, 290.213, and 290.256 through 290.267 are also amended to change all references from the obsolete form number ATF F 2149/2150, to the new form number ATF F 5200.14. The regulations in 27 CFR 290.152 through 290.154 are also amended to change all references from the obsolete form number: ATF F 2635, to the new form number: ATF F 5620.8. The regulations in 27 CFR 290.62 are amended to delete obsolete references to a Customs form and regulatory citation.

## *Record Retention of ATF Forms*

Minor changes are being made in the regulations to reflect the correct number of years that ATF forms numbers 5700.14 and 5620.8 must be retained. The regulations are amended to change the records retention period from 2 years to 3 years.

## **Manufacturer's Record**

The record of a manufacturer of tobacco products at 27 CFR 270.183 is amended to include the term “roll-your-own tobacco” and to include a record of transfers to, and receipts from foreign trade zones.

## **Export Warehouse Records**

The records required to be maintained by an export warehouse proprietor at 27 CFR 290.142 have been amended to include several new items of information. Proprietors will now be required to indicate the manufacturer and brand name of products: received, removed, transferred, destroyed, lost, or returned to manufacturers or customs bonded warehouses. In addition, their records must also include the number of containers and unit type (e.g., cartons, cases).

## **Definitions**

To clarify the regulations, several definitions are being added to the “Meaning of terms” sections in 27 CFR 275.11 and 290.11. Section 275.11 is amended by adding definitions for the terms “export warehouse,” “export warehouse proprietor,” “manufacturer of tobacco products,” “manufacturer of cigarette papers and tubes,” and “relanding,” Section 290.11 is amended by adding a definition for “zone restricted status.”

## **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## **Executive Order 12866**

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866 because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

## **Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0367 and 1512-0358. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is found in 27 CFR 270.183 and 290.142. The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this **Federal Register**.

### **Administrative Procedure Act**

Because this document merely implements sections of the law which were enacted on August 5, 1997, and because immediate guidance is necessary to implement the provisions of the law, it is found to be contrary to the public interest and impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

### **Drafting Information**

The principal authors of this document are Ms. Teri Byers and Mr. Daniel Hiland, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department also participated in developing this document.

### **List of Subjects**

#### *27 CFR Part 200*

Administrative practice and procedure, Authority delegations.

#### *27 CFR Part 270*

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

#### *27 CFR Part 275*

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

**Authority and Issuance**

Accordingly, title 27, Code of Federal Regulations is amended as follows:

**PART 200--RULES OF PRACTICE IN PERMIT PROCEEDINGS**

**Paragraph 1.** The authority citation for part 200 continues to read as follows:

**Authority:** 26 U.S.C. 7805, 27 U.S.C. 204.

**Par 2.** Section 200.49b is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

**§ 200.49b Applications for tobacco permits.**

\* \* \* \* \*

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

\* \* \* \* \*

**PART 270--MANUFACTURE OF TOBACCO PRODUCTS**

**Par 3.** The authority citation for part 270 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 4.** Section 270.61 is revised to read as follows:

**§ 270.61 Qualification--General**

(a) *Who must qualify.* Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original

manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must exceed the quantity to be transferred or received in bond under the permit. For the purposes of this section, repackaging or relabeling activities alone do not qualify as a manufacturing activity.

**Par. 5.** Section 270.183 is revised to read as follows:

**§ 270.183 Record of tobacco products.**

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

- (a) Manufactured;
- (b) Received in bond by--
  - (1) Transfer from other factories,
  - (2) Release from customs custody,
  - (3) Transfer from export warehouses, and
  - (4) Transfer from foreign trade zone;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22);
- (f) Removed, in bond, for--
  - (1) Export,
  - (2) Transfer to export warehouses,
  - (3) Transfer to other factories,
  - (4) Transfer to a foreign trade zone
  - (5) Use of the United States, and
  - (6) Experimental purposes off factory premises;
- (g) Otherwise disposed of, without determination of tax, by--
  - (1) Consumption by employees on factory premises,
  - (2) Consumption by employees off factory premises, together with the number of employees to whom furnished,
  - (3) Use for experimental purposes on factory premises,
  - (4) Loss,
  - (5) Destruction, and
  - (6) Reduction to materials;
- (h) Disclosed as a shortage by inventory; and
- (i) On which the tax has been determined and which are--
  - (1) Received, and
  - (2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512-0358)

**Par. 6.** Section 270.213 is added to read as follows:

**§ 270.213 Tobacco products labeled for export.**

Tobacco products labeled for export are ineligible for removal from the factory and distribution into the domestic U.S. market. Such products may only be sold, transferred or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this section, “repackaging” shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package.

The new packages, marks and notices must conform to the requirements of this subpart.

**Par. 7.** Section 270.233 is amended by adding a new sentence to the end of the section to read as follows:

**§ 270.233 Transfer in bond.**

\* \* \* Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

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

**Par. 8.** The authority citation for part 275 is revised to read as follows:

**Authority:** 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 9.** Section 275.1 is revised to read as follows:

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

This part contains regulations relating to tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing warehouse, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

**Par. 10.** Section 275.11 is amended by adding in alphabetical order, definitions for the terms “Export warehouse,” “Export warehouse proprietor,” “Manufacturer of tobacco products,” “Manufacturer of cigarette papers and tubes,” and “Relanding” to read as follows:

**§ 275.11 Meaning of terms.**

\* \* \* \* \*

*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.

*Manufacturer of tobacco products.* Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco. A manufacturer of tobacco products does not include:

(1) A person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

*Manufacturer of cigarette papers and tubes.* Any person who makes up cigarette papers or cigarette tubes, except for personal use or consumption.

*Relanding.* Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States. This term does not apply to any tobacco products, cigarette papers or tubes that are placed in appropriately marked receptacles by travelers or passengers prior to making their declaration to a U.S. Customs officer upon arrival in the United States.

\* \* \* \* \*

**Par. 11.** Paragraph (a) of § 275.81 is revised to read as follows:

### **§ 275.81 Taxpayment.**

(a) General. The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

\* \* \* \* \*

**Par. 12.** Add § 275.82 to subpart F after the undesignated center heading “Release from Customs Custody \* \* \*” to read as follows:

### **§ 275.82 Return of exported products.**

(a) The provisions of this section apply to articles imported or brought into the United States after December 31, 1999. After such date, the importation or bringing in of tobacco products and cigarette papers and tubes that were previously exported from the United States is restricted. Such products may only be imported or brought into the United States by release from customs custody for delivery to a manufacturer of tobacco products or cigarette papers or tubes, or to the proprietor of an export warehouse. These products are transferred in bond and are released from customs custody without payment of that part of the duty attributable to internal revenue tax.

(b) The products described in paragraph (a) of this section may only be sold, transferred, or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this subsection, “repackaging” shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

**Par. 13.** Add § 275.83 to subpart F after the undesignated center heading “Release from Customs Custody of \* \* \*” to read as follows:

**§ 275.83 Penalties and forfeiture for relanded products.**

Except for the return of exported products that are specifically authorized under § 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in Title 26 U.S.C., be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by Title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This section shall apply only to tobacco products, cigarette papers and tubes removed after December 31, 1999.

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

**Par. 14.** The authority citation for part 290 is revised to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 15.** Section 290.11 is amended by adding, in alphabetical order, the definition of “Zone restricted status” to read as follows:

**§ 290.11 Meaning of terms.**

\* \* \* \* \*

*Zone restricted status.* Tobacco products, cigarettes papers and cigarette tubes which have been taken into a foreign trade zone from United States Customs territory for the sole purpose of exportation or storage until exported.

\* \* \* \* \*

**Par. 16.** Section 290.61 is revised to read as follows:

**§ 290.61 Removals, withdrawals, and shipments authorized.**

(a) Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels, or notices required by this part.

**§ 290.61a [Amended]**

**Par. 17.** Section 290.61a is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

**Par. 18.** In § 290.62 the fifth sentence and the seventh sentence of the section are amended to read as follows:

**§ 290.62 Restriction on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.**

\* \* \* For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. \* \* \* Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122).

\* \* \* \* \*

**Par. 19.** Section 290.142 is revised to read as follows:

**§ 290.142 Records.**

Every export warehouse proprietor must keep in such warehouse complete and concise records, containing the:

- (a) Number of containers;
- (b) Unit type (e.g., cartons, cases);
- (c) Kind of articles (e.g., small cigarettes);
- (d) Name of manufacturer and brand; and,

(e) Quantity of tobacco products, cigarette papers and tubes received, removed, transferred, destroyed, lost or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each Form 5200.14 received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor, from whom tobacco products and cigarette papers and tubes are received and a copy of each Form 5200.14 covering the tobacco products, and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the business day following that on which the transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable. The records and copies of Form 5200.14 shall be retained for 3 years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512-0367)

**§ 290.143 [Amended]**

**Par. 20.** Section 290.143(b) is amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

**§ 290.147 [Amended]**

**Par. 21.** Section 290.147 is amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

**§ 290.152 [Amended]**

**Par. 22.** Section 290.152 is amended by removing the reference “Form 2635” and add in its place the reference “Form 5620.8”. Section 290.152 is also amended by removing the words “two years” and adding in its place the phrase “3 years”.

**§ 290.153 [Amended]**

**Par. 23.** Section 290.153 is amended by removing the reference to “Form 2635 (5620.8)” and add in its place the reference “Form 5620.8”.

**§ 290.154 [Amended]**

**Par. 24.** Section 290.154 is amended by removing the reference to “Form 2635 (5620.8)” and add in its place the reference “Form 5620.8”. Section 290.154 is also amended by removing the phrase “2 years” and by adding in its place the phrase “3 years”.

**Par. 25.** Section 290.181 is revised to read as follows:

**§ 290.181 Packages.**

All tobacco products and cigarette papers and tubes will, before removal or transfer under this subpart, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane wrapping material.

**§ 290.198 [Amended]**

**Par. 26.** Section 290.198 is amended by removing the references “Form 2149” and “Form 2150” and adding in their place the reference “Form 5200.14”.

**§ 290.199 [Amended]**

**Par. 27.** Section 290.199 is amended by removing the reference “Form 2149 or Form 2150” and adding in their place the reference “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

**§ 290.200 [Amended]**

**Par. 28.** Section 290.200 is amended by removing the reference to “Form 2149 or 2150, as the case may be,” and adding in its place the reference “Form 5200.14”.

**§ 290.201 [Amended]**

**Par. 29.** Section 290.201 is amended by removing the reference “Form 2150” and adding in its place the reference “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

**§§ 290.202 through 290.204 [Amended]**

**Par. 30.** Sections 290.202 through 290.204 are amended by removing the reference “Form 2149 or Form 2150” and adding in its place the reference “Form 5200.14”.

**§ 290.205 [Amended]**

**Par. 31.** Section 290.205 is amended by removing the reference “Form 2149/2150 (5200.14)” wherever it appears in paragraphs (a)(1) and (d) and adding in its place the reference “Form 5200.14”.

**§ 290.206 [Amended]**

**Par. 32.** Section 290.206 is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

**§§ 290.207 through 290.208 [Amended]**

**Par. 33.** Sections 290.207 through 206.208 are amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

**§ 290.210 [Amended]**

**Par. 34.** Section 290.210 is amended by removing the reference “Form 2149 or 2150” and adding in its place the reference “Form 5200.14”.

**§ 290.213 [Amended]**

**Par. 35.** Section 290.213 is amended by removing the reference “Form 2150” and adding in its place the reference “Form 5200.14”.

**§ 290.256 [Amended]**

**Par. 36.** Section 290.256 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”.

**§ 290.257 [Amended]**

**Par. 37.** Section 290.257 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

**§§ 290.258 through 290.265 [Amended]**

**Par. 38.** Sections 290.258 through 290.265 are amended by removing the reference “Form 2149” each place it appears and adding in its place the reference “Form 5200.14”.

**§ 290.266 [Amended]**

**Par. 39.** Section 290.266 is amended by removing the reference “Form 2150” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

**§ 290.267 [Amended]**

**Par. 40.** Section 290.267 is amended by removing the reference “Form 2149” and adding in its place “Form 5200.14”. This section is also amended by removing the words “two years” and adding in their place the words “3 years”.

Signed: October 12, 1999.

**John W. Magaw,**  
*Director.*

Approved: November 17, 1999.

**John P. Simpson,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 99-32598 Filed 12-21-99; 8:45 am]

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I— BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

**Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers (98R-316P) And Miscellaneous Technical Amendments**

**T.D. ATF--422; Re: Notice No. 888**

**27 CFR Part 275**

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule implements some of the provisions of the Balanced Budget Act of 1997. The new law sets forth the requirement that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity. Implementing changes, including

a transitional rule, are made to part 275. In addition, clarifying changes are made to part 275. In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

**DATES:** Effective December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Clifford A. Mullen by writing to Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by phone at 202-927-8210, or by e-mail at [alctob@atfhq.atf.treas.gov](mailto:alctob@atfhq.atf.treas.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This temporary rule implements some of the provisions of the Balanced Budget Act of 1997, Public Law 105-33 (“the Act”). These provisions amended the Internal Revenue Code of 1986 (IRC) to require that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity.

### **Current Regulation of Tobacco Products Importation**

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the importation of tobacco products under the IRC, and in the Code of Federal Regulations, 27 CFR part 275. Before the enactment of the Act, no permit qualification requirement existed for importers of tobacco products.

The Act amended sections 5712 and 5713 of the IRC to require, in part, that importers of tobacco products apply for and obtain a permit before commencing business as an importer. The Act also provided a transitional rule to allow existing importers of tobacco products or cigarette papers and tubes, who file an application for a permit with ATF before January 1, 2000, to continue in such business pending final action on their application.

Under the temporary rule, persons who are already engaged in the business as an importer of tobacco products may continue in such business after January 1, 2000, provided they file an application for a permit with ATF before January 1, 2000. Such persons will be issued a temporary permit, which will remain valid for a period of one year or until a final determination is made on their application, if a final determination has not been made within that time. All others must obtain a permit before engaging in the business as an importer of tobacco products or cigarette papers and tubes beginning January 1, 2000.

Only manufacturers and export warehouse proprietors may import tobacco products in bond. Therefore, no bond need be filed by any other importer of tobacco products in conjunction with the permit, because such importers are not authorized to import tobacco products without payment of tax upon release from customs custody.

Fully qualified applicants will be issued a permit limited to a three-year duration. A three-year permit duration was determined to be a reasonable method to avoid the proliferation of numerous unused permits, which would pose administrative difficulties and potential jeopardy to the revenue. Keeping track of unused permits would strain limited resources, and such permits could eventually fall into the hands of unqualified persons who would be unknown and unaccountable to ATF. Administrative controls will be put in place to facilitate timely renewals by permittees.

In addition, Part 275, Subpart G--Puerto Rican Tobacco Products and Cigarette Papers and Tubes, brought into the United States, contains obsolete requirements for the release of Puerto Rican tobacco products and cigarette papers and tubes from Customs custody without payment of tax. Accordingly, subpart G is being amended to eliminate the obsolete requirements under this temporary rule.

### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Executive Order 12866**

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

### **Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0398. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information initiated by this document is found in 27 CFR 275.204 and 275.205. This information is required to ensure proper payment of excise taxes on imported tobacco products and cigarette papers and tubes.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

### **“Plain Language” Changes**

During the revision of the regulations in this document, we also tried to simplify and clarify the language of the affected regulations. Any suggestions for improving the readability of these regulations may be submitted as comments to the cross-referenced notice of proposed rulemaking.

### **Delegations**

In the sections of the regulations that are affected by this document, we have changed obsolete ATF titles to read “the appropriate ATF officer” and referred to a delegation order that specifies the current title of the ATF official responsible for each activity. The titles of responsible persons in the remaining sections of these parts will be updated by a future technical amendment.

### **Administrative Procedure Act**

Because this document merely implements sections of the law which are effective on January 1, 2000, and because immediate guidance is necessary to implement the provisions of the law, it is not found to be necessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

### **Drafting Information**

The principal author of this document is Clifford A. Mullen, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

### **List of Subjects in 27 CFR Part 275**

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and record keeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

### **Authority and Issuance**

**Par. 1.** The authority citation for 27 CFR part 275 is revised to read:

**Authority:** 26 U.S.C. 5701, 5703, 5704, 5705, 5706, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 18 U.S.C. 2342.

**Par. 2-3.** Section 275.11 is amended by removing the definition of “District director of customs,” revising the definition of “Removal or Remove,” and adding the definitions for “Appropriate ATF officer,” “Customs officer,” “Port director of Customs,” and “Records” to read in alphabetical order as follows:

#### **§ 275.11 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.16, Delegation Order--Delegation of the Director's Authorities in 27 CFR Part 275, Importation of Tobacco Products and Cigarette Papers and Tubes.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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 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;
  - (ii) Establish the correctness of any importation;
  - (iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;
  - (iv) Determine the liability of any person for fines, penalties, and forfeitures; and
  - (v) Determine whether the person has complied with the laws and regulations administered by ATF and the Customs Service, and any other documents required under laws or regulations administered by ATF and the Customs Service.

\* \* \* \* \*

*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.

\* \* \* \* \*

**Par. 4.** The fourth sentence of § 275.25 is revised to read as follows:

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

\* \* \* Except where the tax is to be paid to the Port Directors of Customs or other authorized customs officer in accordance with Customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on such articles must be evidenced by presentation, to the officer having custody of the articles, of a receipt from the appropriate ATF officer showing such payment. \* \* \*

\* \* \* \* \*

**§ 275.39 [Removed and reserved]**

**Par. 5.** Section. 275.39 is removed and reserved.

**Par. 6.** Section 275.40 is revised to read as follows:

#### **§ 275.40 Persons liable for tax.**

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: Provided, That tobacco products or cigarette papers or tubes (other than those previously exported and returned) imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 275.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

**Par. 7.** Section 275.41 is revised to read as follows:

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

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

**Par. 8.** The last sentence of § 275.50 and the undesignated centerheading preceding it are revised to read as follows:

### **Exemptions From Taxes and Permits**

#### **§ 275.50 Exemptions.**

\* \* \*. 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.

**Par. 9.** Section 275.62 is revised to read as follows:

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

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

**Par. 10.** Paragraphs (a), (b), and (c), introductory text, of § 275.81 are revised to read as follows:

#### **§ 275.81 Taxpayment.**

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

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under § 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and taxpaid 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) \* \* \*  
\* \* \* \* \*

**Par. 11.** Section 275.85 is revised to read as follows:

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

(a) The provisions of this section apply only to tobacco products, cigarette papers, and cigarettes tubes, which are not put up in packages, i.e., not placed by the manufacturer or importer in packages in which the products will be sold to consumers. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer to the factory of any manufacturer of tobacco products under the internal revenue bond of the manufacturer to whom such articles are released. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer, under the internal revenue bond of the manufacturer to whom such articles are released, to the factory of a manufacturer of cigarette papers and tubes; or a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section must be in accordance with § 275.86:

*Provided, however,* that in the case of products exported from the Virgin Islands, in order for a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes to remove such products from customs custody in the United States under the manufacturer's internal revenue bond without payment of internal revenue tax, the manufacturer must file an extension of coverage of the internal revenue bond on ATF Form 2105, and receive a notice of approval from the appropriate ATF officer. The extension of coverage must be executed by the principal and the surety and must be in the following form:

“Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond.”

“Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest,

for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provision of law and regulations with respect thereto.”

(b) Articles received into the factory of a manufacturer under the provision of this section are subject to the provisions of part 270 of this chapter.

**Par. 12.** Section 275.85a is revised to read as follows:

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

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

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

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

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

(c) Releases under this section must be in accordance with the procedures set forth in § 275.86. Once released, the tobacco products and cigarette papers and tubes will be subject to the tax and all other provisions of 26 U.S.C. chapter 52, and, as applicable, subject to the provisions of the regulations in part 270 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

**Par. 13.** Section 275.86 is revised to read as follows:

**§ 275.86 Procedure for release.**

(a) Every manufacturer of tobacco products and cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under its internal revenue bond, as provided in § 275.85 or § 275.85a, must prepare a notice of release, Form 2145, in triplicate, and file the three copies of the form with the appropriate ATF officer. The appropriate ATF officer will not certify Form 2145 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 270 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form.

(b) Importers who are either manufacturers of tobacco products and cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request such release until they have received the ATF Form 2145 certified by the appropriate ATF officer. Once Customs releases the

tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the electronic filing and customs release to the appropriate ATF officer at the address shown thereon. The importer will retain one copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers and tubes from customs custody in the United States under any other authorized procedure will submit all copies of the ATF Form 2145 to the appropriate customs officer along with their request for release. The customs officer will verify that the ATF Form 2145 has been certified by the appropriate ATF officer and return all copies to the importer or the importer's authorized representative.

(d) Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 2145 along with a copy of the customs release to the appropriate ATF office at the address shown thereon. The importer will retain one copy of the ATF Form 2145 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

#### **§ 275.101 [Amended]**

**Par. 14.** Section 275.101 is amended by removing paragraphs (d) and (e).

**Par. 15.** Section 275.106 is revised to read as follows:

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

The taxpayer will prepare ATF Form 3075 (5200.9), in triplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment must obtain the receipted copy of the tax return from the taxpayer and verify on ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return on ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment, mail one copy to the appropriate ATF officer, and retain the remaining copy. The ATF officer will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper must affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are packed. Such statement, ATF Form 3074 (5200.6), must be affixed to the outside container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not to the individual cartons, cases, etc., included in such outer container. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

#### **§ 275.107 [Removed and reserved]**

**Par. 16.** Section 275.107 is removed and reserved.

**§ 275.108 [Removed and reserved]**

**Par. 17.** Section 275.108 is removed and reserved.

**Par. 18.** Section 275.110 is amended by revising the first sentence to read as follows:

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

Where tobacco products are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer must calculate the tax and must prepare an original and two copies of Form 2987 (5210.8).

\* \* \* \* \*

**Par. 19.** Section 275.111 is amended by revising the introductory text, paragraphs (a), (b), and (c) to read as follows:

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

On receipt of the original and two copies of the Form 2987 (5210.8) completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the tobacco products covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the tobacco products for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by:

- (a) Mailing one copy to the appropriate ATF officer;
- (b) Returning one copy to the bonded manufacturer and
- (c) Submitting the original to the Chief, Puerto Rico Operations.

\* \* \* \* \*

**Par. 20.** Section 275.115a, paragraph (e), is revised to read as follows:

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

\* \* \* \* \*

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate ATF officer will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part.

**§ 275.117 [Removed and reserved]**

**Par. 21.** Section 275.117 is removed and reserved.

**§ 275.118 [Removed and reserved]**

**Par.22.** Section 275.118 is removed and reserved.

**Par. 23.** The undesignated center heading preceding § 275.135 is removed.

**§§ 275.135--275.138 [Removed and reserved]**

**Par. 24.** Sections 275.135 through 275.138 are removed and reserved.

**Par. 25.** The first sentence in § 275.140 is revised to read as follows:

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

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

**Par. 26.** The first sentence in § 275.141 is revised to read as follows:

**§ 275.141 Reports.**

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products, or cigarette papers or tubes without payment of internal revenue tax, under his bond, must report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. \* \* \*

**Par. 27.** Subpart K is added to read as follows:

**Subpart K--Tobacco Products Importers**

§

- 275.190 Persons required to qualify.
- 275.191 Application for permit.
- 275.192 Transitional rule.
- 275.193 Corporate documents.
- 275.194 Articles of partnership or association.
- 275.195 Trade name certificate.
- 275.196 Power of attorney.
- 275.197 Additional information.
- 275.198 Investigation of applicant.
- 275.199 Notice of Contemplated Disapproval.
- 275.200 Issuance of permit.
- 275.201 Duration of permit
- 275.202 Renewal of permit.
- 275.203 Retention of permit and supporting documents.

**Required Records and Reports**

- 275.204 General.
- 275.205 Recordkeeping requirements.

## **Filing and Retention of Records and Reports**

275.206 Reports.  
275.207 Filing.  
275.208 Retention.

### **Subpart K--Tobacco Products Importers**

#### **§ 275.190 Persons required to qualify.**

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with the provisions of this part. Any person eligible for the exemption in § 275.50 is not engaged in the business as an importer of tobacco products.

Persons importing tobacco products and cigarette papers and tubes for personal use, in such quantities as may be allowed by Customs without payment of tax, do not require an importer's permit.

#### **§ 275.191 Application for permit.**

Except as provided in § 275.192, every person, before commencing business as an importer of tobacco products as defined in § 275.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on ATF Form 5230.4, according to the instructions for the form. All documents required under this part to be furnished with such application must be made a part thereof.

#### **§ 275.192 Transitional rule.**

Any person who--

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

#### **§ 275.193 Corporate documents.**

Every corporation, before commencing business as an importer of tobacco products, must furnish with its application for permit, required by § 275.191, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate ATF officer, and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

#### **§ 275.194 Articles of partnership or association.**

Every partnership or association, before commencing business as an importer of tobacco products, must furnish with its application for permit required by § 275.191 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate ATF officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

#### **§ 275.195 Trade name certificate.**

Every person, before commencing business under a trade name as an importer of tobacco products, must furnish with his application for a permit, required by § 275.191, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such true copy of the certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

#### **§ 275.196 Power of attorney.**

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate ATF officer. (For power of attorney in connection with conference and practice requirements see subpart E, part 70 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 275.194. Form 1534 does not have to be filed again with the appropriate ATF officer if such form has previously been submitted to ATF and is still in effect.

#### **§ 275.197 Additional information.**

The appropriate ATF officer may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant must, when required by the appropriate ATF officer, furnish as a part of his application for such permit such additional information as the appropriate ATF officer deems necessary to determine whether the applicant is entitled to a permit.

#### **§ 275.198 Investigation of applicant.**

Appropriate ATF officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether the applicant has disclosed all

material information required, or whether the applicant has made any material false statement in the application for such permit.

#### **§ 275.199 Notice of Contemplated Disapproval.**

If the appropriate ATF officer has reason to believe that the applicant is not entitled to a permit, the appropriate ATF officer will promptly give to the applicant a notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 200 of this chapter. If, after such notice and opportunity for hearing, the appropriate ATF officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

#### **§ 275.200 Issuance of permit.**

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

#### **§ 275.201 Duration of permit.**

(a) Permits other than temporary permits issued under paragraph (b) of this section will be valid for a period of three years from the effective date shown on the permit, ATF F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 275.192.

#### **§ 275.202 Renewal of permit.**

Importers wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of such expiration on ATF F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is taken by ATF on the application for renewal, provided a timely application for renewal is filed.

#### **§ 275.203 Retention of permit and supporting documents.**

The importer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this part are kept. The permit and supporting documents must be made available for inspection by any appropriate ATF officer upon request.

### **Required Records and Reports**

#### **§ 275.204 General.**

Every tobacco products importer must keep such records and, when required by this part, submit such reports, of the physical receipt and disposition of tobacco products. Records and reports will not be required under this part with respect to tobacco products while in customs custody.

#### **§ 275.205 Recordkeeping requirements.**

Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any tobacco product or cigarette papers or tubes must make and keep records. A person purchasing a tobacco product from the importer in a domestic transaction and who does not knowingly cause merchandise to be imported is not required to make and keep records unless:

(a) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order).

(b) The tobacco products purchased from the importer include more than 60,000 cigarettes, in which case the importer and the person placing the order with the importer must keep the records required by 27 CFR Part 296, Subpart F, Distribution of Cigarettes. Dividing a single shipment of more than 60,000 cigarettes into smaller components of 60,000 cigarettes or less does not exempt any person from the recordkeeping requirements of this subpart.

## **Filing and Retention of Records and Reports**

### **§ 275.206 Reports.**

(a) Importers must file a monthly report on ATF F 5220.6 in accordance with the format and instructions for the form. (b) The first report(s) must be submitted by the 15th day of the month following the month in which the permit is issued; all previous months beginning January 1, 2000, must also be reported at that time.

For example:

An importer who is issued a permit with a date of August 17, 2000, would be required to submit by September 15, 2000, a total of eight reports for the months January-August, 2000.

(c) Reports with the notation “No Activity” must be made for those months in which no activity occurs.

(d) When a transfer of ownership of the business of an importer of tobacco products described in § 275.224, or when a change in control of a corporation described in § 275.226 occurs, a concluding report with the notation “Concluding Report” must be made for the month or partial month during which the transfer of ownership or change in control becomes effective.

### **§ 275.207 Filing.**

All records and reports required by this part will be maintained separately, chronologically by transaction or reporting date, at the importer's place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

### **§ 275.208 Retention.**

(a) All records and reports required by this part, documents or copies of documents supporting these records or reports, and file copies of reports required by this part to be submitted to ATF must be retained for not less than three years following the close of the calendar year in which filed or made, and during this period must be available for inspection and copying by ATF during business hours.

(b) Furthermore, the appropriate ATF officer may require these records to be kept for an additional period of not more than three years in any case where it is determined that such record retention is necessary to protect the revenue. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

**Par. 28.** Subpart L is added to read as follows:

## **Subpart L--Changes After Original Qualification of Importers**

### **Changes in Name**

§

275.220 Change in individual name.

275.221 Change in trade name.

275.222 Change in corporate name.

### **Changes in Ownership and Control**

275.223 Fiduciary successor.

275.224 Transfer of ownership.

275.225 Change in officers, directors, or stockholders of a corporation.

275.226 Change in control of a corporation.

### **Changes in Location or Address**

275.227 Change in location.

275.228 Change in address.

## **Subpart L--Changes After Original Qualification of Importers**

### **Changes in Name**

#### **§ 275.220 Change in individual name.**

Where there is a change in the name of an individual operating as an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

#### **§ 275.221 Change in trade name.**

Where there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must make application on ATF Form 5230.5 for an amended permit to reflect such change within 30 days of such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or statement in lieu thereof, required by § 275.195.

#### **§ 275.222 Change in corporate name.**

Where there is a change in the corporate name of an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

### **Changes in Ownership and Control**

#### **§ 275.223 Fiduciary successor.**

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an importer of tobacco products, as a continuing operation, such fiduciary must make application for permit, before commencing operations as required by subpart K of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of tobacco products will not be required if the fiduciary promptly files with the appropriate ATF officer a written statement to that effect.

#### **§ 275.224 Transfer of ownership.**

If a transfer is to be made in ownership of the business of an importer of tobacco products (including a change of any member of a partnership or association), such importer must give notice, in writing, to the appropriate ATF officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor must qualify as an importer of tobacco products, before commencing operations, in accordance with the applicable provisions of subpart K of this part. The importer must give such notice of transfer, and the proposed successor must make application for permit in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with the provisions of § 275.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 275.206.

#### **§ 275.225 Change in officers, directors, or stockholders of a corporation.**

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of an importer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer must, within 30 days of such action, so notify the appropriate ATF officer in writing, giving the identity of such person. In the event that the acquisition of ten or more percent in aggregate of the outstanding stock of such corporation results in a change of

control of such corporation, the provisions of § 275.226 will apply. When there is any change in the authority furnished under § 275.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate ATF officer in writing.

**§ 275.226 Change in control of a corporation.**

Where the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must make application on ATF Form 5230.4 for a new permit within 30 days after the change occurs. Otherwise, the present permit will be automatically terminated at the expiration of such 30-day period, and the importer will dispose of all tobacco products on hand, in accordance with this part, make a concluding report, in accordance with the provisions of § 275.206, and surrender his permit with such report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

**Changes in Location or Address**

**§ 275.227 Change in location.**

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

**§ 275.228 Change in address.**

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

Signed: November 18, 1999.

**John W. Magaw,**  
*Director.*

Approved: December 7, 1999.

**Dennis M. O'Connell,**  
*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 99-32600 Filed 12-21-99; 8:45 am]

## **Floor Stocks Tax for Cigarettes**

**T.D. ATF-423**

### **27 CFR Part 296**

**ACTION:** Final Rule (Treasury decision).

**SUMMARY:** This document implements section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). This document prescribes regulations covering the computation and payment of floor stocks tax on Federally taxpaid or tax determined cigarettes which are held for sale on January 1, 2000 and January 1, 2002. This document also provides regulations for conducting inventories and for maintaining required records associated with the floor stocks tax.

**EFFECTIVE DATE:** December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8210, e-mail, alc/tob@atfhq.atf.treas.gov.

### **SUPPLEMENTARY INFORMATION:**

#### **General Requirements**

Section 9302(j) of the Balanced Budget Act imposes a floor stocks tax on all cigarettes. This floor stocks tax is to be computed on Federally taxpaid or tax determined large and small cigarettes held for sale on the first moment of January 1, 2000 and January 1, 2002.

The floor stocks tax applies to anyone who holds cigarettes for sale on the tax increase dates. This applies to manufacturers, importers, wholesalers and retailers. The tax applies to cigarettes only; the floor stocks tax does not apply to other tobacco products (including cigars, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) or cigarette papers and tubes. Cigarettes that are in vending machines in accordance with 27 CFR 296.212 on the tax increase dates are not subject to the tax.

#### **Inventory Requirements**

Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records. The inventory must be taken sometime between December 26th and January 10th.

The inventory must separately account for any cigarettes held for sale that have been marked for export from the United States. A package of cigarettes marked for export from the United States has been imprinted or has been labeled with the words "Tax-exempt. For use outside U.S." or "U.S. Tax-Exempt. For use outside U.S." or has a stamp, sticker or notice, required by a foreign country or a possession of the United States, which identifies the foreign country or possession. If a person is required to file a return, that person will report the quantities of these export cigarettes separately on the tax return.

ATF believes that the requirements of a separate inventory and a separate reporting of cigarettes on the tax return marked for export are necessary to enforce the provisions of 26 U.S.C. 5761(c). Section 5761(c) of the IRC penalizes persons who sell, reland or receive cigarettes that have been labeled or shipped for export on or after January 1, 2000. We note that any person who has cigarettes with such export markings that are held on the first moment of January 1, 2000, and are tax paid or tax determined may continue to sell these cigarettes without incurring the penalties of section 5761(c).

The requirements to take a separate inventory of cigarettes that have been marked for export from the United States, and if required, a separate report on the tax return, will identify those who hold such cigarettes and the quantities involved. By identifying the quantities of cigarettes that have been marked for export before January 1, 2000, and the persons holding such cigarettes, ATF can more effectively conduct inspections to ensure compliance with the provisions of 26 U.S.C. 5761(c).

### **Filing Requirements**

Any person holding Federally taxpaid or tax determined cigarettes on January 1, 2000 or January 1, 2002 may have to file a tax return and make payment. Each person is allowed a credit of \$500 or the amount of the tax liability, whichever is less. Therefore, a person whose liability is \$500 or less will not be required to file a return. However, all persons must maintain an inventory record establishing that the tax liability is \$500 or less.

Where tax is due, payment in full must accompany the return. For the tax increases on January 1, 2000, and January 1, 2002, persons must file the floor stocks return and pay the floor stocks tax no later than March 31, 2000, or April 1, 2002, respectively.

### **Delegations**

In the sections of the regulations that are affected by this document, we have replaced obsolete ATF titles with the "appropriate ATF officer" and referred to a delegation order that specifies the current title of the ATF official for each activity. The titles of responsible persons in the remaining sections of regulations in this part will be updated by future technical amendments.

### **Administrative Procedure Act**

This document merely implements sections of the law that were enacted on August 5, 1997. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

### **Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to 26 U.S.C. 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses pursuant to section 7805(f).

## **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

## **Paperwork Reduction Act of 1995**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information for OMB number 1512-0504 is found in 27 CFR 296.196 and 296.262. The collection information for OMB number 1512-0141 is found in 27 CFR 296.253. This information is required to ensure proper records and payment of floor stocks tax on cigarettes. The collection of information is mandatory for respondents who are primarily businesses or otherwise operate for profit. The estimated average burden of this information collection is 4 hours per respondent for a small business and 12 hours per respondent for a large business. The overall burden of this information collection is estimated at 2 million hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

## **Drafting Information**

The principal author of this document is Jackie White of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

## **List of Subjects in 27 CFR Part 296**

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

## **PART 296--[AMENDED]**

**Paragraph 1.** The authority citation for part 296 is revised to read as follows:

**Authority:** 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

**Par. 2.** Subpart I is revised to read as follows:

## **Subpart I--Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002**

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§

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### **Subpart I--Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002**

**Authority:** Section 9302, Pub.L. 105-33, 111 Stat. 251, unless otherwise noted.

### **General**

#### **§ 296.191 Purpose of this subpart.**

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

#### **§ 296.192 Terms used in this subpart.**

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.14, Delegation Order--Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1 (a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

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

(e) *Person.* When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

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

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

### **§ 296.193 Floor stocks tax defined.**

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

### **§ 296.194 Persons liable for this tax.**

You are liable for this tax if you hold for sale any taxpaid or tax determined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 296.207 and 296.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 296.209).

### **§ 296.195 Persons not liable for this tax.**

If you do not hold any taxpaid or tax determined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

### **§ 296.196 Floor stocks requirements.**

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 296.205 and 296.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in § 296.222. Apply the tax credit as provided by § 296.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 296.241.

(Approved by the Office of Management and Budget under control number 1512-0554)

## **Inventories**

### **§ 296.201 Establish quantities of cigarettes.**

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a book or record inventory.

### **§ 296.202 Inventory for cigarettes with export markings.**

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

### **§ 296.203 How to identify cigarettes with export markings.**

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words “Tax-exempt. For use outside U.S.” or “U.S. Tax Exempt. For use outside U.S.”; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

### **§ 296.204 When to take inventory.**

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000.....	December 26, 1999...	January 10, 2000.
January 1, 2002.....	December 26, 2001...	January 10, 2002.

**§ 296.205 Physical inventory requirements.**

Your physical inventory must include a written record of:

(a) *Quantity and Type.* You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate as stated in § 296.222 and whether the cigarettes have export markings as stated in § 296.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A)...	Count the: <ul style="list-style-type: none"><li>• Number of cigarettes without export markings.</li><li>• Number of cigarettes with export markings.</li></ul>
Large cigarettes (Class B)...	Count the: <ul style="list-style-type: none"><li>• Number of large cigarettes 6.5” or less in length without export markings.</li><li>• Number of large cigarettes 6.5” or less in length with export markings.</li><li>• Number of each size of large cigarettes more than 6.5” in length without export markings.</li><li>• Number of each size of large cigarettes more than 6.5” in length with export markings.</li></ul>

(b) *Date.* Date(s) the inventory was taken.

(c) *Name.* Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) *Location.* Record where the inventory was taken (street address, city and State).

(e) *Time.* The physical inventory must be taken between the dates shown in § 296.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

**§ 296.206 Book or record inventory requirements.**

You may use a book or record inventory if you have source records that show:

(a) The quantity of receipts and dispositions of all cigarettes.

(b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective. Refer to § 296.205(a).

(c) The name and address of the consignor and consignee.

(d) The date of receipt or disposition of the cigarettes.

(e) The brand name of each product.

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 296.205(e).

### **§ 296.207 Cigarettes in transit.**

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

### **§ 296.208 Guidelines to determine title of cigarettes in transit.**

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination.* The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point.* The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

### **§ 296.209 Cigarettes in a foreign trade zone.**

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

### **§ 296.210 Cigarettes held in bond.**

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

### **§ 296.211 Unmerchantable cigarettes.**

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchantable any items that may be held because of poor market demand or to reduce your inventory.

### **§ 296.212 Cigarettes in vending machines.**

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

(a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and

(b) The cigarettes are ready to be dispensed by a consumer.

**§ 296.213 Cigarettes marked “not for sale” or “complimentary.”**

Cigarettes marked “not for sale” or “complimentary” that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 296.205 and 296.206. Cigarettes that are marked “not for sale” or “complimentary” and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

**Compute Tax Liability**

**§ 296.221 Determine amount of tax due.**

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 296.222. Multiply the amount of each type of cigarette by the applicable tax rate.

**§ 296.222 Floor stocks tax rates.**

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000).	\$5 per 1,000 or 10 cents per 20.	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000).	\$10.50 per 1,000 or 21 cents per 20.	\$5.25 per 1,000 or 10.5 cents per 20

Special rule: For large cigarettes over 6 ½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2 ¾ inches and any fraction of the length, as one (1).

**§ 296.223 Apply tax credit.**

You are allowed a credit against your floor stocks tax of up to \$500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

**Filing Requirements**

**§ 296.231 How to obtain a tax return.**

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

- (a) ATF web site ([www.atf.treas.gov](http://www.atf.treas.gov));

(b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

**§ 296.232 Prepare tax return.**

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

**§ 296.233 How to pay.**

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

(a) Electronic fund transfer. If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

(1) ATF web site ([www.atf.treas.gov](http://www.atf.treas.gov));

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

(b) [Reserved]

**§ 296.234 Tax return due dates.**

Tax increase date	File tax return no later than:
January 1, 2000.....	March 31, 2000 <sup>1</sup>
January 1, 2002.....	April 1, 2002

<sup>1</sup>Section 9302(j) of P.L. 105-33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

**§ 296.235 Filing requirements for multiple locations.**

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

**§ 296.236 Cigarettes in a warehouse.**

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The cigarettes can be reported by a single location or apportioned among several locations.

**§ 296.237 Controlled group members.**

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 296.223 if it is apportioned to you as a member of the controlled group.

**Records**

**§ 296.241 Required records.**

You must maintain:

- (a) Inventory records.
- (b) Tax computations.
- (c) Names, addresses and employer identification number of all controlled group members, if applicable.
- (d) Copy of tax return, if you filed one.
- (e) List of locations and warehouses covered by the tax return.
- (f) Any approved alternate method or procedure under 296.263.

**§ 296.242 Period for maintaining records.**

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 296.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

**§ 296.243 Cigarettes at multiple locations.**

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

- (a) Address.
- (b) Name of the proprietor (if different).

- (c) The employer identification number (if different).
- (d) Quantity and classification of all cigarettes held at each location.

**§ 296.244 Where records must be maintained.**

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

**§ 296.245 Errors in records.**

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

**Claims**

**§ 296.251 Before filing a claim.**

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

**§ 296.252 When to file a claim for errors on return.**

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

**§ 296.253 How to file a claim for errors on return.**

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512-0554)

**§ 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.**

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

**§ 296.255 Additional reasons for filing a claim.**

(a) Manufacturer. 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) Export warehouse proprietor. 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) Exported taxpaid. If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) Importer. An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

## **Alternate Methods or Procedures**

### **§ 296.261 Purpose of an alternate method or procedure.**

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

### **§ 296.262 How to apply for approval.**

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512-0554)

### **§ 296.263 Conditions for approval.**

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use.
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure.
- (c) It affords equivalent security to the revenue.
- (d) It is not contrary to any provision of law.
- (e) It will not result in an increase in cost to the Government.
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.
- (g) It is not a method or procedure that relates to the payment or collection of tax.

### **§ 296.264 Withdrawal of an alternate method or procedure.**

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

## **ATF Authorities**

### **§ 296.270 Delegations of the Director.**

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.14, Delegation Order--Delegation of the

Director's Authorities in Subpart I of 27 CFR part 296. ATF delegation orders, such as ATF O 1130.14, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

**§ 296.271 Entry, examination and testimony.**

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

**§ 296.272 Issuance of summons.**

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the authority stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

- (a) Any books of account or other data pertaining to liability of floor stocks tax.
- (b) Any person liable for the floor stocks tax or having possession of books of account or other data.
- (c) Any other appropriate person in connection with the books or tax liability.

**§ 296.273 Refusing entry or examination.**

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

**§ 296.274 Penalties for failure to comply.**

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

Signed: October 13, 1999.

**John W. Magaw,**  
*Director.*

Approved: October 27, 1999.

**John P. Simpson,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 99-32604 Filed 12-21-99; 8:45 am]

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I— BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

**Implementation of Public Law 105-33, Section 9302, Relating to the Imposition of Permit Requirements on the Manufacturer of Roll-Your-Own Tobacco (98R-370P)**

**T.D. ATF--424**

**27 CFR Parts 270, 275, 290, 295, 296**

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule implements the provision of the Balanced Budget Act of 1997 relating to the new permit requirements on the manufacture of roll-your-own tobacco. This temporary rule also removes references to forms which have previously been made obsolete, and renumbers certain forms to reflect the current ATF numbering system. In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

**DATES:** Effective date: December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8210; or [alc/tob@atfhq.atf.treas.gov](mailto:alc/tob@atfhq.atf.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

This temporary rule implements the provision of the Balanced Budget Act of 1997, Public Law 105-33 (“the Act”), enacted on August 5, 1997 relating to roll-your-own tobacco. Section 9302 of the Act amends the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5701 and 5702 by imposing new permit requirements on the manufacture of roll-your-own tobacco.

This temporary rule also makes minor changes to remove references to obsolete forms and to replace old form numbers with current ATF form numbers. This rule also corrects the title of part 270 of title 27 CFR to include manufacturers of cigarette papers and tubes.

**Roll-Your-Own Tobacco**

Roll-your-own tobacco is defined in the Act to mean “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.” On or after January 1, 2000, manufacturers of roll-your-own tobacco are required to hold a permit. Section 9302(i)(2) of the Act also contains a transitional rule which allows those who on the date of enactment, August 5, 1997, were engaged in the manufacture of roll-your-own tobacco and who make an application for a permit prior to January 1, 2000, to continue to engage in such business pending final action on the application. In

addition, by amending the definitions of the terms “Tobacco products” and “Manufacturer of tobacco products” to include roll-your-own tobacco, the Act subjects manufacturers of such products to all the statutory and regulatory controls set forth in chapter 52 of IRC. These controls include tax payment, permit qualification, bonding, recordkeeping, and civil and criminal sanctions. This rule contains temporary regulations implementing the provisions of section 9302 of the Balanced Budget Act of 1997 described above. In addition, this temporary rule prescribes the packages, marks, labels, and notice requirements for roll-your-own tobacco.

Specifically, these regulations require that every package of roll-your-own tobacco shall, before removal subject to tax, have imprinted thereon or on a label securely affixed to the package the designation “roll-your-own tobacco,” as well as a statement of the pounds and ounces of the product contained in the package. As an alternative to the designation “roll-your-own tobacco,” the package may be designated “Tax Class J.” The Bureau believes that allowing the use of this alternative designation will adequately protect the revenue by distinguishing the roll-your-own tobacco class from the other classes of tobacco products. This also facilitates the relabeling of many tobacco products which are subject to tax but which are currently labeled as “smoking tobacco” rather than roll-your-own tobacco.

This document also contains a use-up rule for packages for roll-your-own tobacco. It allows manufacturers to place roll-your-own tobacco in packages that do not meet the mandatory marking requirements. Under this use-up rule, until April 1, 2000, a manufacturer may continue to place roll-your-own tobacco in packages that were in use prior to January 1, 2000.

### **Title Change of Part 270**

The title of 27 CFR part 270 is being changed to properly reflect the contents of this part. On October 17, 1996, Treasury Decision ATF-384 was published in the Federal Register (61 FR 54084). This decision eliminated Part 285, Manufacturers of Cigarette Papers and Tubes, by merging the contents into part 270 under a new subpart K. As a result of this action, the title to part 270 should have been changed to properly reflect regulations on the manufacture of tobacco products and the manufacture of cigarette papers and tubes.

### **Obsolete Forms**

Changes to the regulations are being made to remove references to obsolete forms. First this removes the reference to ATF Form 2988 (5200.8), Deferred Tax Return--Puerto Rican Cigars and Cigarettes. This form was eliminated by Treasury Decision ATF-277 published in the Federal Register on November 9, 1988 (53 FR 45266) with the implementation of ATF Form 5000.25, Excise Tax Return--Alcohol and Tobacco (Puerto Rico). References to ATF Form 2137 (5230.7), Monthly Tax Return--Manufacturer of Cigarette Papers and Tubes, and ATF Form 3071 (5210.7), Tax Return--Manufacturer of Tobacco Products, are also removed from the regulations. These forms were made obsolete by Treasury Decision ATF-219 published in the Federal Register on December 17, 1985 (50 FR 51386) with the implementation of ATF Form 5000.24, Excise Tax Return, for domestic producers. References to ATF Forms 3065, Record of Large Cigars, and 3066, Record of Small Cigars, are removed as these forms were inadvertently not removed from the regulations when such recordkeeping requirements were deemed no longer necessary.

## Renumbered ATF Forms

Minor changes are made to reflect the correct ATF form number on certain forms. The regulation citation and form changes are as follows:

Regulation cite in 27 CFR	Old form number	New form number
290.147.....	2140	5220.4
275.86.....	2145	5200.11
290.222, 290.224 through 290.227, 290.232.....	2147	5620.7
270.201.....	3067	5210.9
270.202, 275.141.....	3068	5210.5
270.311, 270.476, 275.170, 275.172.....	3069 (5200.7)	5200.7

## Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

## Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0358 and 1512-0502. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection information in this regulation is found in 27 CFR 270.182, 270.183, 270.216a, 275.72b, and 295.45b. This information is required to ensure proper payment of excise tax on roll-your-own tobacco products.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this Federal Register.

## **Administrative Procedure Act**

This document merely implements sections of the law that were enacted on August 5, 1997, and immediate guidance is necessary to implement the provisions of the law. Therefore, it is found to be unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation under 5 U.S.C. 553(d).

## **Drafting Information**

The principal author of this document is Jackie White, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

## **List of Subjects**

### **27 CFR Part 270**

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

### **27 CFR Part 275**

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

### **27 CFR Part 290**

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

### **27 CFR Part 295**

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

### **27 CFR Part 296**

Authority delegations, Cigarette papers and tubes, Claims, Disaster assistance, Excise taxes, Floor stocks tax, Penalties, Seizures and forfeitures, Surety bonds, Tobacco products.

## **Authority and Issuance**

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

**PART 270--MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

**Paragraph 1.** The heading of part 270 is revised to read as set forth above:

**Par. 2.** The authority citation for part 270 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 3.** Section 270.11 is amended by adding the definition for “Roll-your-own tobacco” and by revising the definitions “Manufacturer of tobacco products” and “Tobacco products” to read as follows:

**§ 270.11 Meaning of terms.**

\* \* \* \* \*  
\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

\* \* \* \* \*

**Par. 4.** Subpart E is amended by removing § 270.61b and by revising § 270. 61a to read as follows:

**Subpart E--Qualification Requirements for Manufacturers**

**§ 270.61a Transitional rule.**

Any person who:

- (a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and
  - (b) Before January 1, 2000, submits an application as provided in this part to engage in such business,
- may continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

**§ 260.61b [Removed]**

**Par. 5.** Section 270.133 is amended by revising the third sentence to read as follows:

**§ 270.133 Amount of individual bond.**

\* \* \* The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed \$150,000 for a manufacturer producing or receiving cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco in bond; and need not exceed \$250,000 for a manufacturer producing or receiving, any combination of tobacco products in bond. \* \* \*

**Par. 6.** Section 270.181 is revised to read as follows:

**§ 270.181 General.**

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§. 270.182 and 270.183. For this purpose day shall mean calendar day, except that the regional director (compliance) may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the regional director (compliance). No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§ 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 270.184 and 270.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term business day shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

**Par. 7.** Section 270.182 is amended by revising paragraph (a) to read as follows:

**§ 270.182 Record of tobacco.**

\* \* \* \* \*

(a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco, pipe tobacco and roll-your-own tobacco), together with the name and address of the person from whom received;

\* \* \* \* \*

**Par. 8.** Section 270.183 is amended by revising the introductory text to read as follows:

**§ 270.183 Record of tobacco products.**

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco): \* \* \*

\* \* \* \* \*

**§ 270.201 [Amended]**

**Par. 9.** Section 270.201 is amended by removing the reference to “Form 3067” and adding in its place the reference “Form 5210.9” wherever it appears.

**§ 270.202 [Amended]**

**Par. 10.** Section 270.202, introductory text, is amended by removing the reference to “Form 3068” and adding in its place the reference “Form 5210.5” wherever it appears.

**§ 270.216a [Removed]**

**§ 270.216b [Redesignated as § 270.216a]**

**Par. 11.** Section 270.216a is removed, § 270.216b is redesignated as § 270.216a and a new § 270.216b is added to read as follows:

**§ 270.216b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “roll-your-own tobacco.” As an alternative, packages of roll-your-own tobacco may be designated “Tax Class J.”

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

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

**Par. 12.** Section 270.216c is revised to read as follows:

**§ 270.216c Package use-up rule.**

Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 216b. The manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

**Par. 13.** The second sentence of § 270.231 is revised to read as follows:

**§ 270.231 Consumption by employees.**

\* \* \* Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. \* \* \*

\* \* \* \* \*

**Par. 14.** The second sentence of § 270.252 is revised to read as follows:

**§ 270.252 Reduction of tobacco products to materials.**

\* \* \* If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. \* \* \*

**Par. 15.** The first sentence of § 270.255 is revised to read as follows:

**§ 270.255 Shortages and overages in inventory.**

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 270.183. \* \* \*

\* \* \* \* \*

**§ 270.311 [Amended]**

**Par. 16.** Section 270.311 is amended by removing the reference “Form 3069 (5200.7)” and adding in its place the reference “Form 5200.7” wherever it appears.

**§ 270.476 [Amended]**

**Par. 17.** Section 270.476 is amended by removing the reference “Form 3069 (5200.7)” and adding in its place the reference “Form 5200.7” wherever it appears.

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

**Par. 18.** The authority citation for part 275 continues to read as follows:

**Authority:** 26 U.S.C. 5701, 5703-5705, 5708, 5722, 5723, 5741, 5761-5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 19.** Section 275.11 is amended by revising the definitions of “Computation or computed,” “Manufacturer of tobacco products,” and “Tobacco products,” and by adding a definition for “Roll-your-own tobacco” to read as follows:

**§ 275.11 Meaning of terms.**

\* \* \* \* \*

*Computation or computed.* When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco) of tobacco products and the sale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

**Par. 20.** A new § 275.72b is added to read as follows:

**§ 275.72b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “roll-your-own tobacco.” As an alternative, packages of roll-your-own tobacco may be designated “Tax Class J.”

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

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

**Par. 21.** Section 275.81 is amended by adding a new paragraph (c)(7) to read as follows:

**§ 275.81 Taxpayment.**

\* \* \* \* \*

(c) \* \* \*

(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.

\* \* \* \* \*

**§ 275.86 [Amended]**

**Par. 22.** Section 275.86 is amended by removing the reference to “Form 2145” and adding in its place the reference “Form 5200.11” wherever it appears.

**Par. 23.** Section 275.107 is revised to read as follows:

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

(a) The port director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release.

(b) The statement of exceptions shall identify each shipping container which sustained a loss; the tobacco products and cigarette papers and tubes reported shipped in such container; and the tobacco products and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage.

(c) Where the statement is made on the basis of tobacco products or cigarette papers or tubes missing or damaged, the port director of customs shall show:

(1) The numbers of small cigarettes, large cigarettes, and small cigars.

(2) The number and total sale price of large cigars with a sale price of not more than \$235.294 per thousand,

(3) The number of large cigars with a sale price of more than \$235.294 per thousand,

(4) The number of books or sets of cigarette papers of each different numerical content.

(5) The number of cigarette tubes,

(6) The pounds and ounces of chewing tobacco and snuff,

(7) The pounds and ounces of pipe tobacco, and roll-your-own tobacco.

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

**Par. 24.** Section 275.110 is amended by revising paragraph (e) to read as follows:

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

\* \* \* (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped, \* \* \*  
\* \* \* \* \*

**Par. 25.** Section 275.117 is amended by revising paragraph (e) to read as follows:

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

\* \* \* (e) the pounds and ounces of pipe tobacco or roll-your-own tobacco.  
\* \* \* \* \*

**Par. 26.** Section 275.121 is amended by revising the first sentence, and the last sentence to read as follows:

**§ 275.121 Amount of bond.**

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: Provided, That the amount of any such bond need not exceed \$250,000 where payment of tax on cigarettes or on any combination of tobacco products is deferred; and need not exceed \$150,000 where the tax on cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco is deferred. \* \* \* The manufacturer shall charge such account with the amount of tax that was agreed to be paid on Form 2987. The manufacturer must credit the account for the amount paid on Form 5000.25, at the time the tax return is filed.

**Par. 27.** Section 275.139 is amended by revising paragraph (a) to read as follows:

**§ 275.139 Records.**

\* \* \* \* \*

(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).

\* \* \* \* \*

**Par. 28.** Section 275.140 is amended by revising the last sentence and adding a sentence to read as follows:

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

\* \* \* \* \*

Such tobacco products and cigarettes papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on Form 5000.24. The amount of tax paid on such articles shall be separately stated on Form 5000.24.

**§ 275.141 [Amended]**

**Par. 29.** Section 275.141 is amended by removing the reference “Form 3068” and adding in its place the reference “Form 5210.5” wherever it appears.

**§§ 275.170 and 275.172 [Amended]**

**Par. 30.** Remove the reference “Form 3069 (5200.7)” and add in place of it the reference “Form 5200.7” wherever it appears in the following sections:

- (a) 275.170; and
- (b) 275.172.

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

**Par. 31.** The authority citation for part 290 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 32.** Section 290.11 is amended by adding the definition for “Roll-your-own tobacco,” and by revising the definitions for “Manufacturer of tobacco products,” and “Tobacco products” to read as follows:

**§ 290.11 Meaning of terms.**

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

\* \* \* \* \*

**Par. 33.** Section 290.143 is amended by revising paragraph (a) to read as follows:

**§ 290.143 General.**

(a) Every export warehouse proprietor shall at the times specified in this subpart make a true and accurate inventory of products held on ATF Form 5220.3 (3373). This inventory must be submitted to the Regional Director (Compliance), and must specify the following:

- (1) The number of small cigars, large cigars, small cigarettes, large cigarettes, cigarette papers, and cigarette tubes held by such proprietor at the times specified in this subpart.
- (2) The pounds and ounces of chewing tobacco, snuff, pipe tobacco and roll-your-own tobacco held by such proprietor at the times specified in this subpart.

(b) \* \* \*

\* \* \* \* \*

**§ 290.147 [Amended]**

**Par. 34.** Section 290.147 is amended by removing the reference to “Form 2140” and add in its place the reference “Form 5220.4”.

**§§ 290.222, 290.224, 290.225, 290.226, 290.227, and 290.232 [Amended]**

**Par. 35.** Remove the reference to “Form 2147” and add in its place the reference “Form 5620.7” wherever it appears in the following sections:

- (a) Section 290.222;

- (b) Section 290.224;
- (c) Section 290.225;
- (d) Section 290.226;
- (e) Section 290.227; and
- (f) Section 290.232.

**PART 295--REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT FOR USE OF THE UNITED STATES**

**Par. 36.** The authority citation for part 295 continues to read as follows:

**Authority:** 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

**Par. 37.** Section 295.11 is amended by adding the definition for “Roll-your-own tobacco”, and by revising the definitions for “Manufacturer of tobacco products,” and “Tobacco products” to read as follows:

**§ 295.11 Meaning of terms.**

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

\* \* \* \* \*

**Par. 38.** Section 295.45b is revised to read as follows:

**§ 295.45b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “roll-your-own tobacco.” As an alternative, packages of roll-your-own tobacco may be designated “Tax Class J”.

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

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

**Par. 39.** Section 295.45c is added to read as follows:

**§ 295.45c Package use-up rule.**

Until April 1, 2000, manufacturers of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 216b. The manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

**PART 296--MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

**Par. 40.** The authority citation for part 296 continues to read as follows:

**Authority:** 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

**Par. 41.** Section 296.72 is amended by revising the definitions for “Tobacco Products” to read as follows:

**§ 296.72 Meaning of Terms.**

\* \* \* \* \*

*Tobacco Products.* Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.  
\* \* \* \* \*

**§ 296.74 [Amended]**

**Par. 42.** The second sentence of § 296.74 is amended by adding the words “and roll-your-own-tobacco” after the term “pipe tobacco”.

**Par. 43.** Section 296.163 is amended by revising the definitions for “Manufacturer of tobacco products” and “Tobacco products” to read as follows:

**§ 296.163 Meaning of terms.**

\* \* \* \* \*

*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.

\* \* \* \* \*

*Tobacco Products.* Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.  
\* \* \* \* \*

Signed: August 13, 1999.

**John W. Magaw,**  
*Director.*

Approved: October 27, 1999.

**John P. Simpson,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*  
[FR Doc. 99-32602 Filed 12-21-99; 8:45 am]

## **Subpart D — ADMINISTRATIVE**

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

### **Delegation of Authority**

#### **T.D. ATF- 425**

#### **27 CFR Parts 4, 5, 7 and 16**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury Decision, Final rule.

**SUMMARY:** Authority delegation. This final rule places most ATF authorities contained in parts 4, 5, and 7, title 27 Code of Federal Regulations (CFR), with the “appropriate ATF officer” and requires that persons file documents required by parts 4, 5, and 7, title 27 CFR, with the “appropriate ATF officer” or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.2A is being published. Through this order, the Director has delegated most of the authorities in 27 CFR parts 4, 5 and 7 to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports that are not ATF forms are filed. Finally, this final rule removes the definition of, and a reference to, the Director in part 16, title 27 CFR.

**DATES:** Effective March 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202-927-8210).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Pursuant to Treasury Order 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of the Federal Alcohol Administration (FAA) Act. The

Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in parts 4, 5, and 7 that were previously delegated and places those authorities with the “appropriate ATF officer.” Most of the authorities of the Director that were not previously delegated are also placed with the “appropriate ATF officer.” Along with this final rule, ATF is publishing ATF Order 1130.2A, Delegation Order--Delegation of the Director’s Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in parts 4, 5 and 7 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

To conform to these changes, this final rule removes the definition of “Director” and the one reference to the Director in part 16. The reference to the Director is found in 27 CFR 16.30. This section states that certificates of label/bottle approval or exemption from label approval are issued pursuant to parts 4, 5, and 7.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends parts 4, 5 and 7 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the “appropriate ATF officer” identified in ATF Order 1130.2A.

These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to subparts A of 27 CFR parts 4, 5 and 7. First, new sections are added in each part to recognize the authority of the Director to delegate regulatory authorities and to identify ATF Order 1130.2A as the instrument reflecting such delegations. Second, various sections are amended in each part to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has begun to make similar changes in delegations to other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

## **Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

## **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

## **Executive Order 12866**

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

## **Administrative Procedure Act**

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

## **Drafting Information**

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

## **List of Subjects**

### *27 CFR Part 4*

Advertising, Authority delegations, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and Containers, Reporting and recordkeeping requirements, Wine.

### *27 CFR Part 5*

Advertising, Authority delegations, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements.

### *27 CFR Part 7*

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and Containers, Reporting and recordkeeping requirements.

27 CFR Part 16

Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Health, Imports.

**Authority and Issuance**

Title 27, Code of Federal Regulations is amended as follows:

**PART 4--LABELING AND ADVERTISING OF WINE**

**Paragraph 1.** The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205, unless otherwise noted.

**§§ 4.3, 4.21, 4.23, 4.24, 4.33, 4.37, 4.38, 4.39, 4.40, 4.50, 4.52, and 4.64 [Amended]**

**Par. 2.** In part 4 remove the word “Director” each place it appears and add, in substitution, the words “appropriate ATF officer” in the following places:

- (a) Section 4.3(a);
- (b) Section 4.21(b)(3)(iii);
- (c) Section 4.23(c)(2);
- (d) Section 4.24(a)(1) and (c)(1);
- (e) Section 4.33(b);
- (f) Section 4.37(c);
- (g) Section 4.38(h);
- (h) Section 4.39(a)(4) and (5), (d), (g), (i)(2)(iii) and (3), and (j);
- (i) Section 4.40(c);
- (j) Section 4.50(b);
- (k) Section 4.52; and
- (l) Section 4.64(a)(4) and (5).

**Par. 3.** Section 4.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

**§ 4.3 Forms prescribed.**

- (a) \* \* \* The form will be filed in accordance with the instructions for the form.
- (b) Forms may be requested from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

\* \* \* \* \*

**Par. 4.** A new § 4.4 is added to Subpart A to read as follows:

**§ 4.4 Delegations of the Director.**

Most of the regulatory authorities of the Director contained in this Part 4 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

ATF delegation orders, such as ATF Order 1130.2A, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

**Par. 5.** Section 4.10 is amended by removing the definition “Regional director (compliance)”, and by adding a new definition of “Appropriate ATF officer” to read as follows:

#### **§ 4.10 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

\* \* \* \* \*

**Par. 6.** The first and last sentences of paragraph (b)(1) of § 4.24 are amended to remove the words “Director” and “Director's”, respectively, and by adding, in substitution, the phrases “appropriate ATF officer” and “appropriate ATF officer's”.

**Par. 7.** Paragraph (b)(1) of § 4.30 is amended to remove the words “Regional director (compliance)” and adding, in substitution, the words “appropriate ATF officer”.

**Par. 8.** Paragraph (a) of § 4.50 is amended by removing the words “application is made to the Director and” and adding to the end of the sentence the phrase “by the appropriate ATF officer”.

### **PART 5--LABELING AND ADVERTISING OF DISTILLED SPIRITS**

**Par. 9.** The authority citation for part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

#### **§§ 5.3, 5.22, 5.23, 5.26, 5.28, 5.34, 5.35, 5.36, 5.38, 5.42, 5.46, 5.51, 5.55 and 5.65 [Amended]**

**Par. 10.** In part 5 remove the word “Director” each place it appears and add, in substitution, the words “appropriate ATF officer” in the following places:

- (a) Section 5.3(a);
- (b) Section 5.22(k)(1) and (2), and (l)(2);
- (c) Section 5.26(b);
- (d) Section 5.28, introductory text;
- (e) Section 5.34(a);
- (f) Section 5.35(a);
- (g) Section 5.36(d);
- (h) Section 5.38(c);
- (i) Section 5.42(a)(4) and (5), and (b)(7);
- (j) Section 5.46(d)(1);

- (k) Section 5.51(c);
- (l) Section 5.55(a), (b) and (c); and
- (m) Section 5.65(a)(4) and (5), and (g).

Par. 11. Section 5.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

**§ 5.3 Forms prescribed.**

(a) \* \* \* The form will be filed in accordance with the instructions for the form.

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

\* \* \* \* \*

**Par. 12.** A new § 5.4 is added to Subpart A to read as follows:

**§ 5.4 Delegations of the Director.**

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

**Par. 13.** Section 5.11 is amended by removing the definition “Area supervisor”, and by adding a new definition of “Appropriate ATF officer” to read as follows:

**§ 5.11 Meaning of terms.**

\* \* \* \* \*

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

\* \* \* \* \*

**Par. 14.** The first sentence of paragraph (a) of § 5.26 is amended by removing the phrase “with the Director”.

**Par. 15.** Paragraph (c) of § 5.32 is amended by removing the phrase “by the Director”.

**Par. 16.** Paragraph (g) of § 5.33 is amended by removing the words “Director or regional director (compliance)” and adding, in substitution, the words “appropriate ATF officer”.

**Par. 17.** Paragraph (f) of § 5.36 is revised as follows:

**§ 5.36 Name and address.**

\* \* \* \* \*

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

\* \* \* \* \*

## **PART 7--LABELING AND ADVERTISING OF MALT BEVERAGES**

**Par. 18.** The authority citation for part 7 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **§§ 7.3, 7.23, 7.24, 7.25, 7.29, 7.31, 7.54 [Amended]**

**Par. 19.** In part 7 remove the word “Director” each place it appears and add, in substitution, the words “appropriate ATF officer” in the following places:

- (a) Section 7.3(a);
- (b) Section 7.23(b);
- (c) Section 7.24(g);
- (d) Section 7.25(a);
- (e) Section 7.29(a)
- (4) and (5), and (d);
- (f) Section 7.31(c); and
- (g) Section 7.54(a)(4) and (5).

**Par. 20.** Section 7.3 is amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

#### **§ 7.3 Forms prescribed.**

(a) \* \* \* The form will be filed in accordance with the instructions for the form.

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

\* \* \* \* \*

**Par. 21.** A new § 7.5 is added to subpart A to read as follows:

#### **§ 7.5 Delegations of the Director.**

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

**Par. 22.** Section 7.10 is amended by removing the definition “Regional director (compliance)”, and by adding a new definition of “Appropriate ATF officer” to read as follows:

#### **§ 7.10 Meaning of terms.**

\* \* \* \* \*

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.2A, Delegation Order--Delegation of the Director's Authorities in 27 CFR part 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages.

\* \* \* \* \*

**Par. 23.** The second sentence of paragraph (c)(1) of § 7.20 is amended by removing the words “regional director (compliance)” and adding, in substitution, the words “appropriate ATF officer”.

**Par. 24.** The first sentence of paragraph (f) of § 7.24 is amended by removing the phrase “by the Director”.

**Par. 25.** Paragraph (a) of § 7.41 is revised to read as follows:

#### **§ 7.41 Certificates of label approval.**

(a) *Requirement.* No person may bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless an approved certificate of label approval, ATF Form 5100.31, is issued.

\* \* \* \* \*

### **PART 16--ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT**

**Par. 26.** The authority citation for Part 16 continues to read as follows:

**Authority:** 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

**Par. 27.** Section 16.10 is amended by removing the definition of “Director.”

**Par. 28.** Section 16.30 is amended by removing the phrase “by the Director”.

Signed: August 12, 1999.

**John W. Magaw,**  
*Director.*

Approved: January 3, 2000.

**Dennis M. O'Connell,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 00-5360 Filed 3-6-00; 8:45 am]

## **ADMINISTRATIVE MATTERS — V**

### **Subpart C — Treasury Department orders and Delegation Orders**

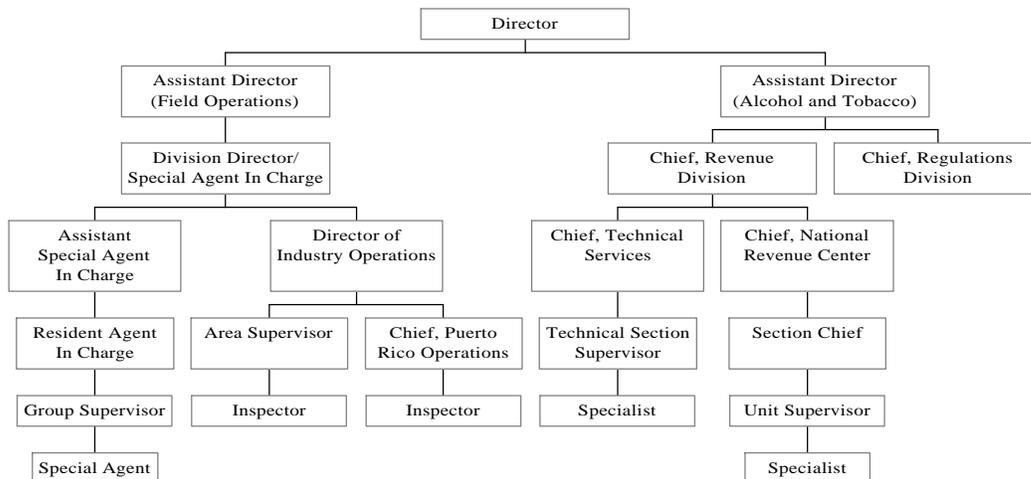
**Delegation Order — Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296**

1. PURPOSE. This order delegates the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF- , which revised subpart I of Part 296 of Title 27 of the Code of Federal Regulations (CFR) for the floor stocks tax on cigarettes.
2. CANCELLATION. This order cancels ATF O 1100.154, Delegation Order - Delegation of Certain Authorities of the Director in 27 CFR Parts 170 and 296.
3. BACKGROUND. Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.
4. DELEGATIONS. Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120-1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701-9, this ATF order delegates certain authorities to take final action prescribed in subpart I of Part 296 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by subpart I of Part 296 of Title 27 CFR, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

**John W. Magaw,**  
Director

Regulatory Section	Officer(s) Authorized to Act or Receive Document.
§296.242	Director of Industry Operations
§296.244	Inspector, Specialist or Special Agent
§296.253	Section Chief, National Revenue Center(NRC), to approve (by affixing the signature of the Director) claims of more than \$5,000 for remission, abatement, credit, or refund of tax.
§296.253	Unit Supervisor, NRC, to approve (by affixing the signature of the Director) claims of \$5,000 or less for remission, abatement, credit, or refund of tax.
§296.263	Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§296.264	Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division.
§296.271	Inspector, Specialist or Special Agent
§296.272	Director of Industry Operations
§296.274	Section Chief, NRC

## ATF Organization



This is not a complete organizational chart of ATF.

## **Delegation Order - Delegation of the Director's Authorities in 27 CFR Parts 4, 5 and 7, Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages**

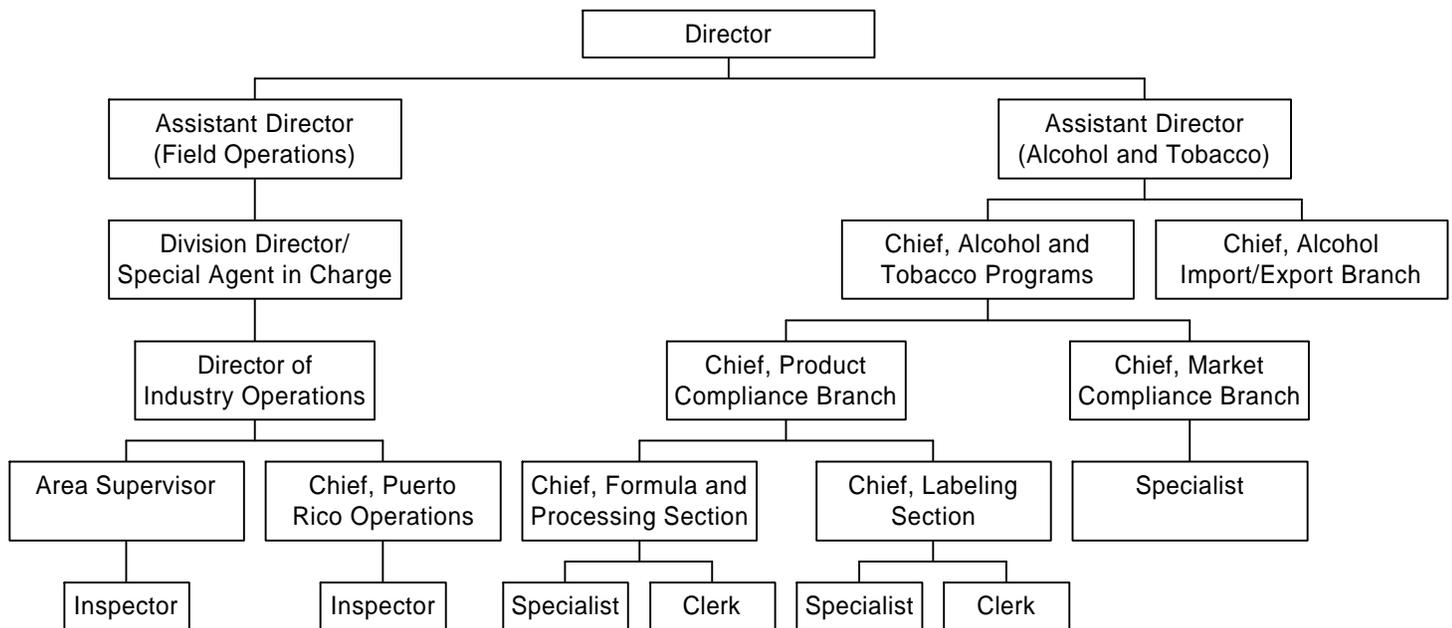
1. **PURPOSE.** This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.
2. **CANCELLATION.** ATF O 1130.2, Delegation Order - Delegation to Bureau Headquarters Personnel of Authorities of the Director in 27 CFR Parts 4, 5, and 7, Federal Alcohol Administration Act, dated 5/29/96, is canceled.
3. **BACKGROUND.** Under current regulations, the Director has authority to take final action on matters relating to labeling and advertising of wine, distilled spirits and malt beverages. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.
4. **DELEGATIONS.** Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120-1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701-9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Parts 4, 5 and 7 to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by 27 CFR Part 4, 5 and 7, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

**John W. Magaw,**  
Director

<b>Regulatory Section</b>	<b>Officer(s) Authorized to Act or Receive Document.</b>
§4.3(a)	Chief, Product Compliance Branch
§4.21(b)(3)(iii)	Chief, Product Compliance Branch
§4.23(c)(2)	Chief, Product Compliance Branch
§4.24 (a)(1), (b)(1) and (c)(1)	Chief, Product Compliance Branch
§4.30(b)(1)	Area Supervisor or Chief, Puerto Rico Operations
§4.33(b)	Specialist, Product Compliance Branch
§4.37(c)	Specialist, Product Compliance Branch
§4.38(h)	Area Supervisor, Chief, Puerto Rico Operations, Specialist, Product Compliance Branch, or Chief, Alcohol Import/Export Branch
§4.39(a)(4)and (5)	Specialist, Product Compliance Branch
§4.39(d)	Specialist, Product Compliance Branch
§4.39(g)	Specialist, Product Compliance Branch
§4.39(i)(2)(iii)	Specialist, Product Compliance Branch
§4.39(i)(3)	Specialist, Product Compliance Branch
§4.39(j)	Specialist, Product Compliance Branch
§4.40(c)	Specialist, Product Compliance Branch
§4.50(a) and (b)	Specialist, Product Compliance Branch
§4.52	Specialist or Clerk, Product Compliance Branch
§4.64(a)(4) and (5)	Specialist, Market Compliance Branch
§5.3(a)	Chief, Product Compliance Branch
§5.22(k)(1) and (2), and (l)(2)	Chief, Product Compliance Branch
§5.26(b)	Specialist, Product Compliance Branch
§5.28	Specialist, Product Compliance Branch
§5.33(g)	Area Supervisor, Chief, Puerto Rico Operations, Specialist, Product Compliance Branch, or Chief, Alcohol Import/Export Branch
§5.34(a)	Specialist, Product Compliance Branch
§5.35(a)	Specialist Product Compliance Branch
§5.36(d)	Specialist, Product Compliance Branch
§5.38(c)	Specialist, Product Compliance Branch
§5.42(a)(4) and (5) and (b)(7)	Specialist, Product Compliance Branch
§5.46(d)	Specialist, Product Compliance Branch
§5.51(c)	Specialist, Product Compliance Branch
§5.55(a) and (b)	Specialist, Product Compliance Branch
§5.55(c)	Specialist or Clerk, Product Compliance Branch
§5.65(a)(4) and (5) and (g)	Specialist, Market Compliance Branch
§7.3(a)	Chief, Product Compliance Branch
§7.20(c)(1)	Area Supervisor or Chief, Puerto Rico Operations
§7.23(b)	Specialist, Product Compliance Branch
§7.24(g)	Specialist, Product Compliance Branch
§7.25(a)	Specialist, Product Compliance Branch
§7.29(a)(4) and	Specialist, Product Compliance Branch

Regulatory Section	Officer(s) Authorized to Act or Receive Document.
(a)(5) and (d)	
§7.31(c)	Specialist, Product Compliance Branch
§7.41	Specialist, Product Compliance Branch
§7.54(a)(4) and (5)	Chief, Market Compliance Branch

## ATF Organization (Not a complete organizational chart.)



## Announcements – VI

### Announcement 99-18

#### Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters, may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 564 and 5708. Claims for such payments should be filed with the Director of Industry Operations, Bureau of Alcohol, Tobacco and Firearms, for the ATF district in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

#### **ALABAMA 1317**

Type of Disaster:

Counties:

March 7, 2000

Severe winter storm

Cherokee, DeKalb, Jackson

#### **ALASKA 1316**

Type of Disaster:

Affected areas:

March 7, 2000

Severe winter storms and  
avalanches

Municipality of Anchorage,  
Kenai Peninsula Borough,  
Mantansuka-Susitana  
Borough, Valdez-Cordova  
Census Area

#### **GEORGIA 1311**

Type of Disaster:

Counties:

February 11, 2000

Severe winter storm

Banks, Barrow, Bartow, Butts,  
Carroll, Catuosa, Chattooga,  
Cherokee, Clarke, Cobb,  
Dawson, DeKalb, Douglas,  
Elbert, Fannin, Floyd, Forsyth,  
Franklin, Fulton, Gilmer,  
Gordon, Greene, Gwinnett,  
Habersham, Hall, Haralson,  
Hart, Henry, Jasper, Jones,  
Lamar, Lumpkin, Newton,  
Oconee, Oglethorpe, Paulding,  
Pickens, Pike, Rabun,

**GEORGIA 1315**

Type of Disaster:

Counties:

Rockdale, Spalding, Stephens,  
Taliaferro, Union, Upson,  
Walker, White, Wilkes

February 29, 2000

Severe storms and tornadoes  
Colquitt, Decatur, Grady,  
Mitchell, Tift

**KENTUCKY 1310**

Type of Disaster:

Counties:

January 19, 2000

Tornadoes, severe storms,  
torrential rain and flash  
flooding

Ballard, Breckenridge,  
Carlisle, Crittenden, Daviess,  
Hancock, Henderson,  
Hopkins, Livingston, Spencer,  
Webster

**KENTUCKY 1320**

Type of disaster:

Counties:

March 14, 2000

Severe storms and flooding  
Bath, Boyd, Carter, Fleming,  
Greenup, Harrison, Lewis,  
Mason, Nicholas, Robertson,  
Rowan

**LOUISIANA 1314**

Type of Disaster:

Parishes:

February 29, 2000

Severe winter storm  
Bienville, Claiborne, Lincoln,  
Ouachita, Richland, Union,  
Webster, West Carroll

**NORTH CAROLINA 1312**

Type of Disaster:

Counties:

February 11, 2000

Severe winter storm  
Alamance, Anson, Cabarrus,  
Caswell, Chatham, Davidson,  
Durham, Edgecomb, Franklin,  
Granville, Guilford, Halifax,  
Harnett, Hoke, Johnston, Lee,  
Mecklenburg, Montgomery,  
Moore, Nash, Northampton,  
Orange, Person, Randolph,  
Richmond, Rockingham,  
Scotland, Stanly, Union,  
Vance, Wake, Warren, Wilson

**SOUTH CAROLINA 1313**

Type of Disaster:

Counties:

February 11, 2000

Severe winter storm

Abbeville, Aiken, Allendale,

Bamberg, Barnwell, Berkley,

Calhoun, Charleston,

Cherokee, Chester,

Chesterfield, Clarendon,

Collenton, Darlington, Dillon,

Dorchester, Edgefield,

Fairfield, Florence,

Georgetown, Greenwood,

Kershaw, Lancaster, Laurens,

Lee, Lexington, Marion,

Marlboro, McCormick,

Newberry, Orangeburg,

Richland, Saluda, Spartanburg,

Sumter, Union, Williamsburg,

York

**Amendments to Previously Declared Disasters**

**MASSACHUSETTS 3153**

County:

Amendment

Worcester

**Announcement 99-19**

**REVOCATIONS**

Permittees not engaged in the operations authorized by their permit for a period of more than (2) years are subject to revocation. The following permit(s) have been revoked for this reason.

*Company/Location*

Academy Beer Distributors, Inc.

Bronx, NY

Al-Saha Corporation

North Bergen, NJ

Beer and Beverage Warehouse, Inc.

Fresh Meadows, NY

Beer Haus, Ltd.

N. Babylon, NY

*Company/Location*

Agromart Beer Distributors, Inc.

T/A Medina Beer Distributors

Ridgewood, NY

George Arington

T/A A & M Distributing

Beaver Falls, PA

Beer Haus, Ltd.

Copiague, NY

Bonded Liquors, Ltd.  
Hauppauge, NY

Brun Beer Distributing Corp.  
College Park, NY

Clifton Beverage Distributors, Inc.  
Troy, NY

DiCampli Distributors, Inc.  
Geneva, NY

E.M.C.M. Enterprises, Inc.  
Long Island City, NY

Guy Gerard, Inc.  
T/A The Wine Showbiz  
Stony Point, NY

Inteq Corporation  
Kingston, NY

Leroy & DeVillaine, Ltd.  
Valley Stream, NY

Neighborhood Home Beverage Service  
Edison, NJ

Oneida Distributors, Inc.  
Oneida, NY

Premier Consortium, Ltd.  
New York, NY

Rashi Vineyards, Ltd.  
T/A Rashi Imports  
Brooklyn, NY

Sovat Corporation  
T/A Brittany Imports  
Philadelphia, PA

Vintner's International Company, Inc.  
Hammondsport, NY

Bell Beverage Corporation  
Bronx, NY

Champagne Nicolas Feuillatte USA  
Garden City, NY

Dee Jay Beverage Corporation  
Woodside, NY

Edenwald Beverage Discount Corp.  
Bronx, NY

General Beverage Co.  
T/A The Wine Spectrum  
Hammondsport, NY

Illva Saronna Corporation  
Bound Brook, NJ

L.P. Brady Distributors, Inc.  
Le Roy, NY

National Beer Distributors, Inc.  
Poukeepsie, NY

N.F.O., Inc.  
T/A Brewer's Outlet  
Maxatawney, PA

The Outpost Discount Beverages  
Hudson, NY

Puccio Vintage Wines, Inc.  
New York, NY

Rosemat International Imports  
Paterson, NJ

Stewart Hill Co., Inc.  
Staten Island, NY

Tillson Beverage Distributors, Inc.  
Tillson, NY

V. Volpe Distribution, Inc.  
T/A A & C Beer Distributors  
Staten Island, NY

WXXR, Inc.  
Pelham, NY

Louis Vincent Zarrillo  
T/A Zarillo Beverages  
Brooklyn, NY

White Food Corporation  
East Farmingdale, NY

Wine By Gerard, Inc.  
New York, NY