

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]

BILLING CODE 4810-31-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF—422; Re: Notice No. 888]

RIN 1512-AC07

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

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

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.

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

Sec.

- 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**

Sec.

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]

BILLING CODE 4810-31-P