cases the distinguishing features must affect viticulture.

(iii) *Boundary evidence and description.* The petition must explain how the boundary of the existing AVA was incorrectly or incompletely defined or is no longer accurate due to new evidence or changed circumstances, with reference to the name evidence and distinguishing features of the existing AVA and of the area affected by the proposed boundary change. The petition must include the appropriate U.S.G.S. maps with the proposed boundary change drawn on them and must provide a detailed narrative description of the changed boundary.

(2) *Name change.* If a petition seeks to change the name of an existing AVA, the petition must establish the suitability of that name change by providing the name evidence specified in paragraph (a)(1) of this section.

§ 9.13 Initial processing of AVA petitions.

(a) *TTB notification to petitioner of petition receipt.* The appropriate TTB officer will acknowledge receipt of a submitted petition. This notification will be in a letter sent to the petitioner within 30 days of receipt of the petition.

(b) *Acceptance of a perfected petition or return of a deficient petition to the petitioner.* The appropriate TTB officer will perform an initial review of the petition to determine whether it is a perfected petition. If the petition is not perfected, the appropriate TTB officer will return it to the petitioner without prejudice to resubmission in perfected form. If the petition is perfected, TTB will decide whether to proceed with rulemaking under § 9.14 and will advise the petitioner in writing of that decision. If TTB decides to proceed with rulemaking, TTB will advise the petitioner of the date of receipt of the perfected petition. If TTB decides not to proceed with rulemaking, TTB will advise the petitioner of the reasons for that decision.

(c) *Notice of pending petition.* When a perfected petition is accepted for rulemaking, TTB will place a notice to that effect on the TTB Web site.

§ 9.14 AVA rulemaking process.

(a) *Notice of proposed rulemaking.* If TTB determines that rulemaking in response to a petition is appropriate, TTB will prepare and publish a notice of proposed rulemaking (NPRM) in the **Federal Register** to solicit public comments on the petitioned-for AVA action.

(b) *Final action.* Following the close of the NPRM comment period, TTB will review any submitted comments and any other available relevant information and will take one of the following actions:

(1) Prepare a final rule for publication in the **Federal Register** adopting the proposed AVA action, with or without changes;

(2) Prepare a notice for publication in the **Federal Register** withdrawing the proposal and setting forth the reasons for the withdrawal. Reasons for withdrawal of a proposal must include at least one of the following:

(i) The extent of viticulture within the proposed boundary is not sufficient to constitute a grape-growing region as specified in § 9.11(a); or

(ii) The name, boundary, or distinguishing features evidence does not meet the standards for such evidence set forth in § 9.12; or

(iii) The petitioned-for action would be inconsistent with one of the purposes of the Federal Alcohol Administration Act or any other Federal statute or regulation or would be otherwise contrary to the public interest;

(3) Prepare a new NPRM for publication in the **Federal Register** setting forth a modified AVA action for public comment; or

(4) Take any other action deemed appropriate by TTB as authorized by law.

PART 70—PROCEDURE AND ADMINISTRATION

■ 7. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

■ 8. Section 70.701 is amended by adding a sentence at the end of paragraph (c) to read as follows: "A petition to establish a new American viticultural area or to modify an existing American viticultural area is subject to the rules in part 9 of this chapter."

Signed: October 1, 2010.

John J. Manfreda,

Administrator.

Approved: October 1, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–1138 Filed 1–19–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 19, 24, 25, 26, 40, 41, and 70

[Docket No. TTB–2011–0001; T.D. TTB–89; Re: Notice No. 115; T.D. ATF–365; T.D. TTB–41; ATF Notice No. 813 and TTB Notice No. 56]

RIN 1513–AB43

Time for Payment of Certain Excise Taxes, and Quarterly Excise Tax Payments for Small Alcohol Excise Taxpayers

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule updates and reissues Alcohol and Tobacco Tax and Trade Bureau regulations pertaining to the semimonthly payments of excise tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, and also reissues temporary regulations regarding quarterly payment of excise tax for small alcohol excise taxpayers. The temporary regulations adopted in this document replace temporary regulations issued under T.D. ATF–365 and T.D. TTB–41, which were originally published in 1995 and 2006, respectively. TTB is soliciting comments from all interested parties on these regulatory provisions through a notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Dates:* This temporary rule is effective on February 22, 2011, through February 24, 2014.

FOR FURTHER INFORMATION CONTACT: For questions concerning tax payment procedures and quarterly filing procedures, contact Jackie Feinauer, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (513–684–3442); for questions concerning this document, contact Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2103 or *Kara.Fontaine@ttb.gov*).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986 (IRC). These provisions of the IRC concern the taxation of distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. TTB's responsibilities include promulgating regulations to implement the statutory provisions pertaining to the time and method for payment of the applicable excise taxes. *See* 26 U.S.C. 5061 pertaining to distilled spirits, wine, and beer and 26 U.S.C. 5703 pertaining to tobacco products and cigarette papers and tubes. Prior to January 24, 2003, our predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) administered these statutory provisions and the regulations thereunder. The regulations implementing the times and methods for payment of these Federal excise taxes are now found in the TTB regulations at 27 CFR parts 19, 24, 25, 26, 40, 41, and 70.

Semimonthly Reporting and Payment of Tax

Generally, the Federal excise taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes are paid on the basis of a semimonthly return. The semimonthly periods covered by the tax return are from the 1st day to the 15th day of each month and from the 16th day to the last day of that month. The return must be filed and the taxpayment must be made no later than the 14th day after the last day of each semimonthly period.

Accelerated Payment Requirements for the Second Semimonthly Period in September

Uruguay Round Agreements Act

Section 712 of the Uruguay Round Agreements Act (the URAA), Pub. L. 103–465, 108 Stat. 4809, enacted on December 8, 1994, amended sections 5061(d) and 5703(b)(2) of the IRC to accelerate the time for payment of taxes for most of the second semimonthly period of September. These amendments were adopted in order to ensure receipt of these taxes during the fiscal year to which they relate.

The amendments made by the URAA divided the second semimonthly period in September into two payment periods for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. The first of these payment periods runs from September 16 through September 26, and the second of these payment periods runs from September 27 through September 30. The tax return and payment for the period September 16 through September 26 are due on or before September 29 except that, for taxpayers who are not required to pay taxes through electronic funds transfer (EFT), this first payment period ends on September 25 and taxes are due on or before September 28. The statutory amendments did not include an accelerated payment deadline for the second payment period (September 27 through 30) and therefore payment for it is due according to the general semimonthly payment rule (that is, on October 14).

The amendments made by the URAA also included a "safe harbor" rule covering the first (accelerated) payment period for taxes due for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, which permits the taxpayer to meet his or her obligation to pay tax for that payment period based on payment of a proportion (11/15ths) of the tax liability incurred for the period September 1 through September 15. In addition to the above, the amendments made by the URAA added a special due date rule (that is, the following day) when the due date for the new first (accelerated) payment in September falls on a Sunday.

Temporary Rule T.D. ATF–365

On June 28, 1995, ATF published a temporary rule (T.D. ATF–365) in the **Federal Register** at 60 FR 33665, to implement the changes to sections 5061 and 5703 of the IRC made by section 712 of the URAA. Specifically, T.D. ATF–365 amended 27 CFR parts 19, 24, 25, 250 (now part 26), 270 (now part 40), 285 (now part 40), 275 (now part 41), and 70, primarily by adding various provisions to those parts relating to reporting and tax payment for alcohol products, tobacco products, and cigarette papers and tubes.

In addition, T.D. ATF–365 made extensive amendments to the firearms and ammunition excise tax regulations in 27 CFR part 53. Subsequent legislation has substantially changed these provisions. For clarity, TTB will address the amendments to part 53 in a separate rulemaking document.

Subsequent Regulatory Changes

The following subsequent regulatory amendments adopted by ATF and TTB affected some of the sections of the regulations that were amended by T.D. ATF–365:

- T.D. ATF–384, published in the **Federal Register** (61 FR 54084), on October 17, 1996, recodified part 285 into part 270. As part of this recodification, § 285.25 was redesignated as § 270.355.
- T.D. ATF–444, published in the **Federal Register** (66 FR 13849) on March 8, 2001, amended §§ 275.114 (b)(1) and (b)(2) by changing the referenced form number from 5000.24 to 5000.25.
- T.D. ATF–459, published in the **Federal Register** (66 FR 38547) on July 25, 2001, recodified part 250 as part 26.
- T.D. ATF–460, published in the **Federal Register** (66 FR 39091) on July 27, 2001, recodified part 270 as part 40.
- T.D. TTB–16, published in the **Federal Register** (69 FR 52421) on August 26, 2004, recodified part 275 as part 41.

Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (the SAFETEA), Public Law 109–59, 119 Stat. 1144, enacted on August 10, 2005, amended IRC section 5061(d) (26 U.S.C. 5061(d)) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and adding a new paragraph (4), which allows certain Federal alcohol excise taxpayers to pay taxes quarterly rather than on a semimonthly basis as provided in section 5061(d) before the amendment. Application of this new provision commenced with quarterly tax payment periods beginning on and after January 1, 2006.

Paragraph (4) of section 5061(d) specifically references taxes imposed under subparts A, C, and D of part I of subchapter A of chapter 51 of the IRC and section 7652 of the IRC (26 U.S.C. 7652). The taxes imposed under subparts A, C, and D involve gallonage taxes on distilled spirits (26 U.S.C. 5001), wines (26 U.S.C. 5041), and beer (26 U.S.C. 5051). These taxes apply to spirits, wines, and beer produced in or imported into the United States. TTB collects these taxes from proprietors of domestic bonded premises pursuant to regulations contained in 27 CFR parts 19, 24, and 25; United States Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. Section 7652 of the IRC (26 U.S.C. 7652) imposes a tax on spirits, wines, and beer coming to the United States from Puerto Rico and the U.S. Virgin Islands. TTB collects these taxes from regulated premises in Puerto Rico under regulations in 27 CFR part 26, and CBP collects these taxes pursuant to title 19 of the CFR when the products in question come to the United States from the U.S. Virgin Islands.

The quarterly tax payment provisions of paragraph (4) of section 5061(d) apply to "any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes * * * for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year." In such a case the taxpayer must pay the tax no later than the 14th day after the last day of the calendar quarter during which the action giving rise to the tax (that is, withdrawal, removal, entry, and bringing in from Puerto Rico) occurs. The statute defines a "calendar quarter" as the three-month period ending on March 31, June 30, September 30, or December 31.

Paragraph (4) also provides that the quarterly tax payment procedure does not apply to a taxpayer for any remaining portion of the calendar year following the date on which the aggregate amount of tax due from the taxpayer exceeds $50,000. If at any point during the year the taxpayer's liability exceeds $50,000, any tax that has not been paid on that date becomes due on the 14th day after the last day of the semimonthly period in which that date falls. Thus, in effect, a taxpayer whose tax liability exceeds the $50,000 limit during the calendar year is required to revert to the semimonthly payment procedure for the remainder of the year.

Temporary Rule T.D. TTB–41

On February 2, 2006, TTB published in the **Federal Register** (71 FR 5598) a temporary rule, T.D. TTB–41, that amended 27 CFR parts 19, 24, 25, 26, and 70 to implement the new quarterly tax payment procedures of section 5061(d)(4) of the IRC. This Treasury Decision revised or otherwise amended regulatory texts concerning return or payment periods that had been adopted in T.D. ATF–365. The affected provisions were: Paragraph (a) of § 19.522, paragraph (a) of § 19.523, paragraph (b) and the heading of paragraph (c) of § 24.271, paragraphs (c) and (d) of § 25.164, the section heading and paragraph (a)(1) of § 25.164a, and paragraphs (b) and (d) of § 250.112 (now § 26.112). Tax payments in connection with transactions that are subject to regulations administered by CBP were not dealt with in T.D. TTB–41. In the Supplementary Information section of the T.D. TTB–41 preamble, TTB included the above summary of the changes brought about by section 11127 of the SAFETEA and also included discussions of the following: (1) Basic interpretive considerations; (2) effect on bond amounts; (3) effect on reporting requirements; and (4) other considerations.

Basic Interpretive Considerations

The following basic interpretive considerations were discussed in the preamble, and incorporated in the regulatory texts, of T.D. TTB–41.

1. We noted in T.D. TTB–41 that the longer deferral period allowed under section 5061(d)(4) would result in a larger unpaid tax liability, with a consequent impact on bonds. While we recognized that the intent of the statutory change was to ease the regulatory burden on small taxpayers, we also acknowledged the need to protect the revenue by ensuring that unpaid taxes are covered by appropriate bond amounts. If a taxpayer otherwise eligible for the new quarterly payment procedure does not wish to adjust the penal sum of its bond, that taxpayer should be allowed to continue to make payments and file returns on a semimonthly basis.

Accordingly, we decided to treat the quarterly payment procedure as optional rather than mandatory in the implementing regulations in order to provide flexibility to those taxpayers. Looking at section 5061 as a whole, and noting the placement of the semimonthly payment procedure in subsection (d)(1) as a provision of general applicability, we continue to believe that this interpretation is permissible because it makes the semimonthly procedure available to any taxpayer eligible for deferred payment of taxes, even if the taxpayer is also eligible for the quarterly payment procedure. The Conference Report of the Committee of Conference on H.R. 3, Report 109–203 at page 1133, describes the statutory change as follows: "[D]omestic producers and importers of distilled spirits, wine, and beer with excise tax liability of $50,000 or less attributable to such articles in the preceding calendar year may file returns and pay taxes within 14 days after the end of the calendar quarter instead of semi-monthly." The use of the word "may" indicates Congress viewed the continued use of the semimonthly procedure as an option.

2. Based on the wording of new paragraph (4) and of redesignated paragraph (5) of section 5061(d), we took the position that the "special rule for taxes due in September" properly applies only to semimonthly return periods and therefore does not apply to quarterly payments under new paragraph (4). Further, the Conference Report of the Committee of Conference on H.R. 3, Report 109–203 at page 1134, states "special rules accelerating payments for taxes allocable to the second half of September do not apply to quarterly filers under the Senate amendment". Accordingly, we changed the regulations referring to this payment to restrict its application to taxpayers who file semimonthly returns.

3. In T.D. TTB–41 we expressed our understanding that a "taxpayer" means an entity (including an individual, partnership or corporation) with a single taxpayer identification number, because the IRC controlled group rules generally do not apply to quarterly payment scenarios as explained below. For this reason we included in the regulatory texts an appropriate definition of this term.

4. With regard to the reference in the statute to a taxpayer who reasonably expects to be liable for not more than $50,000 in a tax year, we concluded that it would be appropriate to define "reasonably expects" in the implementing regulations to mean both that the taxpayer was not liable for more than $50,000 in taxes the previous year and that there are no other existing or anticipated circumstances (such as an increase in production capacity) that would cause the tax liability to increase beyond $50,000.

In addition, several other interpretative considerations were discussed in the preamble of T.D. TTB–41 and have been applied by TTB for purposes of administering section 5061(d)(4); however, they were not explicitly incorporated in the T.D. TTB–41 regulatory texts. The interpretative considerations in question were as follows:

- We noted that a single taxpayer could have multiple locations, and in such a case the combined liability for all locations for the same taxable commodity must be considered in determining eligibility for quarterly payments.
- Since the taxes imposed by 26 U.S.C. 5001, 5041, and 5051 apply to commodities produced in or imported into the United States, a taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports to determine eligibility for the quarterly procedure.
- We noted that new paragraph (4) makes no mention of controlled groups. Accordingly, we concluded that it is appropriate to take into account only the taxpayer's own liability in determining eligibility for quarterly payments, even if the taxpayer is considered to be a member of a controlled group for other purposes under the IRC. We also noted that there may be some individual taxpayers who

are eligible for the quarterly payment procedure but who are required to pay taxes by EFT because they are part of a controlled group that owes more than $5 million in distilled spirits, wine, or beer excise taxes per year. *See* 26 U.S.C. 5061(e). These individual taxpayers must transmit the quarterly payments via EFT.

• We noted that new taxpayers will be eligible to file quarterly returns in their first year of business simply if they reasonably expect to be liable for not more than $50,000 in taxes during that calendar year.

• Finally, we pointed out in T.D. TTB–41 that if a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000. This flows from the statutory provision, 26 U.S.C. 5061(d)(4)(A), which states the eligibility requirement that a taxpayer's liability must not have exceeded $50,000 in the preceding calendar year.

Effect on Bond Amounts

The bond regulations that apply to domestic producers of distilled spirits and wine at 27 CFR 19.245 and 24.148, and the regulations covering deferral bonds for proprietors bringing distilled spirits, wine, and beer to the United States from Puerto Rico at 27 CFR 26.66 (for distilled spirits), 26.67 (for wine), and 26.68 (for beer), require proprietors to calculate the penal sum of their deferral bonds to cover the unpaid tax that is chargeable against the bond at any one time. We stated in T.D. TTB–41 that we do not believe section 5061(d)(4) requires any changes to these regulatory provisions, the terms of which will clearly apply to taxpayers who use the quarterly payment procedure. However, we noted that it would be prudent for a taxpayer who uses the quarterly payment procedure to review the current deferral bond coverage, which in all likelihood is based on anticipated semimonthly taxes plus a 14-day deferral period. Such taxpayers may need to increase the deferral coverage for anticipated quarterly taxes because of the longer three-month plus 14-day deferral period.

We noted in T.D. TTB–41 that the penal sum amount set by regulation at 27 CFR 25.93 for a brewer's bond is 10 percent of the maximum amount of annual tax liability, with a minimum amount of $1,000. This 10 percent/minimum amount provides adequate bond coverage for small brewers who incur less than $50,000 of annual taxable liability each year and who file on a semimonthly basis. However, we also noted that the average maximum tax liability per return period for small brewers who pay quarterly will be approximately 29 percent of their annual liability. Our calculation indicated that the average maximum liability for a quarter of the year, plus the additional liability incurred during the 14 day period provided for payment, equals between 2.5 and 3.0 times the amount of the bond coverage presently required. Thus we concluded that the required bond coverage under § 25.93 is inadequate for small brewers who pay taxes quarterly. As a result, T.D. TTB–41 increased the required bond coverage for small brewers who pay excise taxes quarterly to 29 percent of the maximum amount of annual tax liability. We note that such increased bonding liability applies only to small brewers who pay excise taxes quarterly and not to other small brewers who continue to pay semimonthly.

Effect on Reporting Requirements

We noted in T.D. TTB–41 that, in general, proprietors of distilled spirits plants, bonded wine cellars, and breweries must file monthly reports of operations. Since proprietors who are small taxpayers may be filing quarterly tax returns, in T.D. TTB–41 we discussed whether these proprietors should file quarterly reports of operations as well.

When T.D. TTB–41 was published, the beer regulations at 27 CFR 25.297(b) already allowed brewers to file quarterly reports if they produce less than 10,000 barrels of beer during a calendar year. This level of activity represents a tax liability of $70,000 per year at the reduced rate of tax for small brewers, so brewers eligible to file quarterly returns under section 5061(d)(4) were already eligible to file quarterly reports under the existing rule. Therefore, T.D. TTB–41 did not make any change to the regulations regarding the brewers' report of operations.

Prior to publication of T.D. TTB–41, the wine regulations at 27 CFR 24.300(g)(2) allowed small proprietors to file an annual, rather than a monthly, report of operations if they are eligible to pay taxes on an annual basis and their total wine to be accounted for in a calendar month does not exceed 20,000 gallons. We continue to believe, as stated in T.D. TTB–41, that it is appropriate to allow wine premises proprietors to file quarterly reports of operations if they are eligible to make quarterly tax payments. Accordingly, T.D. TTB–41 revised paragraph (g) of § 24.300 to give quarterly taxpayers the option of filing quarterly reports of operations, and we set a maximum activity level of 60,000 gallons of wine to be accounted for in a calendar quarter in order to ensure that proprietors with very large production or storage capacity who pay little or no tax will continue to file monthly reports of operations. T.D. TTB–41 also made a corresponding conforming change to 27 CFR 24.313, Inventory records.

In the case of distilled spirits plant proprietors, we noted in T.D. TTB–41 that there are four operational report forms and that there is no provision in the TTB regulations specifying a reporting interval less frequent than monthly. We determined that T.D. TTB–41 was not the appropriate vehicle for making a change in the timing for reports of operations.

Other Considerations

The TTB regulations include provisions that allow TTB to require prepayment of taxes or to make a jeopardy assessment of taxes if we believe such action is necessary to protect the revenue. We reviewed those prepayment and jeopardy assessment provisions prior to the publication of T.D. TTB–41 and determined that no changes to the prepayment and jeopardy assessment provisions were needed in order for them to apply to taxpayers who pay on a quarterly basis. We remain of the view that such changes are not necessary.

In T.D. TTB–41 we stated that we had considered whether to require the filing of a notice of intent by a taxpayer who chooses to make quarterly tax payments before the taxpayer begins the procedure. Since we can determine from records we already have that a taxpayer appears to be eligible for the quarterly payment procedure (in particular, that the taxpayer's liability for the previous calendar year did not exceed $50,000), and because advance notice would serve no other useful purpose, we decided not to require advance notice. We remain of the view that advance notice is not necessary.

Reissuance of T.D. ATF–365 and T.D. TTB–41 as a New Temporary Rule

When T.D. ATF–365 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule; TTB has no record of comments received by ATF in response to this comment solicitation, and no action was taken by ATF to adopt the T.D. ATF–365 temporary regulations as a final rule. As noted above, a number of subsequent changes to the ATF/TTB regulations were made that affected the texts adopted in T.D. ATF–365, the most substantively significant of which were the changes to the alcohol excise tax payment provisions made by T.D. TTB–41, which included some revisions of the provisions implementing the URAA section 712 special September rule to accommodate the SAFETEA section 11127 quarterly payment procedure. When T.D. TTB–41 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule; only one comment was received in response to that comment solicitation, and that commenter expressed support for the rulemaking. TTB has not taken final action on the temporary regulations contained in T.D. TTB–41.

In view of the fact that the regulatory amendments adopted in T.D. TTB–41 in part involved a revision of, and thus depended on, amendments previously made by T.D. ATF–365, it would not be practical to take final action on the T.D. TTB–41 regulations without first finalizing those earlier regulatory amendments. However, we note both that a significant period of time has elapsed since T.D. ATF–365 was published and that the earlier rulemaking record is incomplete in that there is no record of comments received in response to the notice of proposed rulemaking published in connection with T.D. ATF–365. Given these circumstances, we believe that the best approach at this juncture would be to publish one new temporary rule that, in effect, reissues the regulatory texts adopted in T.D. ATF–365 and in T.D. TTB–41, with necessary changes to the T.D. ATF–365 texts to conform them to the later amendments noted above. The regulatory text amendments contained in this document are discussed in more detail below. In addition, in order to ensure a complete rulemaking record consistent with the requirements of 26 U.S.C. 7805(e)(1), we are publishing in the Proposed Rules section of this issue of the **Federal Register** a notice of proposed rulemaking inviting comments from the public on this new temporary rule.

Provisions of T.D. ATF–365 Reflected in This New Temporary Rule

In addition to the provisions covering the basic URAA "September rule," this temporary rule includes the following regulatory provisions (with appropriate section number changes to reflect the recodification of some parts of the regulations as mentioned above) regarding distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes that were published in T.D. ATF–365:

1. *Safe harbor rule.* The IRC as amended by the URAA specifically provides that, in the case of taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, the accelerated payment requirement will be met if the taxpayer pays not later than September 29 an amount equal to 11/15th (73.3 percent) of the taxpayer's liability for the first semimonthly period in September. This "safe harbor" provision is reflected in this temporary rule in 27 CFR 19.523(c)(2), 24.271(c)(2), 25.164a(b), 26.112(d)(2), 40.164(b), 40.355(g)(2), and 41.114(b)(2).

2. *Special rule for taxpayers not required to remit taxes by EFT.* The URAA amendment provided special rules for taxpayers who are not required to remit taxes by EFT for the calendar year. For those taxpayers, payment of taxes for the period September 16 to September 25 is due on or before September 28. The regulations relating to this requirement provide that the requirement to pay tax for this period is satisfied if the taxpayer pays an amount equal to ⅔ (66.7 percent) of the taxpayer's liability for the first semimonthly period in September. These provisions are reflected in this temporary rule in 27 CFR 19.523(c)(1)(ii), 19.523(c)(2)(ii), 24.271(c)(1)(ii), 24.271(c)(2)(ii), 25.164a(a)(2), 25.164a(b)(2), 26.112(d)(1)(ii), 26.112(d)(2)(ii), 40.164(a)(2), 40.164(b)(2), 40.355(g)(1)(ii), 40.355(g)(2)(ii), 41.114(b)(1)(ii) and 41.114(b)(2)(ii).

3. *Last day for making payment.* The URAA amendments revised, in part, the special rules for due dates falling on Saturday, Sunday, or legal holidays as defined in 26 U.S.C. 7503. The amendment relating to due dates falling on Sunday applies only to the accelerated return period in September. If the required due date for the accelerated payment period falls on a legal holiday or Saturday, taxpayment is due on the immediately preceding day, and if the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. These provisions are reflected in this temporary rule in §§ 19.523(c)(3), 24.271(c)(3), 25.164a(c), 26.112(d)(3), 40.164(c), 40.355(g)(3), and 41.114(b)(3).

Finally, as a result of our review of the regulatory texts published in T.D. ATF–365, we have made a number of nonsubstantive, editorial, or conforming changes to those texts to improve their clarity and readability. These include minor organizational and wording changes, inclusion of paragraph headings where appropriate to assist the reader in following the texts and inclusion of a revision of paragraph (b) of § 40.355 to ensure consistency of paragraph heading usage within the section.

Provisions of T.D. TTB–41 Reflected in This New Temporary Rule

The following regulatory amendments issued in T.D. TTB–41 implementing 26 U.S.C. 5061(d)(4), some of which incorporate and therefore take the place of September rule amendments adopted in T.D. ATF–365, are being reissued in this temporary rule:

- *27 CFR Part 19.* The regulations at 27 CFR 19.11, 19.522, 19.523, 19.565, and 19.703 were amended to accommodate the quarterly return procedure. The amendment of § 19.565 includes a reorganization of the text for editorial purposes, as well as the removal of the word "semimonthly."
- *27 CFR Part 24.* To accommodate the quarterly procedure, § 24.10, § 24.271 (which prescribes the return periods available for proprietors who have deferral bonds), and § 24.300(g) were amended in T.D. TTB–41.

Prior to the publication of T.D. TTB–41, part 24 included § 24.273, which allowed certain wine premises proprietors to file annual tax returns and pay taxes annually. Because the wine bond's coverage is split between operations coverage and deferral coverage, when drafting T.D. TTB–41 we were not limited by the existing language of section 5061 of the IRC, which specified semimonthly return periods for removals under a bond for deferred payment of taxes. Thus, we were able administratively to allow an annual return period for small proprietors who had no bond for deferred payment of taxes and who owed less than $1,000 per calendar year in taxes. Section 5061(d)(4) of the IRC does not affect the right of eligible proprietors to continue to pay taxes on an annual basis. T.D. TTB–41 revised § 24.273 to show that it is an exception to both semimonthly and quarterly return filing and also reorganized the section for clarity.

- *27 CFR Part 25.* The regulations at 27 CFR 25.93 were amended by T.D. TTB–41 to change the bond penal sum for quarterly taxpayers. Provisions at §§ 25.164 and 25.164a, which cover the tax return filing rules for brewers, were also amended to reflect the adoption of the quarterly return procedure.
- *27 CFR Part 26.* The regulations at 27 CFR 26.11 and 26.112, which

concern taxes imposed under section 7652 of the IRC, were amended by T.D. TTB–41 to incorporate references to the quarterly taxpayment procedure.

• *27 CFR Part 70.* Paragraph (a) of 27 CFR 70.412, which summarizes alcohol tax return filing procedural rules, was amended by T.D. TTB–41 to include a reference to quarterly returns.

This document also includes the following changes to the regulatory texts discussed above that were adopted in T.D. TTB–41:

• The definitions of "taxpayer" and "reasonably expects" are no longer included as such in §§ 19.522, 24.271, 25.164, and 26.112 but rather are included within each section as rules that apply to the quarterly return period procedure. These changes do not affect the substance of the regulatory texts but rather are intended to lend more precision to the texts and to avoid textual redundancy. In addition, each paragraph that sets forth the basic quarterly rule has been modified for purposes of clarity but without substantive change.

• The interpretative considerations discussed above that had not been included in the T.D. TTB–41 regulatory texts have been incorporated into the texts set forth in this document. We have reviewed this matter and have concluded that inclusion of those considerations in the regulations as rules that apply to the quarterly procedure will provide enhanced regulatory transparency.

• Finally, we have made some nonsubstantive, editorial-type changes to the regulatory texts, including minor wording changes and insertion of paragraph headings where appropriate, to improve the clarity and readability of the texts.

Public Participation

To submit comments on these regulations, please refer to the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statutes. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statutes. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), the temporary regulations 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

This is not a significant regulatory action as defined in E.O. 12866. Therefore, it requires no regulatory assessment.

Paperwork Reduction Act

The collections of information in the regulations contained in this reissued temporary rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and assigned control numbers 1513–0009, 1513–0053, 1513–0083, 1513–0090, and 1513–0104. 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. There is no new collection of information imposed by this temporary rule.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

• P.O. Box 14412, Washington, DC 20044–4412;
• 202–927–8525 (facsimile); or
• *formcomments@ttb.gov* (e-mail).

Inapplicability of Prior Notice and Comment

Because this document implements provisions of law that were effective on January 1, 1995, and January 1, 2006, and because this temporary rule updates and reissues previously issued temporary rules implementing these provisions of law, TTB believes it is unnecessary and contrary to the public interest to issue this temporary decision with prior notice and public comment, and therefore, consistent with 5 U.S.C. 553(b), good cause exists to take this action. That is, TTB has determined that good cause exists to provide the industry with this updated temporary rule because it reflects the statutory requirements that are already in effect and for which the industry continues to need immediate guidance. TTB is soliciting public comment on the regulatory provisions contained in this temporary rule in a concurrently issued notice of proposed rulemaking.

Drafting Information

Kara T. Fontaine of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of Information, Law enforcement, Penalties, Surety bonds.

Amendments to the Regulations

Accordingly, for the reasons set forth in the preamble, 27 CFR parts 19, 24, 25, 26, 40, 41, and 70 are amended as set forth below.

PART 19—DISTILLED SPIRITS PLANTS

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5101, 5121, 5122–5124, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 19.11 is amended by revising the definition of "calendar quarter and quarterly" to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 3. Section 19.522 is amended by revising paragraph (a) to read as follows:

§ 19.522 Taxes to be collected by returns.

(a)(1) *Deferred payment of taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on TTB F 5000.24, Excise Tax Return. The return shall be executed and filed for each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on TTB F 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(2) *Return periods.* (i) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (a)(2)(ii) of this section, all taxpayers shall use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.523(c).

(ii) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(A) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(B) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(C) A taxpayer with multiple locations must combine the distilled spirits tax liability for all locations to determine eligibility for the quarterly return procedure;

(D) A taxpayer who has both domestic operations and import transactions must combine the distilled spirits tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(E) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in distilled spirits excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(F) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in distilled spirits taxes during that calendar year; and

(G) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

* * * * *

■ 4. Section 19.523 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Except when payment is pursuant to a quarterly return as provided in paragraph (d) of this section, where the proprietor of bonded premises has withdrawn spirits from those premises on determination and before payment of tax, the proprietor must file a semimonthly tax return covering those spirits on TTB F 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as otherwise provided in paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

* * * * *

(c) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 19.524, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are

considered to have met the requirements of paragraph (c)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(4) *Example: Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

(d) *Payment pursuant to quarterly return.* Where the proprietor of bonded premises has withdrawn spirits from those premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.522(a)(2)(ii), the proprietor shall file a quarterly tax return covering such spirits on TTB F 5000.24, and remittance, as required by § 19.525, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday.

* * * * *

■ 5. Section 19.565 is revised to read as follows:

§ 19.565 Shortages of bottled distilled spirits.

(a) *Determination of shortage.* Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by § 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(b) *Payment of tax on shortage.* An unexplained shortage of bottled distilled spirits shall be taxpaid:

(1) Immediately on a prepayment return on TTB F 5000.24, or

(2) On the return on TTB F 5000.24 for the return period during which the shortage was ascertained.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

■ 6. Section 19.703 is amended by revising paragraph (a) to read as follows:

§ 19.703 Taxpayment of samples.

* * * * *

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's next deferred payment of tax on TTB F 5000.24.

* * * * *

PART 24—WINE

■ 7. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 8. Section 24.10 is amended by revising the definition of "calendar quarter and quarterly" to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 9. Section 24.271 is revised to read as follows:

§ 24.271 Payment of tax by return with remittance.

(a) *General.* The tax on wine is paid by an Excise Tax Return, TTB F 5000.24, which is filled with remittance (check, cash, or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form. If no tax is due for the return period, the filing of a return is not required.

(b) *Return periods and due dates.* (1) *Return periods.* (i) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, the annual return period as provided in § 24.273 or the quarterly return period as provided in paragraph (b)(1)(ii) of this section, all taxpayers who have filed a bond for deferred payment of taxes must use semimonthly return periods. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (c) of this section.

(ii) *Quarterly return period.* A taxpayer who has filed a bond for deferred payment of taxes may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(A) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(B) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(C) A taxpayer with multiple locations must combine the wine tax liability for all locations to determine eligibility for the quarterly return procedure;

(D) A taxpayer who has both domestic operations and import transactions must combine the wine tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(E) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in wine excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(F) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in wine taxes during that calendar year; and

(G) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(2) *Semimonthly and quarterly tax return due dates.* The taxpayer shall file the semimonthly or quarterly return, with remittance, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

(c) *Special September rule for taxes due by semimonthly return.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 24.272, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(4) *Example: Payment of tax for the month of September.* (i) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

■ 10. Section 24.273 is revised to read as follows:

§ 24.273 Exception to filing semimonthly or quarterly tax returns.

(a) *Eligibility for annual filing.* A proprietor may file the Excise Tax Return, TTB F 5000.24, and remittance within 30 days after the end of the calendar year instead of semimonthly or quarterly as provided in § 24.271, if the proprietor has not given a bond for deferred payment of wine excise tax and if the proprietor:

(1) Paid wine excise taxes in an amount less than $1000 during the previous calendar year, or

(2) Is the proprietor of a newly established bonded wine premises and expects to pay less than $1000 in wine excise taxes before the end of the calendar year.

(b) *Loss of eligibility for annual filing.* (1) If before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals $1000 or more, the proprietor will commence semimonthly or quarterly filing of the wine Excise Tax

Returns and making of payments as required by § 24.271.

(2) If there is a jeopardy to the revenue, the appropriate TTB officer may at any time require the proprietor to file Excise Tax Returns on a semimonthly or quarterly basis.

(c) *Other rules apply.* A proprietor who files on a calendar year basis under this section is subject to the failure to pay or file provisions of § 24.274.

■ 11. Section 24.300 is amended by revising paragraph (g) to read as follows:

§ 24.300 General.

* * * * *

(g) *TTB F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations must complete and submit TTB F 5120.17 in accordance with the instructions on the form.

(1) *Monthly report.* The proprietor must submit TTB F 5120.17 on a monthly basis, except as otherwise provided in paragraph (g)(2) or (g)(3) of this section.

(2) *Quarterly or annual report.* (i) *General.* A proprietor may file a completed TTB F 5120.17 on a quarterly or annual basis if the proprietor meets the criteria in paragraph (g)(2)(ii) or (g)(2)(iii) of this section. To begin the quarterly or annual filing of a report of bonded wine premises operations, a proprietor must state the intent to do so in the "Remarks" section when filing the prior month's TTB F 5120.17. A proprietor who is commencing operations during a calendar year and expects to meet these criteria may use a letter notice to the appropriate TTB officer and file TTB F 5120.17 quarterly or annually for the remaining portion of the calendar year. If a proprietor becomes ineligible for quarterly or annual filing by exceeding the applicable tax liability or activity limit, the proprietor must file TTB F 5120.17 for that month and for all subsequent months of the calendar year. If there is jeopardy to the revenue, the appropriate TTB officer may at any time require any proprietor otherwise eligible for quarterly or annual filing of a report of bonded wine premises operations to file such report monthly.

(ii) *Eligibility for quarterly report filing.* In order to be eligible to file TTB F 5120.17 on a quarterly basis, the proprietor must be filing quarterly tax returns under § 24.271, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(iii) *Eligibility for annual report filing.* In order to be eligible to file TTB F 5120.17 on an annual basis, the proprietor must be filing annual tax returns under § 24.273, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 20,000 gallons for any one month during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(3) *No reportable activity.* A proprietor who files a monthly TTB F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months may attach to the filed TTB F 5120.17 a statement that, until a change in the inventory or a reportable operation occurs, a TTB F 5120.17 will not be filed.

* * * * *

PART 25—BEER

■ 12. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 13. Section 25.93 is amended by revising paragraph (a) to read as follows:

§ 25.93 Penal sum of bond.

(a)(1) *Brewers filing semimonthly tax returns.* For brewers filing tax returns and remitting taxes semimonthly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(2) *Brewers filing quarterly tax returns.* For brewers filing tax returns and remitting taxes quarterly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 29 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

* * * * *

■ 14. In § 25.163, the first sentence is revised to read as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on TTB F 5000.24, as provided in §§ 25.164, 25.164a, 25.173, and 25.175. * * *

■ 15. Section 25.164 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.164 Quarterly and semimonthly returns.

* * * * *

(c) *Return periods.* (1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (c)(2) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month, except as otherwise provided in § 25.164a.

(2) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to beer imposed by 26

U.S.C. 5051 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(i) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the beer tax liability for all locations to determine eligibility for the quarterly return procedure;

(iv) A taxpayer who has both domestic operations and import transactions must combine the beer tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in beer taxes during that calendar year; and

(vii) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(d) *Time for filing returns and paying tax.* Except as otherwise provided in § 25.164a for semimonthly tax returns, the brewer shall file the tax return, TTB F 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 25.164a(c).

* * * * *

■ 16. Section 25.164a is revised to read as follows:

§ 25.164a Special September rule for taxes due by semimonthly return.

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return, TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 25.165, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule.* (1) *General.* Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September.* (1) *Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 17. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c: 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131, 5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 18. Section 26.11 is amended by revising the definition of "calendar quarter and quarterly" to read as follows:

§ 26.11 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 19. In § 26.112, paragraph (b), the last sentence of paragraph (c)(1), and paragraph (d) are revised to read as follows:

§ 26.112 Returns for deferred payments of tax.

* * * * *

(b) *Return periods.* (1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(2) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (d) of this section.

(2) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes imposed by 26 U.S.C. 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(i) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the tax liability for all locations with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the quarterly return procedure;

(iv) A taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the quarterly return procedure;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in distilled spirits, wine, or beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in distilled spirits, wine, or beer taxes during that calendar year; and

(vii) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(c) *Filing.* (1) * * *. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (d) of this section.

* * * * *

(d) *Special September rule for taxes due by semimonthly return.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (d)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 26.112a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (d)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (d)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 20. The authority citation for part 40 is amended to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703–5705, 5711–5713, 5721–5723, 5731–5734, 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.

■ 21. Section 40.163 is revised to read as follows:

§ 40.163 Semimonthly tax return periods.

Except as otherwise provided in § 40.164, the periods to be covered by semimonthly tax returns are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

■ 22. Section 40.164 is revised to read as follows:

§ 40.164 Special rule for taxes due for the month of September.

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.165a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule.* (1) *General.* Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September.* (1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 40.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 40.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 40.164(b)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 40.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 40.164(b)).

■ 23. In § 40.165, paragraph (a) is revised to read as follows:

§ 40.165 Times for filing semimonthly return.

(a) *General.* Except as otherwise provided in § 40.164 and in paragraph (b) of this section, semimonthly returns on TTB F 5000.24 must be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 40.164(c).

* * * * *

■ 24. In § 40.355, paragraphs (b), (c), (f), and (g) are revised to read as follows:

§ 40.355 Return of manufacturer.

* * * * *

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if cigarette papers and tubes were not removed subject to tax during the period and the appropriate TTB officer has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.* Except as otherwise provided in paragraph (g) of this section, semimonthly return periods run from the 1st day of the month through the 15th day of that month, and from the 16th day of the month through the last day of that month.

* * * * *

(f) *Time for filing.* Except as otherwise provided in paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (g)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.357, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(i) of this section if the amount paid no later

than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday, or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 25. The authority citation for part 41 continues to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 26. Section 41.113 is revised to read as follows:

§ 41.113 Return periods.

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

■ 27. In § 41.114, paragraphs (b) and (d) are revised to read as follows:

§ 41.114 Time for filing.

* * * * *

(b) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (b)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 41.115a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (b)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (b)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekend or holiday due date.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

(d) *Weekends and holidays.* Except as otherwise provided in paragraph (b)(3) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday.

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

■ 28. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552: 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

■ 29. In § 70.306, the section heading and the last sentence of paragraph (a) are revised to read as follows:

§ 70.306 Time for performance of acts other than payment of tax or filing of any return when the last day falls on Saturday, Sunday, or legal holiday.

(a) * * * For rules concerning the payment of any tax or the filing of any return required under the authority of 26 U.S.C. 4181 and 4182 relating to firearms and ammunition or subtitle E relating to alcohol, tobacco products, and cigarette papers and tubes, see 26 U.S.C. 5061, 5703, and 6302 and the regulations covering the specific commodity.

* * * * *

■ 30. In § 70.412, the second sentence of paragraph (a) is revised to read as follows:

§ 70.412 Excise taxes.

(a) *Collection.* * * * If the person responsible for paying the taxes has filed a proper bond to defer payment, that person may be eligible to file semimonthly or quarterly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during the semimonthly or quarterly period. * * *

* * * * *

Signed: June 2, 2010.

Mary G. Ryan,

Acting Administrator.

Approved: August 18, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

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