

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau**

27 CFR Parts 17, 19, 20, 22, 24, 25, 26, 27, 28, 31, 40, 44, 46, and 70

[Docket No. TTB-2009-0003; T.D. TTB-79; Re: Notice No. 96]

RIN 1513-AB63

Liquor Dealer Recordkeeping and Registration, and Repeal of Certain Special (Occupational) Taxes

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

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule amends the regulations administered by the Alcohol and Tobacco Tax and Trade Bureau, to reflect the repeal of certain special (occupational) taxes by section 11125 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The repeal involves such taxes on alcohol beverage producers and dealers, tax-free alcohol users, denatured spirits users and dealers, and persons claiming drawback for the manufacture of nonbeverage alcoholic products. In place of the special (occupational) tax requirement, the amended law requires recordkeeping and registration by dealers in distilled spirits, wines, and beer, and by manufacturers of nonbeverage products who claim drawback. We also are soliciting comments from all interested parties on these regulatory amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Dates:* This temporary rule is effective July 28, 2009 through July 30, 2012.

FOR FURTHER INFORMATION CONTACT: For questions concerning registration or occupational tax filing procedures, contact Jackie Feinauer, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (800-937-8864); for other questions concerning this document, contact Steve Simon, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-453-2164).

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the President signed into law the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users," Public Law 109-59, 119 Stat. 1953 (the Act). Section

11125 of the Act amended certain provisions of the Internal Revenue Code of 1986 (IRC) (26 U.S.C.) to repeal, effective July 1, 2008, the provisions covering special (occupational) taxes (also referred to in this document as SOT or special taxes) on:

- Producers and dealers of alcohol beverages,
- Manufacturers of nonbeverage products,
- Users of tax-free alcohol, and
- Users and dealers of specially denatured spirits.

Although section 11125 repealed the tax for these occupations, it did not remove the recordkeeping and registration requirements for dealers in alcohol beverages and for manufacturers of nonbeverage products. Under section 11125, all persons who sell distilled spirits, wine, or beer are dealers. As explained below, this covers only those dealers who sell alcohol products fit for beverage use.

The IRC chapter 51 and 52 provisions referred to above, and the regulations promulgated thereunder and contained in title 27 of the Code of Federal Regulations, are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

In order to remove the special (occupational) taxes on producers and marketers of alcohol beverages, paragraph (a) of section 11125 repealed the following subparts and sections of IRC chapter 51, subchapter A, part II:

- Subpart A relating to proprietors of distilled spirits plants, bonded wine cellars, etc. (26 U.S.C. 5081);
- Subpart B relating to brewers (26 U.S.C. 5091-5093);
- Subpart D relating to wholesale dealers, except for sections 5114 and 5116 (26 U.S.C. 5111-5113 and 5117);
- Subpart E relating to retail dealers, except for section 5124 (26 U.S.C. 5121-5123 and 5125); and
- Subpart G relating to general provisions, except for sections 5142, 5143, 5145, and 5146 (26 U.S.C. 5141 and 5147-5149).

Section 11125(a) also did away with the special (occupational) tax on nonbeverage drawback claimants by removing from 26 U.S.C. 5131 the reference to annual payment of a special tax. Finally, section 11125(a) did away with the special (occupational) tax on industrial use of distilled spirits by repealing 26 U.S.C. 5276.

Paragraph (b) of section 11125 made a number of conforming amendments to IRC chapter 51, subchapter A, part II. These amendments involved:

- Redesignating subpart C as subpart A;
- Redesignating subpart F as subpart B (with sections 5131 through 5134

redesignated as sections 5111 through 5114);

- Removing the special tax rate provision from redesignated section 5111; and
- Adding new subparts C (containing new sections 5121 through 5124) and D (containing new sections 5131 and 5132). **Note:** A technical error in the designation of section 5121 was corrected by section 11(a)(31) of the Tax Technical Corrections Act of 2007 (Pub. L. 110-172, 121 Stat. 2487).

New sections 5121, 5122, and 5123 were obtained by redesignating sections 5114, 5124, and 5146, respectively. The text of former section 5112 is included in new section 5121, and the text of former section 5122 is included in new section 5122. New section 5124, titled "Registration by Dealers," is patterned after existing section 7011(a). New section 5131 was obtained by redesignating section 5116, and new section 5132 contains, with a change, the text of former section 5117.

Paragraph (b) of section 11125 made additional conforming amendments elsewhere in the IRC, of which we note the following:

- Chapter 51, subchapter J, part V (section 5691) was repealed (although the terms of section 5691(b) were included in new section 5121(c)(4)); and
- Sections 5142, 5143, and 5145 were redesignated as sections 5732, 5733, and 5734 in subchapter D of chapter 52, relating to the special tax on tobacco occupations, which remains in effect.

Temporary Rule

Based on the July 1, 2008, effective date of the repeal of certain special (occupational) taxes, as described above, TTB believes that the proper administration of the repeal and the related changes to recordkeeping and registration requirements necessitates immediate adoption of the implementing regulations as a temporary rule.

Public Participation

To submit comments on the regulatory amendments contained in this temporary rule, please refer to the related notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

Basic Interpretative Considerations

Based on a careful reading of the amendments set out in section 11125 of the Act and resulting statutory language, TTB has applied the following considerations in preparing the regulatory changes to title 27 of the Code of Federal Regulations (27 CFR) set forth in this document:

1. *Application.* Consistent with the Government's longstanding interpretation of the IRC, liquor dealer recordkeeping and registration requirements apply only to dealers in alcohol fit for beverage use. See, e.g., 26 CFR 194.21 (1960 ed.). "Alcohol fit for beverage use" not only includes alcohol beverages but also includes alcoholic products for industrial use, unless the products are unfit for beverage use.

2. *Frequency of registration.* SOT for dealers was an annual tax, and filing of the return and registration was required by regulation on an annual basis. However, the IRC does not, and never did, require annual dealer registration, only that such dealers must "register with the Secretary." We see no reason to continue the annual filing requirement in the absence of annual collection of a tax. Instead, the regulatory changes in this document lessen the dealers' burden by requiring registration upon entering business as a dealer, with subsequent registrations required only for reporting changes in certain information and upon termination of business. On the other hand, Manufacturer of Nonbeverage Products (MNBP) drawback claimant registration is required annually because of the wording of 26 U.S.C. 5112. For persons filing MNBP drawback claims under the IRC, the first claim for the calendar year will satisfy the registration requirement if the claim contains the required registration information; subsequent claims with updated information will be considered amended registrations.

3. *Registration of proprietors of distilled spirits plants, bonded wine cellars, etc.* Since the definition of "dealer" in new section 5121(c)(4) of the IRC refers to "any person who sells, or offers for sale, any distilled spirits, wines, or beer," the requirements for recordkeeping and registration by dealers will also apply to proprietors of distilled spirits plants, bonded wine premises, taxpaid wine bottling houses, and breweries, if those proprietors sell their products or offer them for sale. Although these persons previously were generally exempted by 26 U.S.C. 5113 from the registration requirements applicable to liquor and beer dealers, this situation changed when section 11125 of the Act repealed section 5113 of the IRC and thereby deleted the exemption under section 5113.

In order to minimize the resulting regulatory burden, TTB has determined that proprietors of distilled spirits plants, bonded wine premises, and taxpaid wine bottling houses who have qualified under the IRC, and brewers who hold approved brewers' notices

under the IRC, will be deemed to have registered as dealers. In other words, the qualification and brewer's notice will serve as the registration required by section 11125. As part of the qualification or notice process, the proprietor must file and maintain in a current status all the information required for dealer registration under section 11125. Required notices of changes to the information required for IRC qualification or the brewer's notice will be considered as amendments to the dealer registration, and notice that the proprietor is going out of business will terminate the dealer registration as well.

4. *Proprietors will be registered as wholesale liquor dealers.* Proprietors of distilled spirits plants, bonded wine premises, and taxpaid wine bottling houses qualified under the IRC, and brewers who hold approved brewers notices under the IRC, will be treated as wholesale liquor dealers for registration purposes. This will allow the proprietor to sell distilled spirits, wine or beer at wholesale or retail from the covered location. For proprietors who have retail operations such as taverns on brewery premises, or who run wholesale or import operations from their premises and sell alcohol beverages other than the ones they produce, this interpretation will give maximum registration flexibility. Because industrial distilled spirits plants are qualified under the IRC, they will be considered as having registered as a wholesale liquor dealer for sales of undenatured alcohol. Even though a proprietor who makes no sales of alcohol fit for beverage use is not required to register, we believe this approach imposes the least overall burden. Since there is no cost to the proprietor, there is no reason to make a distinction in the registration.

5. *Persons who must register on Form 5630.5d.* Persons required to hold a basic permit under the Federal Alcohol Administration (FAA) Act as wholesalers or importers are considered dealers under section 11125, and so must file a registration on Form 5630.5d, as must retail dealers. This registration will remain in effect as long as the required information remains the same. Changes must be reported by filing of an amended Form 5630.5d if any of the required information changes, and the registrations must be terminated when covered operations cease. States, localities, and the District of Columbia are required to register only once as a wholesaler and once as a retailer in order to cover all operations within the jurisdiction in question.

6. *Records.* Required records for wholesale and retail liquor and beer dealers are specified in 27 CFR part 31 and are not significantly changed by this document. Breweries and proprietors of distilled spirits plants, bonded wine premises, and taxpaid wine bottling houses, who keep required records under the applicable IRC regulations, need not generate additional records as dealers for the same transactions.

7. *Transition to new rules.* For persons who were required to register and report changes on TTB Form 5630.5 during the SOT suspension period (July 1, 2005, through June 30, 2008), any registration filed after January 1, 2007, will constitute a valid registration required on or after July 1, 2008, and will continue in effect until the required registration information changes or operations are terminated. Therefore, such existing registrants will not have to re-register to comply with the new registration requirements. However, existing businesses that have not registered on or after January 1, 2007, must file a one-time registration on or before July 1, 2009, using TTB Form 5630.5d. The reasons for these dates are as follows: (1) Technically, the last registration required under the regulations for the 3-year SOT suspension was due on or before July 1, 2007. Most registrants would probably have filed before the deadline, but few, if any, would have filed before January 1, 2007; and (2) since this document was not published before July 1, 2008, the first registration under these new regulations—except for new businesses—will be due July 1, 2009. This transition rule applies to alcohol beverage dealers, breweries, and proprietors of distilled spirits plants, bonded wine premises, and taxpaid wine bottling houses, but not to MNBP drawback claimants. As noted above, MNBPs will be considered registered when they file the first claim for each year.

8. *Effective date.* The amendments made by section 11125 were effective on July 1, 2008. However, these regulations take effect on the date of their publication in the **Federal Register**. For the period between July 1, 2008, and the effective date of the temporary regulations, TTB will not apply or enforce any regulatory provision that is clearly inconsistent with current law, since statutory provisions always take precedence over conflicting regulations. On the other hand, any regulations that are not in conflict with current law (for example, the prior recordkeeping requirements) would remain in effect until superseded by the new temporary regulations. Further, section 11125

specifies, in paragraph (c), that its amendments “shall not apply to taxes imposed for periods before such date [July 1, 2008].” Therefore, persons who failed to pay special (occupational) tax when it was in force are not excused from their prior liability by the repeal of this tax.

9. *Employer identification number.* Section 6109(a)(1) of the IRC (26 U.S.C. 6109(a)(1)) states: “Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.” In accordance with this provision and subsection (d) of section 6109, the regulations promulgated by this document require inclusion of the employer identification number (EIN) on registrations for alcohol dealers and manufacturers of nonbeverage products. This requirement is unchanged from prior regulations.

Section 6723 of the IRC imposes a penalty of \$50 for each “failure by any person to comply with a specified information reporting requirement on or before the time prescribed therefor.” The definition of “specified information reporting requirement” in 26 U.S.C. 6724(d)(3) includes “any requirement contained in the regulations prescribed under section 6109 that a person—(i) include his TIN [taxpayer identification number; see 26 U.S.C. 7701(a)(41)] on any return, statement, or other document * * *.” The requirement, imposed by these regulations, to include the EIN on the registration is such an information reporting requirement. Because a person who does not submit a registration has failed to include his EIN on the registration, as required, the \$50 penalty of 26 U.S.C. 6723 applies. Per 26 U.S.C. 6724(a), this penalty is not imposed when there is reasonable cause for the failure. These principles are reflected in the new temporary regulations at 27 CFR 31.14.

10. *Confidentiality of registration information.* Because registration is required under new section 5112 or 5124 of the IRC, the submitted information is subject to the confidentiality and disclosure requirements of section 6103 of the IRC, even though most alcohol beverage dealers are no longer TTB taxpayers. Accordingly, such registration is held to be an “information return” within the intent of 26 U.S.C. 6103. This holding is reflected in the new temporary regulations at 27 CFR 31.15, set forth below.

11. *Tobacco.* Section 11125 did not repeal the special (occupational) tax on

any tobacco occupations; therefore, manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and tobacco export warehouse proprietors must continue to register and pay the special (occupational) tax every year.

Discussion of Specific Regulatory Changes

Part 17—Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products

The regulations in 27 CFR part 17 govern claims for drawback on taxpaid distilled spirits that are used in manufacturing nonbeverage products. Several subparts and sections within part 17 are amended in this document to conform with the changes made by section 11125 of the Act.

Subpart C Revised. Subpart C has been substantially amended by removing all sections relating to special tax and redesignating the subpart as “Subpart C—Registration”. As noted above, effective July 1, 2008, IRC section 5132 was redesignated as section 5112. As redesignated, this section continues to require that every person who claims drawback for the manufacture of nonbeverage products must register annually as a nonbeverage domestic drawback claimant. Section 5112 does not specify either how registration will be accomplished or the items of information that must be provided as part of the registration process. However, as discussed above, TTB has decided that registration will be accomplished when the claimant submits a claim for drawback along with the supporting information that must be submitted with the claim. Thus, the filing of the claim will satisfy the requirement to register.

The revised subpart now includes a new § 17.21 that explains this registration of nonbeverage drawback claimants. The revised subpart also contains two new sections (§§ 17.22 and 17.23) relating to the use of, and application for, the employer identification number.

Subpart D Removed. Subpart D—Special Tax Stamps, consisting of §§ 17.51 through 17.93 and covering the issuance of special tax stamps, their subsequent amendment, and refunds of special tax, has been removed and reserved.

Location of Records and Recovery Operations. Several sections relating to records (§§ 17.161, 17.168, and 17.171) have been amended to delete references to the premises covered by the special tax stamp.

Miscellaneous Amendments. In addition to the above amendments, TTB has made several minor amendments to the regulations in part 17 by removing references to special tax within various sections. We also amended several legal citations within the regulations to reflect the redesignation of certain sections of law effective July 1, 2008. Finally, § 17.4 is revised to reflect the OMB control numbers that were assigned when the Alcohol and Tobacco Tax and Trade Bureau was created and to remove references to sections that have been removed from part 17.

Part 19—Distilled Spirits Plants

The regulations in 27 CFR part 19 govern operations at distilled spirits plants. Several subparts and sections within part 19 have been revised or otherwise amended.

Subpart Ca—Dealer Registration. Subpart Ca has been revised in order to remove all references to special tax, and the subpart heading has been revised to read “Dealer Registration and Recordkeeping”. Effective July 1, 2008, every proprietor of a distilled spirits plant who sells or offers for sale any distilled spirits, wines, or beer must register as a dealer. As noted above, TTB has determined that proprietors who have registered the distilled spirits plant under the qualification provisions of part 19 will be deemed to have registered as wholesale liquor dealers at the distilled spirits plant premises. The revised subpart Ca includes a new § 19.50 which explains the registration process for proprietors. In addition, the revised subpart contains a new section on amending the registration (§ 19.51) and a new section on dealer records (§ 19.52).

Dealer Recordkeeping. Although distilled spirits plants proprietors who sell, or offer for sale, distilled spirits fit for beverage use will be subject to the recordkeeping requirements of 26 U.S.C. 5121, new § 19.52 provides that the records required by subpart W of part 19 will satisfy those requirements, except where the distilled spirits plant engages in dealer operations not already covered by the recordkeeping requirements of part 19.

Alcohol Fuel Plants. In general, alcohol fuel plants would not be subject to the requirements applicable to alcohol beverage dealers, because they generally do not produce and sell alcohol fit for beverage use. However, an alcohol fuel plant that sells distilled spirits that have not been rendered unfit for beverage use (for transfer in bond to a distilled spirits plant or another alcohol fuel plant) would meet the definition of a “dealer.” Therefore,

§ 19.906 is revised to clarify that such an alcohol fuel plant is subject to the provisions of revised subpart Ca.

Miscellaneous Amendments. In addition to the above amendments, TTB has made several minor amendments to the regulations in part 19 to remove references to special tax in various sections. We also amended several legal citations within the regulations to reflect the redesignation of certain sections of law that went into effect on July 1, 2008. For example, a reference to “26 U.S.C. 5131–5134” in the definition of “alcoholic flavoring material” of § 19.11 has been replaced with a reference to “26 U.S.C. 5111–5114”.

Part 20—Distribution and Use of Denatured Alcohol and Rum

The regulations in 27 CFR part 20 govern the distribution and use of denatured alcohol and rum. Effective July 1, 2008, section 11125(a)(3) of the Act repealed 26 U.S.C. 5276, which imposed a special tax on dealers and users of denatured alcohol and rum. Accordingly, in part 20, subpart Ca—Special (Occupational) Taxes has been removed and reserved. TTB also notes in this regard that dealers and users of denatured alcohol and rum who operate within the requirements of the law and regulations, selling denatured products for nonbeverage purposes only, are not considered to be “dealers” under the IRC and therefore will not be required to register as such.

Part 22—Distribution and Use of Tax-Free Alcohol

The regulations in 27 CFR part 22 govern the distribution and use of tax-free alcohol. As in the case of part 20 discussed above, the repeal of 26 U.S.C. 5276, which imposed a special tax on users of tax-free alcohol, necessitates the removal from part 22 of subpart Ca—Special (Occupational) Taxes. Similarly, users of tax-free alcohol are generally not considered to be “dealers” under the IRC and therefore will not be required to register as such. However, this document also amends § 22.102 to provide that any person who sells tax-free alcohol will become a dealer and therefore will be subject to the provisions of part 31 (since tax-free alcohol is fit for beverage use).

Part 24—Wine

The regulations in 27 CFR part 24 govern operations at bonded wine premises and taxpaid wine bottling houses.

Dealer Registration. As a result of the changes to the IRC made by section 11125 of the Act, effective July 1, 2008, every proprietor of bonded wine

premises and every proprietor of a taxpaid wine bottling house who sells or offers for sale any distilled spirits, wines, or beer must register as a dealer. As noted above, TTB has determined that proprietors who have qualified as a bonded wine premises or taxpaid wine bottling house under part 24 will be deemed to have registered as a wholesale liquor dealer at those premises. Section 24.52 is revised to explain the registration process for these proprietors.

Dealer Recordkeeping. Although proprietors of wine premises who sell beverage wine (or who offer it for sale) will be subject to the recordkeeping requirements of 26 U.S.C. 5121, § 24.54 is revised to provide that the records required by subpart O of part 24 will satisfy these requirements, except where the bonded wine cellar or taxpaid wine bottling house engages in dealer operations not covered by the recordkeeping requirements of part 24.

Miscellaneous Amendments to Part 24. Several sections in part 24 relating to special tax have been removed. In addition, several sections have been amended by removing all reference to special tax and by replacing those references, where appropriate, with provisions covering the registration of proprietors as dealers. TTB notes that with regard to § 24.146, which covers bonds, although the specific reference to special tax is removed, bonds will still cover liability for unpaid special tax that was due prior to the repeal. Finally, § 24.53 is revised to cover amendment of the dealer registration.

Part 25—Beer

The regulations in 27 CFR part 25 govern operations at breweries. Subpart I and several sections in part 25 have been amended.

Subpart I—Dealer Registration. Subpart I has been revised in order to remove all sections relating to special tax, and the subpart heading has been revised to read “Subpart I—Dealer Registration and Recordkeeping.” As a result of the changes to the IRC made by section 11125 of the Act, effective July 1, 2008, every proprietor of a brewery who sells or offers for sale any distilled spirits, wines, or beer must register as a dealer. As noted above, TTB has determined that registration of the brewery premises will be accomplished when the proprietor files a Brewer’s Notice, Form 5130.10, and TTB approves the notice. The revised subpart includes § 25.112, which explains the registration process for proprietors. In addition, the revised subpart contains a section on amending the registration (§ 25.113), which provides that

amendments to the brewer’s notice serve as amended dealer registrations, and a section on dealer records (§ 25.114—see the description of this section immediately below).

Dealer Recordkeeping. Although brewers who sell beverage beer (or offer it for sale) will be subject to the recordkeeping requirements of 26 U.S.C. 5121, the records required by subpart U of part 25 provide similar information. Therefore, § 25.114 provides that the records of subpart U will satisfy the requirements of section 5121 of the IRC, except where the brewer engages in dealer operations not covered by the recordkeeping requirements of part 25.

Employer Identification Number. Section 25.168, which concerns employer identification numbers, has been amended to revise a cross reference to instructions regarding the application for an employer identification number. Those instructions were formerly in subpart I and addressed the preparation of the special tax return. Since subpart I now deals with dealer registration, those instructions have been removed from that subpart and added as a new § 25.169, and the cross reference in § 25.168 has been revised accordingly.

Miscellaneous Amendments. In addition to the above amendments, TTB has made several minor amendments to the part 25 regulations by removing references to special tax in various sections.

Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands

The regulations in 27 CFR part 26 govern operations of persons bringing alcohol beverages and certain other alcoholic products to the United States from Puerto Rico and the Virgin Islands. These persons include brewers, proprietors of distilled spirits plants and bonded wine cellars, dealers in denatured alcohol, and nonbeverage drawback claimants. Accordingly, several sections in part 26 are affected.

Industrial Alcohol. Since the special tax provisions on tax-free alcohol users, and on denatured spirits users and dealers, are repealed, § 26.36 is amended by removing references to that tax, and § 26.47 is removed. Because tax-free alcohol is fit for beverage use, persons shipping such alcohol to the United States for sale are subject to registration as alcohol beverage dealers; however, such registration will be accomplished by obtaining a distilled spirits plant permit and complying with the other requirements of 27 CFR part 19. Section 26.36(b) is amended accordingly. Section 26.46, which relates only to special (occupational) tax

on distilled spirits plant proprietors, is removed.

Nonbeverage drawback claimant registration. Sections 26.171 and 26.173 (Puerto Rico), and §§ 26.307 and 26.309 (Virgin Islands), are revised or otherwise amended to replace references to the special tax for nonbeverage drawback claimants with a discussion of the new registration requirement for claimants similar to the discussion in part 17 above.

Dealer registration. In §§ 26.44 and 26.45 (Puerto Rico) and §§ 26.210 and 26.211 (Virgin Islands), references to the special tax registration and return for alcohol occupations are changed to refer to dealer registration and recordkeeping.

Miscellaneous Amendments. We changed a legal citation within the definition of “eligible flavors” and several informational citations to reflect the redesignation of certain sections of law affected by section 11125 of the Act. We made some minor technical amendments in §§ 26.173(a) and 26.309(a) relating to the description of the drawback rate and the procedure for filing drawback claims. In §§ 26.173(c) and 26.309(c), we replaced the requirement for entering the control number on the special tax stamp with a requirement for entering the claimant’s employer identification number, since the special tax return (which is no longer filed by these claimants) formerly supplied TTB with that information.

Part 27—Importation of Distilled Spirits, Wines, and Beer

The regulations in 27 CFR part 27 govern operations of persons importing distilled spirits, wine, and beer into the United States. Several sections of regulations within part 27 have been amended.

Dealer registration. In §§ 27.30 and 27.31, references to the special tax registration and return for alcohol occupations are changed to refer to dealer registration.

Miscellaneous Amendments. We also changed a legal citation within the definition of “eligible flavors” and several informational citations to reflect the redesignation of certain sections of law affected by section 11125 of the Act.

Part 28—Exportation of Alcohol

The regulations in 27 CFR part 28 govern operations by persons exporting distilled spirits, wines, and beer to foreign countries and possessions of the United States. Section 28.212, dealing with persons authorized to export wine with benefit of drawback, is revised to replace the reference to payment of special tax as a wholesale liquor dealer with a reference to registration as such

a dealer under part 31. Also, the authority citation for part 28 is revised to reflect the repeal or redesignation of certain sections of law by section 11125 of the Act.

Part 31—Alcohol Beverage Dealers

The regulations in 27 CFR part 31 govern the operations of alcohol beverage dealers. The principal subject matter of part 31 historically has been the special (occupational) tax. The elimination of that tax makes it necessary to revise the entire part. In general, we have attempted in this document to retain as much of the old part 31 as can be adapted to the IRC provisions as amended by section 11125 of the Act. Nevertheless, the new part 31 set forth in this document is significantly shorter. References to the special (occupational) tax are removed, the part is reorganized, conforming changes are made to cross references, and OMB information collection approval numbers are updated. Several new sections are added to clarify producers’ status as dealers (§ 31.48), to describe situations where registration is required (§§ 31.137 and 31.138), to clarify liability for special (occupational) tax for periods prior to its elimination (§ 31.234), and to set forth penalty and disclosure provisions (§§ 31.14 and 31.15). In addition, sections concerning preparation of the special tax return are redrafted to cover preparation of the dealer registration form, and sections concerning exemption from dealer’s special tax for persons who registered as producers are removed.

Sections that formerly clarified liability for special tax have been revised to clarify when persons are considered to be dealers subject to the regulations. Some of these clarifications in part 31 were based on specific statutory exemptions formerly contained in 26 U.S.C. 5113 and 5123. Although these two statutory provisions were repealed by section 11125 of the Act, we will continue to apply those exemptions as administrative interpretations.

As noted above, the exemption in repealed section 5113 of the IRC for proprietors of controlled premises (distilled spirits plants, bonded wine cellars, taxpaid wine bottling houses, and breweries) has been retained in effect by allowing qualification documents and records required by part 19, 24, or 25, as applicable, to satisfy the alcohol dealer registration and recordkeeping requirements (§§ 31.48, 31.154). Other exemptions and exceptions in repealed section 5113 that are retained in the revised part 31 texts

pertain to: States, political subdivisions, etc. (§§ 31.43, 31.153); creditors, fiduciaries, and officers of court (§§ 31.62(a), (b) and (c)); retiring partners or representatives of deceased partners (§ 31.62(d)); persons returning liquors for credit, refund, or exchange (§ 31.67); dealers making sales on purchaser dealers’ premises (§§ 31.52 and 31.53); retail dealers selling in liquidation (§ 31.66); and retail dealers selling to limited retail dealers (§ 31.55(b)).

Exemptions and exceptions contained in repealed section 5123 of the IRC that are retained in the revised part 31 texts pertain to: Wholesale dealers making retail sales (§ 31.51); retail dealers “at large” (§ 31.94); dealers on trains, aircraft, or vessels (§§ 31.91 through 31.93); and liquor stores operated by States, political subdivisions, etc. (§§ 31.43, 31.153). The exemption from additional special tax when a wholesale or retail dealer in beer begins to sell other liquors, which was formerly provided for in repealed sections 5113(g) and 5123(c) of the IRC, is not retained in the revised part 31 texts for registration purposes, because section 11125 of the Act requires a dealer to register his or her “trade or business” (see new § 31.75).

The table below shows the source of, and extent of the change reflected in, each section in revised part 31:

New section	Source (action)
31.0	31.1 (P)
Subpart A—General Provisions	
31.1	31.11 (P)
31.2	31.2 (O)
31.3	31.3 (P)
31.4	31.4 (P)
Subpart B—Administrative Provisions	
31.11	31.41 (P)
31.12	31.42 (O)
31.13	31.43 (O)
31.14	31.109, 31.111 (C)
31.15	26 U.S.C. 6103 (N)
Subpart C—Activities Subject to this Part	
31.21	31.21 (P)
31.22	31.22 (O)
Dealers Classified	
31.31	31.23 (P)
31.32	31.24 (P)
31.33	31.25 (P)
31.34	31.26 (P)
31.35	31.27 (O)
31.36	31.28 (O)

New section	Source (action)
Certain Organizations, Agencies, and Persons	
31.41	31.29 (P)
31.42	31.30 (P)
31.43	31.31 (P)
31.44	31.32 (P)
31.45	31.33 (P)
31.46	31.34 (P)
31.47	31.35 (P)
31.48	(N)
Subpart D—Exemptions and Exceptions	
Persons Exempt From Registration and/or Recordkeeping	
31.51	31.23(c)(1) and 31.25(c)(1) (C)
31.52	31.185 (P)
31.53	31.186 (P)
31.54	31.187 (P)
31.55	31.187a (P)
Persons Who Are Not Dealers in Liquors or Beer	
31.61	31.181 (C)
31.62	31.188 (P)
31.63	31.189 (P)
31.64	31.190 (P)
31.65	31.191 (P)
31.66	31.192 (O)
31.67	31.193 (P)
Subpart E—Places Subject to Registration	
31.71	31.51 (P)
31.72	31.52 (O)
31.73	31.53 (P)
31.74	31.54 (P)
31.75	31.72 (C)
Sales in Two or More Areas on the Same Premises	
31.81	31.57 (P)
31.82	31.58 (P)
31.83	31.59 (P)
Sales in Multiple Locations	
31.91	31.124 (P)
31.92	31.125 (P)
31.93	31.126 (P)
31.94	31.127 (P)
31.95	31.55 (P)
31.96	31.56 (P)
Subpart F—Partnerships	
31.101	31.91 (P)
31.102	31.92 (P)
31.103	31.93 (P)
31.104	31.94 (P)
Subpart G—Registration Form, TTB F 5630.5d	
31.111	31.102 (C)
31.112	31.106(c) (P)
31.113	31.104a (P)
31.114	31.106 (P)
31.115	31.106a (P)

New section	Source (action)
31.116	31.107 (P)
Subpart H—Changes in Registration Information	
Changes Requiring Registration as a New Business	
31.121	31.161 (P)
31.122	31.162 (P)
31.123	31.163 (P)
31.124	31.164 (P)
31.125	(N)
Other Changes	
31.131	31.151 (C)
31.132	31.165 (P)
31.133	31.165 (C)
31.134	31.166 (P)
31.135	31.167 (P)
31.136	31.168 (P)
31.137	(N)
31.138	(N)
Subpart I—Restrictions Relating to Purchases of Distilled Spirits	
31.141	31.211 (P)
Subpart J—Records and Reports	
Wholesale Dealers' Records and Reports	
31.151	31.221 (P)
31.152	31.222 (P)
31.153	31.223 (P)
31.154	31.224 (P)
31.155	31.225 (P)
31.156	31.226 (P)
31.157	31.227 (P)
31.158	31.228 (P)
31.159	31.229 (O)
31.160	31.230 (O)
31.161	31.231 (P)
31.162	31.232 (P)
31.163	31.233 (P)
Filing of Wholesale Dealer's Records and Reports	
31.171	31.235 (P)
31.172	31.236 (P)
Retail Dealer's Records	
31.181	31.234 (O)
Retention of Records and Files	
31.191	31.237 (P)
31.192	31.238 (P)
Subpart K—Reuse and Possession of Used Liquor Bottles	
31.201	31.261 (N)
31.202	31.262 (P)
31.203	31.263 (N)
31.204	31.264 (P)
Subpart L—Packaging of Alcohol for Industrial Uses	
31.211	31.271 (P)

New section	Source (action)
31.212	31.272 (O)
Subpart M—Distilled Spirits for Export with Benefit of Drawback	
31.221	31.281 (P)
31.223	31.283 (P)
Subpart N—Miscellaneous	
31.231	31.291 (O)
31.232	31.292 (O)
31.233	31.293 (P)
31.234	(N)

* Actions: (C) = Complete revision; (N) = New section; (O) = No revision; (P) = Partial revision.

Part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes

The regulations in 27 CFR part 40 govern manufacturers of tobacco products and cigarette papers and tubes. Although section 11125 of the Act did not do away with the special tax on tobacco occupations, TTB believes that it would be appropriate to have the special tax provisions applicable to tobacco products and cigarette papers and tubes in one place, similar to the approach taken in revised part 31 for alcohol beverage dealer registration. Accordingly, in this document we have removed and reserved a number of part 40 sections and transferred their contents to a new subpart D in part 46, which contains miscellaneous regulations relating to tobacco products and cigarette papers and tubes.

In addition to the transfer of special tax provisions to part 46, this document includes a number of other changes to the part 40 texts. A definition of "special tax" is added to § 40.11 to facilitate its use in the part 40 texts in place of "special (occupational) tax." Section 40.31 is amended by removing the 1988 transition rule in paragraph (b), clarifying liability for special tax under a partnership, and updating the informational citation at the end of the section. The informational citation at the end of § 40.371 is also amended to reflect the redesignation of certain IRC sections by section 11125 of the Act. Finally, §§ 40.33 and 40.373 are revised to serve as cross references to the special tax provisions of part 46.

Part 44—Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax

The regulations in 27 CFR part 44 govern exportation of tobacco products and cigarette papers and tubes. For the same reason stated for part 40 above, we

have transferred the part 44 special tax provisions to new subpart D of part 46.

For the same reason stated for § 40.11 above, a definition of “special tax” is added to § 44.11. In addition, § 44.31 is amended by removing the superseded 1988 transition rule in paragraph (b), clarifying liability for special tax under a partnership, and updating the informational citation at the end to reflect the redesignation of certain IRC sections by section 11125 of the Act. Finally, § 44.33 is revised to direct users to part 46 for additional provisions concerning special tax.

Part 46—Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes

As discussed above, we are adding a new subpart D to 27 CFR part 46 to set forth provisions related to special tax on tobacco product and related occupations. Certain sections are consolidated from parts 40 and 44, and others are adopted from the liquor dealer regulations in part 31. The regulations adopted for part 46 from part 31 reflect special tax policy positions developed through rulemaking during the time we administered the dealer’s tax. Because we would be guided by these positions if similar questions arose concerning regulated entities in the tobacco product and related occupations, we are adopting them for part 46 purposes to preserve the precedents that existed. The table below shows the source of each new subpart D section:

New section number	Source
46.91	new
46.92	new
46.93	31.57 and 31.71
46.94	31.4, 31.123
46.95	31.91
Payment of Special Tax	
46.101	40.33, 40.373, and 44.33
46.102	40.34 and 44.34
46.103	31.104
46.104	31.105
46.105	31.138
46.106	31.122
46.107	31.109
46.108	31.110
46.109	31.111
Special Tax Stamps	
46.116	40.35, 40.374, and 44.35
46.117	31.132
46.118	31.133
46.119	31.153
46.120	31.134
46.121	31.135

New section number	Source
Changes in Businesses Holding Special Tax Stamps	
46.126	40.36, 40.375, 44.36 and 31.151–31.152
46.127	40.36, 40.375, 44.36, 17.77, and 31.163
Stamps for Incorrect Period or Incorrect Liability	
46.131	31.136
46.132	31.137–139
Abatement or Refund of Special Taxes	
46.136	31.201
46.137	31.202
46.138	31.203

We did not adopt those provisions of part 31 that dealt with exemptions and exceptions from liquor dealers tax because we do not believe they are relevant to the special tax on tobacco product and related occupations.

Part 70—Procedure and Administration

Part 70 of 27 CFR sets forth the procedural and administrative rules of the Alcohol and Tobacco Tax and Trade Bureau. We have amended various sections within part 70 to change references to special tax on alcohol occupations to references to dealer registration or claimant registration while retaining or adding references to special tax on tobacco occupations. We have also removed references to OMB approval after §§ 70.411, 70.412, and 70.414, and 70.431, because those sections are part of the Statement of Procedural Rules. These sections do not impose a recordkeeping requirement but rather only point to regulatory provisions that do impose a recordkeeping requirement. Finally, no changes were made to the title of subpart D or to §§ 70.61, 70.64, 70.433, 70.441, 70.442, or 70.448, because they refer to occupational taxes that are still in effect.

Regulatory Flexibility Act

We certify that this temporary rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The relevant collections of information derive directly from the Internal Revenue Code of 1986, as amended, and the regulations in this rule concerning these collections merely implement the statutory requirements. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C.

7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Paperwork Reduction Act

TTB has provided estimates of the burdens that the collections of information contained in these regulations impose, and these estimated burdens have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0088, 1513–0112, and 1513–0113. Finally, TTB has provided the public with notice of these collections of information and solicited comments on them, with the most recent notices being published in the **Federal Register** on May 2, 2006 (71 FR 25889) for OMB No. 1513–0088, November 21, 2007 (72 FR 65646) for OMB No. 1513–0113, and September 4, 2008 (73 FR 51699) for OMB No. 1513–0112. To date, TTB has not received any comments in response to these notices.

Under the Paperwork Reduction Act of 1995, 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 OMB control number.

Comments concerning suggestions for reducing the burden of the collections of information in this document 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).

Executive Order 12866

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

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Because this document merely implements a law which was effective on July 1, 2008, and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Pursuant to the provisions of 5 U.S.C. 553(d)(1), (d)(2), and (d)(3), we are issuing these regulations without a delayed effective date. These temporary regulations recognize an exemption within the meaning of section 553(d)(1)

and (d)(2) because they lessen burdens by recognizing previously filed documents as registration and recognize longstanding agency interpretations in previously published regulations, respectively. Furthermore, TTB has determined that good cause exists to provide industry members with immediate guidance on their utilization of registration procedures in accordance with section 553(d)(3).

Drafting Information

Steve Simon, Daniel Hiland, and Marjorie Ruhf of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document. Other personnel also participated in its development.

List of Subjects

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Administrative practice and procedures, 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 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

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

27 CFR Part 25

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

27 CFR Part 26

Administrative practice and procedure, 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 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 31

Alcohol and alcoholic beverages, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 40

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

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 46

Administrative practice and procedure, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes,

Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Authority and Issuance

■ For the reasons discussed in the preamble, TTB amends 27 CFR parts 17, 19, 20, 22, 24, 25, 26, 27, 28, 31, 40, 44, 46, and 70 as set forth below:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 1. The authority citation for part 17 is revised to read as follows:

Authority: 26 U.S.C. 5010, 5111–5114, 5123, 5206, 5273, 6065, 6091, 6109, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 17.1 [Amended]

■ 2. Section 17.1 is amended by removing the words, “the payment of special (occupational) taxes in order to be eligible to receive drawback;”.

■ 3. Section 17.4 is revised to read as follows:

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

(b) *OMB control number 1513–0013.* OMB control number 1513–0013 is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1513–0014.* OMB control number 1513–0014 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1513–0021.* OMB control number 1513–0021 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1513–0130.* OMB control number 1513–0130 is assigned to the following sections in this part: §§ 17.142, 17.145, and 17.146.

(f) *OMB control number 1513–0036.* OMB control number 1513–0036 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1513–0072.* OMB control number 1513–0072 is assigned to the following sections in this part: §§ 17.3, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1513–0073.* OMB control number 1513–0073 is assigned to the following sections in this part: §§ 17.161, 17.162, 17.163,

17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1513-0088.* OMB control number 1513-0088 is assigned to the following section in this part: § 17.23.

(j) *OMB control number 1513-0098.* OMB control number 1513-0098 is assigned to the following sections in this part: §§ 17.147 and 17.182.

§ 17.11 [Amended]

■ 4. Section 17.11 is amended by removing the definition of “Special tax”.

■ 5. Subpart C is revised to read as follows:

Subpart C—Registration

Sec.

17.21 Registration.

17.22 Employer identification number.

17.23 Application for employer identification number.

Subpart C—Registration

§ 17.21 Registration.

Every person claiming drawback under this part must register annually as a nonbeverage domestic drawback claimant. Registration will be accomplished when the claimant submits the first drawback claim for each year along with the supporting data required under subpart G of this part. No registration is required for any year in which the claimant does not file a claim for drawback.

§ 17.22 Employer identification number.

Every person who claims drawback under this part must enter on each claim for drawback filed on TTB Form 5620.8, Claim—Alcohol, Tobacco, and Firearms Taxes, the employer identification number (EIN) assigned by the Internal Revenue Service.

(26 U.S.C. 6109, 6723)

§ 17.23 Application for employer identification number.

(a) *Use Form SS-4.* A claimant must obtain an employer identification number (EIN) by filing an application with the Internal Revenue Service (IRS) on IRS Form SS-4. Form SS-4 is available from the local IRS Service Center, from the IRS District Director, the IRS Web site at <http://www.irs.gov> or from the TTB National Revenue Center. The claimant must file this form with IRS in accordance with the instructions on the form.

(b) *One EIN only.* Each claimant must obtain and use only one EIN, regardless of the number of places of business for which a claim is filed under this part.

(26 U.S.C. 6109)

Subpart D—[Removed and Reserved]

■ 6. Subpart D is removed and reserved.

■ 7. Section 17.101 is revised to read as follows:

§ 17.101 Bonds in general.

(a) *Requirement.* A bond must be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. The bond requirement of this part may be satisfied either by a bond obtained from an authorized surety company or by deposit of collateral security.

(b) *Bond form.* The bond must be prepared and executed on TTB Form 5154.3, Bond for Drawback Under 26 U.S.C. 5111, in accordance with the provisions of this part and the instructions printed on the form.

(c) *Bonds executed before July 1, 2008.* On and after July 1, 2008, a reference to 26 U.S.C. 5131–5134 in a bond executed on TTB Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, shall be understood to refer to the sections redesignated as 26 U.S.C. 5111–5114 by section 11125 of Public Law 109–59.

(d) *Approval.* The appropriate TTB officer is authorized to approve all bonds and consents of surety required by this part.

§ 17.134 [Amended]

■ 8. In § 17.134, the first sentence is amended by removing the reference “26 U.S.C. 5131” and adding, in its place, the reference “26 U.S.C. 5111”.

§ 17.141 [Amended]

■ 9. Section 17.141 is amended:

■ a. In the second sentence, by removing the reference “26 U.S.C. 5134” and adding, in its place, the reference “26 U.S.C. 5114”; and

■ b. By removing the last sentence.

§ 17.146 [Amended]

■ 10. In § 17.146, the introductory text is amended by removing the words “set forth” and adding, in their place, the word “show”, and paragraph (a) is removed and reserved.

§ 17.148 [Amended]

■ 11. Section 17.148 is amended:

■ a. In paragraph (a), by removing the reference “26 U.S.C. 5131–5134” and adding, in its place, the reference “26 U.S.C. 5111–5114”;

■ b. In the first sentence of paragraph (b), by removing the citation “26 U.S.C. 5131–5134” and adding in its place the citation “26 U.S.C. 5111–5114”; and

■ c. At the end of the section, by removing the informational reference

“(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))” and adding, in its place, the informational reference “(26 U.S.C. 5114(c))”.

■ 12. Section 17.161 is amended by revising the last sentence to read as follows:

§ 17.161 General.

* * * The records shall be kept complete and current at all times and shall be retained by the manufacturer at the place where the taxpaid distilled spirits are used in the manufacture or production of nonbeverage products, for the period prescribed in § 17.170.

■ 13. In § 17.168, the last sentence of paragraph (a) is revised to read as follows:

§ 17.168 Recovered spirits.

(a) * * * Recovery operations may only be conducted on the premises where the recovered spirits were used in the manufacture or production of nonbeverage or intermediate products.

* * * * *

■ 14. Section 17.171 is amended:

■ a. By revising the first sentence to read as set forth below.

■ b. At the end of the section, by removing the informational reference “(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))” and adding, in its place, the informational reference “(26 U.S.C. 5113, 5123)”.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the premises where distilled spirits are used in the manufacture or production of nonbeverage products and shall be readily available during the manufacturer’s regular business hours for examination and copying by the appropriate TTB officers. * * *

§ 17.181 [Amended]

■ 15. In § 17.181, the last sentence is amended by removing the reference “26 U.S.C. 5134” and adding, in its place, the reference “26 U.S.C. 5114”.

■ 16. Section 17.182 is amended by revising the first sentence to read as follows:

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5114 is allowable on taxpaid distilled spirits used by druggists in compounding prescriptions. * * *

■ 17. Section 17.187 is amended by revising the second sentence to read as follows:

§ 17.187 Discontinuance of business.

* * * Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or registering and keeping records as a liquor dealer under part 31 of this chapter. * * *

PART 19—DISTILLED SPIRITS PLANTS

■ 18. The authority citation for part 19 is revised 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.

§ 19.11 [Amended]

■ 19. Section 19.11 is amended:

■ a. In the definition of “Alcoholic flavoring materials”, by removing the reference “26 U.S.C. 5131–5134” and adding, in its place, the reference “26 U.S.C. 5111–5114”.

■ b. In the definition of “Eligible flavor”, by removing from paragraph (1) the reference “26 U.S.C. 5134” and adding, in its place, the reference “26 U.S.C. 5114”.

■ 20. Subpart Ca is revised to read as follows:

Subpart Ca—Dealer Registration and Recordkeeping

Sec.

19.49 Definitions.

19.50 Dealer registration.

19.51 Amending the dealer registration.

19.52 Dealer records.

Subpart Ca—Dealer Registration and Recordkeeping**§ 19.49 Definitions.**

For purposes of this subpart, the following terms have the meanings indicated:

Dealer. A person who sells, or offers for sale, any alcohol product (distilled spirits, wines, and/or beer) fit for beverage use.

Retail dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to any person other than a dealer.

Wholesale dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to another dealer.

(26 U.S.C. 5121, 5122)

§ 19.50 Dealer registration.

Every proprietor who sells or offers for sale any alcoholic product (distilled spirits, wines, or beer) fit for beverage use must register as a dealer under part 31 of this chapter. However, the proprietor's application for registration of a distilled spirits plant filed under subpart G of this part, and approval of that application by the appropriate TTB officer, will constitute the proprietor's registration as a dealer at the distilled spirits plant. Every proprietor registered as a dealer under this subpart will be classified as a wholesale dealer in liquors (see § 31.32 of this chapter) and as such may also operate as a retail dealer in liquors without additional registration. Registration covers all sales from the same location, including sales of wine, beer, or other proprietors' spirits. A proprietor who conducts business as a dealer at a location other than the distilled spirits plant must register and keep records in accordance with part 31 of this chapter.

(26 U.S.C. 5124)

§ 19.51 Amending the dealer registration.

Every proprietor registered as a dealer under this subpart must maintain a current and accurate distilled spirits plant registration. Whenever there is a change to any of the information provided in the proprietor's approved notice of registration, the proprietor must amend the registration within the time period specified in subpart G of this part. An amendment of the proprietor's distilled spirits plant registration will also serve as an amendment of the proprietor's dealer registration under this subpart. The proprietor's dealer registration will also terminate when distilled spirits plant operations under the notice of registration terminate.

(26 U.S.C. 5124)

§ 19.52 Dealer records.

Every dealer is required to maintain records of transactions. Distilled spirits transactions that appear in the records required by subpart W of this part will meet the proprietor's recordkeeping requirements as a dealer. For other transactions not covered in the distilled spirits plant records, such as retail sales of wine or beer in a restaurant at the distilled spirits plant, or operations as a wholesale dealer in wine or beer, the proprietor must keep the records specified for dealers in part 31 of this chapter.

(26 U.S.C. 5121, 5122)

§ 19.63 [Amended]

■ 21. In § 19.63, the last sentence is amended by removing the words “, including special (occupational) tax,”.

§ 19.65 [Amended]

■ 22. Section 19.65 is amended by removing the last sentence.

§ 19.67 [Amended]

■ 23. Section 19.67 is amended:

■ a. In paragraph (a)(1), by removing the words “and pay special (occupational) tax”; and

■ b. In paragraph (a)(2), by removing the words “(except the payment of special (occupational) tax)”.

§ 19.71 [Amended]

■ 24. In § 19.71, paragraph (a) is amended by removing the last sentence.

§ 19.374 [Amended]

■ 25. In § 19.374, the second sentence is amended by removing the reference “26 U.S.C. 5131–5134” and adding, in its place, the reference “26 U.S.C. 5111–5114”.

■ 26. Section 19.906 is revised to read as follows:

§ 19.906 Dealer registration and recordkeeping.

An alcohol fuel plant that sells spirits that have not been rendered unfit for beverage use is subject to the requirements of subpart Ca of this part, except that the references in §§ 19.50 and 19.51 to “subpart G” should be taken to refer to §§ 19.910 through 19.950, and the reference in § 19.51 to “subpart W” should be taken to refer to §§ 19.980 through 19.988.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

■ 27. The authority citation for part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

Subpart Ca—[Removed and Reserved]

■ 28. Subpart Ca is removed and reserved.

§ 20.241 [Amended]

■ 29. Section 20.241 is amended by removing the last sentence.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

■ 30. The authority citation for part 22 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5123, 5206, 5214, 5271–5275, 5311, 5552, 5555,

6056, 6061, 6065, 6109, 6151, 6806, 7805; 31 U.S.C. 9304, 9306.

Subpart Ca—[Removed and Reserved]

- 31. Subpart Ca is removed and reserved.
- 32. In § 22.102, the last sentence of paragraph (d) is revised to read as follows:

§ 22.102 Prohibited uses.

* * * * *

(d) * * * Any permittee who sells tax-free alcohol becomes subject to the provisions of part 31 of this chapter.

§ 22.171 [Amended]

- 33. In § 22.171, the last sentence of paragraph (a) is removed.

PART 24—WINE

- 34. The authority citation for part 24 is revised 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.

- 35. The undesignated center heading directly above § 24.50 is revised to read, “DEALER REGISTRATION AND RECORDKEEPING”.

§ 24.50 [Removed and reserved]

- 36. Section 24.50 is removed and reserved.
- 37. Sections 24.51 through 24.54 are revised to read as follows:

§ 24.51 Definitions.

For purposes of §§ 24.52 through 24.54 of this part, the following terms have the meanings indicated:

Dealer. A person who sells, or offers for sale, any alcohol product (distilled spirits, wines, and/or beer) fit for beverage use.

Retail dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to any person other than a dealer.

Wholesale dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to another dealer. (26 U.S.C. 5121, 5122)

§ 24.52 Dealer registration.

Every proprietor who sells or offers for sale any alcohol product (distilled spirits, wines, or beer) fit for beverage use must register as a dealer in accordance with part 31 of this chapter. However, the proprietor's application to establish and operate a bonded wine

premises or taxpaid wine bottling house filed under subpart D of this part, and approval of that application by the appropriate TTB officer, will constitute the proprietor's registration as a dealer at the approved bonded or taxpaid wine premises. Every proprietor registered as a dealer under this section will be classified as a wholesale dealer in liquors (see § 31.32 of this chapter) and as such may also operate as a retail dealer in liquors without additional registration. Registration covers all sales from the same location, including sales of spirits, beer, or other proprietors' wine. As provided in § 31.52 of this chapter, the proprietor is subject to no additional registration for making sales of wine or beer at the customer's place of business. Otherwise, a proprietor who conducts business as a dealer at a location other than the bonded wine premises or taxpaid wine bottling house must register and keep records in accordance with part 31 of this chapter. (26 U.S.C. 5124)

§ 24.53 Amending the dealer registration.

Every proprietor registered as a dealer under § 24.52 must maintain a current and accurate application file under subpart D of this part. Whenever there is a change to any of the information provided in the proprietor's approved application, the proprietor must amend the application within the time period specified in subpart D of this part. An amendment of the proprietor's wine premises approved application will also amend the proprietor's dealer registration under § 24.52. The proprietor's dealer registration will also terminate when wine operations authorized under this part terminate. (26 U.S.C. 5124)

§ 24.54 Dealer records.

Every dealer is required to maintain records of transactions. Wine transactions that appear in the records required by subpart O of this part will meet the proprietor's recordkeeping requirements as a dealer. For other transactions not covered in the wine premises records, such as retail sales of distilled spirits or beer in a restaurant at the wine premises, or operations as a wholesale dealer in distilled spirits or beer, the proprietor must keep the records specified for dealers in part 31 of this chapter. (26 U.S.C. 5121, 5122, 5123)

§ 24.55 [Removed]

- 38. Section 24.55 is removed.

§ 24.146 [Amended]

- 39. In § 24.146, paragraph (a) is amended by removing the second sentence.

PART 25—BEER

- 40. The authority citation for part 25 is revised 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.

§ 25.24 [Amended]

- 41. Section 25.24 is amended:
 - a. In paragraph (a)(5) by adding the word “and” at the end of the paragraph after the semicolon;
 - b. By removing paragraph (a)(6); and
 - c. By redesignating paragraph (a)(7) as paragraph (a)(6).
- 42. Subpart I is revised to read as follows:

Subpart I—Dealer Registration and Recordkeeping

Sec.

- 25.111 Definitions.
- 25.112 Dealer registration.
- 25.113 Amending the dealer registration.
- 25.114 Dealer records.

Subpart I—Dealer Registration and Recordkeeping

§ 25.111 Definitions.

For purposes of this subpart, the following terms have the meanings indicated:

Dealer. A person who sells, or offers for sale, any alcohol product (distilled spirits, wines, and/or beer) fit for beverage use.

Retail dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to any person other than a dealer.

Wholesale dealer in liquors. A dealer who sells, or offers for sale, distilled spirits, wines, or beer to another dealer. (26 U.S.C. 5121, 5122)

§ 25.112 Dealer registration.

Every brewer who sells, or offers for sale, any alcohol product (distilled spirits, wines, or beer) fit for beverage use must register as a dealer in accordance with part 31 of this chapter. However, the Brewer's Notice, TTB Form 5130.10, filed under subpart G of this part, and approval of that notice by the appropriate TTB officer, will constitute the brewer's registration as a dealer at the brewery. Every brewer registered as a dealer under this subpart will be classified as a wholesale dealer

in liquors (see § 31.32 of this chapter) and as such may also operate as a retail dealer in liquors without additional registration. Registration covers all sales from the same location, including sales of wine, spirits, or other brewers' beer. As provided in § 31.52 of this chapter, the brewer is subject to no additional registration for making sales of wine or beer at the customer's place of business. Otherwise, a brewer who conducts business as a dealer at a location other than the brewery must register and keep records in accordance with part 31 of this chapter.

(26 U.S.C. 5124)

§ 25.113 Amending the dealer registration.

Every brewer registered as a dealer under this subpart must maintain a current and accurate Brewer's Notice, TTB Form 5130.10. Whenever there is a change to any of the information provided in the approved Brewer's Notice, the brewer must amend the notice within the time period specified in subpart G of this part. An amendment to the Brewer's Notice, Form 5130.10, will also serve as an amendment of the brewer's dealer registration under this subpart. The brewer's dealer registration will also terminate when brewery operations under the Brewer's Notice terminate.

(26 U.S.C. 5124)

§ 25.114 Dealer records.

Every dealer is required to maintain records of transactions. Beer transactions that appear in the records required by subpart U of this part will meet the brewer's recordkeeping requirements as a dealer. For other transactions not covered in the brewery records, such as retail sales of wine or distilled spirits in a restaurant at the brewery, or operations as a wholesale dealer in wine or distilled spirits, the brewer must keep the records specified for dealers in part 31 of this chapter.

(26 U.S.C. 5121, 5122)

§ 25.168 [Amended]

■ 43. In § 25.168, the last sentence is amended by removing the reference “§§ 25.122 and 25.123” and adding, in its place, the reference “§ 25.169”.

■ 44. New § 25.169 is added to read as follows:

§ 25.169 Application for employer identification number.

(a) *Form SS-4*. The taxpayer must obtain an employer identification number (EIN) by filing an application with the Internal Revenue Service (IRS) on IRS Form SS-4. Form SS-4 is available from the local IRS Service

Center, from the IRS District Director, the IRS Web site at <http://www.irs.gov> or from TTB's National Revenue Center. The taxpayer may file this form with IRS by mail, telephone, or fax by following the instructions on the form.

(b) *Time limit*. If the taxpayer has not already received, or applied for, an EIN at the time that the first return on TTB Form 5000.24, Excise Tax Return, is filed, the taxpayer must apply for an EIN not later than seven days from the date of filing the Form 5000.24.

(c) *One EIN only*. Each taxpayer must obtain and use only one EIN, regardless of the number of places of business for which the proprietor is required to file a tax return under this subpart.

(26 U.S.C. 6109)

§ 25.275 [Removed]

■ 45. Section 25.275 is removed and reserved.

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

■ 46. The authority citation for part 26 is revised 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.

§ 26.11 [Amended]

■ 47. In § 26.11, the definition of “Eligible flavor” is amended by removing from paragraph (1) the reference “26 U.S.C. 5134” and adding, in its place, the reference “26 U.S.C. 5114”.

■ 48. Section 26.36 is amended:

■ a. In paragraph (b), by revising the first sentence;

■ b. In paragraph (c), by revising the first sentence; and

■ c. In paragraph (d)(2)(i), by removing the words “, and pays special (occupational) tax,”.

The revisions read as follows:

§ 26.36 Products exempt from tax.

* * * * *

(b) *Industrial spirits*. A distiller of industrial spirits who registers and files a bond as a distilled spirits plant in accordance with part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit issued under part 22 of this chapter. * * *

(c) *Denatured spirits*. A distiller who registers and files a bond as a distilled spirits plant in accordance with part 19 of this chapter and who denatures

spirits in accordance with parts 19 and 21 of this chapter may ship completely denatured alcohol to anyone in the United States, and may ship specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit issued under part 20 of this chapter.

* * *

* * * * *

■ 49. The undesignated center heading before § 26.44 is revised to read as follows: “DEALER REGISTRATION AND RECORDKEEPING”.

■ 50. Sections 26.44 and 26.45 are revised to read as follows:

§ 26.44 Liquor dealer registration and recordkeeping.

Every person bringing liquors into the United States from Puerto Rico who sells, or offers for sale, such liquors must register and keep records as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5123, 5124.)

§ 26.45 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, every person bringing distilled spirits into the United States from Puerto Rico who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, must register and keep records as a dealer in liquors at the place where the warehouse receipts are sold, or offered for sale, in accordance with part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5123, 5124)

§§ 26.46 and 26.47 [Removed and reserved]

■ 51. Sections 26.46 and 26.47 are removed and reserved.

■ 52. Section 26.171 is revised to read as follows:

§ 26.171 Claimant registration.

Any person filing claim for drawback of tax on eligible articles brought into the United States from Puerto Rico must register annually as a nonbeverage domestic drawback claimant. Registration will be accomplished when the claimant submits the first drawback claim for each year, along with the required supporting data for the claim, under subpart G of part 17 of this chapter. For purposes of registration, subpart C part 17 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought

into the United States, and each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture.

- 53. Section 26.173 is amended:
 - a. In paragraph (a), by removing the second sentence and adding, in its place, two new sentences;
 - b. By removing and reserving paragraph (b)(1); and
 - c. By revising paragraph (c)(1).

The addition and revisions read as follows:

§ 26.173 Claims for drawback.

(a) * * * Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate TTB officer will allow the drawback at \$1 less than the rate applicable under 26 U.S.C. 7652(f). Claims for products manufactured in Puerto Rico must be filed separately from claims filed under part 17 of this chapter for products manufactured in the United States.

* * * * *

(c) * * *

(1) The claimant's employer identification number, as required by §§ 17.31 and 17.32 of this chapter; and

* * * * *

■ 54. The undesignated center heading before § 26.210 is revised to read as follows: "DEALER REGISTRATION AND RECORDKEEPING".

■ 55. Sections 26.210 and 26.211 are revised to read as follows:

§ 26.210 Liquor dealer registration and recordkeeping.

Every person bringing liquors into the United States from the Virgin Islands who sells, or offers for sale, such liquors must register and keep records as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5123, 5124)

§ 26.211 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, every person bringing distilled spirits into the United States from the Virgin Islands who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, must register and keep records as a dealer in liquors at the place where the warehouse receipts are sold, or offered for sale, in accordance with part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5123, 5124)

■ 56. Section 26.307 is revised to read as follows:

§ 26.307 Claimant registration.

Any person filing claim for drawback of tax on eligible articles brought into the United States from the Virgin Islands must register annually as a nonbeverage domestic drawback claimant. Registration will be accomplished when the claimant submits the first drawback claim for each year, along with the required supporting data for the claim, under subpart G of part 17 of this chapter. For purposes of registration, subpart C of part 17 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought into the United States, and each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture.

■ 57. Section 26.309 is amended:

- a. In paragraph (a), by removing the second sentence and adding, in its place, two new sentences;
- b. By removing and reserving paragraph (b)(1); and
- c. By revising paragraph (c)(1).

The addition and revisions read as follows:

§ 26.309 Claims for drawback.

(a) * * * Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate TTB officer will allow the drawback at \$1 less than the rate applicable under 26 U.S.C. 7652(f). Claims for products manufactured in the Virgin Islands must be filed separately from claims filed under part 17 of this chapter for products manufactured in the United States.

* * * * *

(c) * * *

(1) The claimant's employer identification number, as required by §§ 17.31 and 17.32 of this chapter; and

* * * * *

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 58. The authority citation for part 27 is revised to read as follows:

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

§ 27.1 [Amended]

■ 59. Section 27.1 is amended by removing the words "special (occupational) and".

§ 27.11 [Amended]

■ 60. In § 27.11, the definition of "Eligible flavor" is amended by removing from paragraph (1) the reference "26 U.S.C. 5134" and adding, in its place, the reference "26 U.S.C. 5114".

■ 61. Revise subpart C to read as follows:

Subpart C—Dealer Registration and Recordkeeping

§ 27.30 Dealer registration and recordkeeping.

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines, or beer are subject to the provisions of part 31 of this chapter relating to dealer registration and records. Part 31 requires the filing of TTB Form 5630.5d with TTB, in accordance with the instructions on the form, before commencing business and on or before July 1 of each year thereafter if there have been any changes. The dealer must file an amended registration and give notice of termination in accordance with the rules of part 31.

(26 U.S.C. 5121, 5122, 5123, 5124)

§ 27.31 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, every person engaged in business as an importer of distilled spirits who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, must register and keep records as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, in accordance with part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5123, 5124)

PART 28—EXPORTATION OF ALCOHOL

■ 62. The authority citation for part 28 is revised to read as follows:

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

■ 63. Section 28.212 is revised to read as follows:

§ 28.212 Persons authorized.

Persons who have qualified under this chapter as proprietors of distilled spirits plants, bonded wine cellars, or taxpaid wine bottling houses, and persons who are wholesale liquor dealers (as defined

in § 31.32 of this chapter) and have registered as a wholesale liquor dealer in accordance with part 31 of this chapter, are authorized to remove wines under the provisions of this subpart.

(26 U.S.C. 5062)

■ 64. Part 31 is revised to read as follows:

PART 31—ALCOHOL BEVERAGE DEALERS

Sec.

31.0 Scope.

Subpart A—General Provisions

31.1 Definitions.

31.2 Territorial extent.

31.3 Basic permit requirements.

31.4 Relation to State and municipal law.

Subpart B—Administrative Provisions

31.11 Forms prescribed.

31.12 Right of entry and examination.

31.13 Delegations of the Administrator.

31.14 Penalties.

31.15 Disclosure of information.

Subpart C—Activities Subject to This Part

31.21 Basis of regulation.

31.22 Selling or offering for sale.

Dealers Classified

31.31 Retail dealer in liquors.

31.32 Wholesale dealer in liquors.

31.33 Retail dealer in beer.

31.34 Wholesale dealer in beer.

31.35 Limited retail dealer; persons eligible.

31.36 Sales of 20 wine gallons (75.7 liters) or more.

Certain Organizations, Agencies, and Persons

31.41 Clubs or similar organizations.

31.42 Restaurants serving liquors with meals.

31.43 States, political subdivisions thereof, or the District of Columbia.

31.44 Sales of denatured spirits or articles.

31.45 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

31.46 Sales by agencies and instrumentalities of the United States.

31.47 Warehouse receipts covering spirits.

31.48 Alcohol beverage producers, processors, and bonded warehousemen.

Subpart D—Exemptions and Exceptions

Persons Exempt From Registration and/or Recordkeeping

31.51 Wholesale dealers making retail sales.

31.52 Wholesale dealers in liquors consummating sales of wines or beer at premises of other dealers.

31.53 Wholesale dealers in beer consummating sales at premises of other dealers.

31.54 Hospitals.

31.55 Limited retail dealers.

Persons Who Are Not Dealers in Liquors or Beer

31.61 Single sale of liquors or warehouse receipts.

31.62 Persons making casual sales.

31.63 Agents, auctioneers, brokers, etc., acting on behalf of others.

31.64 Apothecaries or druggists selling medicines and tinctures.

31.65 Persons selling products unfit for beverage use.

31.66 Retail dealer selling entire stock in liquidation.

31.67 Persons returning liquors for credit, refund, or exchange.

Subpart E—Places Subject to Registration

31.71 Registration required for each place of business.

31.72 Place of sale.

31.73 Place of offering for sale.

31.74 Places of storage; deliveries therefrom.

31.75 Dealer in beer and dealer in liquors at the same location.

Sales in Two or More Areas on the Same Premises

31.81 General.

31.82 Hotels.

31.83 Ball park, race track, etc.; sales throughout the premises.

Sales in Multiple Locations

31.91 Passenger trains, aircraft, and vessels.

31.92 Carriers not engaged in passenger service.

31.93 Supply boats or vessels.

31.94 Retail dealers "At Large."

31.95 Caterers.

31.96 Peddling.

Subpart F—Partnerships

31.101 Registration of partners.

31.102 Addition of partners or incorporation of partnership.

31.103 Formation of a partnership by two dealers.

31.104 Withdrawal of one or more partners.

Subpart G—Registration Form, TTB F 5630.5d

31.111 Date registration form is due.

31.112 Registration of multiple locations.

31.113 Place for filing registration form.

31.114 Completion of registration form.

31.115 Employer identification number.

31.116 Execution of registration form.

Subpart H—Changes in Registration Information

Changes Requiring Registration as a New Business

31.121 Sale of business.

31.122 Incorporation of business.

31.123 New corporation.

31.124 Stockholder continuing business of corporation.

31.125 Cross references.

Other Changes

31.131 Change of address.

31.132 Change in name or style of business.

31.133 Change in management.

31.134 Increase in capital stock of a corporation.

31.135 Change in ownership of capital stock.

31.136 Change in membership of unincorporated club.

31.137 Withdrawal of partner(s).

31.138 Discontinuance of business.

Subpart I—Restrictions Relating to Purchases of Distilled Spirits

31.141 Unlawful purchases of distilled spirits.

Subpart J—Records and Reports

Wholesale Dealers' Records and Reports

31.151 General requirements as to distilled spirits.

31.152 Requirements as to wines and beer.

31.153 Records to be kept by States, political subdivisions of States, or the District of Columbia.

31.154 Records to be kept by alcohol beverage producers, processors, and bonded warehousemen.

31.155 Records of receipt.

31.156 Records of disposition.

31.157 Canceled or corrected records.

31.158 Previously prescribed or approved records of receipt and disposition.

31.159 Variations in format or preparation of records.

31.160 Monthly summary report.

31.161 Conversion between metric and U.S. units.

31.162 Discontinuance of business.

31.163 Requirements when a wholesale dealer in liquors maintains a retail department.

Filing of Wholesale Dealer's Records and Reports

31.171 Method of filing.

31.172 Place of filing.

Retail Dealer's Records

31.181 Requirements for retail dealers.

Retention of Records and Files

31.191 Period of retention.

31.192 Photographic copies of records.

Subpart K—Reuse and Possession of Used Liquor Bottles

31.201 Refilling of liquor bottles.

31.202 Possession of refilled liquor bottles.

31.203 Possession of used liquor bottles.

31.204 Mixed cocktails.

Subpart L—Packaging of Alcohol for Industrial Uses

31.211 Requirements and procedure.

31.212 Labeling.

Subpart M—Distilled Spirits for Export With Benefit of Drawback

31.221 General.

31.223 Records and reports.

Subpart N—Miscellaneous

31.231 Destruction of marks and brands on wine containers.

31.232 Wine bottling.

31.233 Mixing cocktails in advance of sale.

31.234 Liability for special (occupational) tax.

Authority: 26 U.S.C. 5001, 5002, 5121, 5122–5124, 5131, 5132, 5206, 5207, 5273, 5301, 5352, 5555, 5603, 5613, 5681, 5687, 6061, 6065, 6071, 6091, 6103, 6109, 6723, 6724, 7805.

§ 31.0 Scope.

This part contains the requirements relating to the registration of wholesale and retail dealers in liquors and in beer and to the operations of such dealers, including recordkeeping requirements, prescribed under title 26 of the United States Code. This part also contains provisions relating to entry of dealers' premises and inspection of their records by TTB officers.

Subpart A—General Provisions

§ 31.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning, or a different definition is prescribed for a particular subpart, section, or portion of this part:

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

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.31, Delegation of the Administrator's Authorities in 27 CFR Part 31, Alcohol Beverage Dealers.

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

Beverage use or use for beverage purposes. Use as an alcohol beverage.

Bonded wine cellar. An establishment qualified under this chapter for the production, blending, cellar treatment, storage, bottling, and packaging or repackaging of untaxpaid wine.

Brewery. An establishment qualified under this chapter for the production of beer.

CFR. The Code of Federal Regulations.

Dealer. Any person who sells, or offers for sale, any distilled spirits, wines, or beer.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added as prescribed under this chapter.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form,

including all dilutions and mixtures thereof, from whatever source or by whatever process produced.

Distilled spirits plant. An establishment qualified under part 19 of this chapter for the production, storage, or processing of distilled spirits.

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the appropriate TTB officer to adequately protect the revenue.

Liquors. Distilled spirits, wines, or beer.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces.

Person. An individual, trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, the District of Columbia, or a State or a political subdivision thereof (including a city, county, or other municipality).

Place or place of business. The entire office, plant, or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not be deemed a separation for the purposes of this part, if the various divisions are otherwise contiguous.

Reclaim. To grind up a liquor bottle or container and use the ground up material to make products other than liquor bottles or containers.

Recycle. To grind up a liquor bottle or container and use the ground up material to make new liquor bottles or containers.

Sale at retail or retail sale. Sale of liquors to a person other than a dealer.

Sale at wholesale or wholesale sale. Sale of liquors to a dealer.

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

U.S.C. The United States Code.

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine

product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

(26 U.S.C. 5002, 5041, 5052, 7805)

§ 31.2 Territorial extent.

The provisions of this part shall be applicable in the several States of the United States and the District of Columbia.

§ 31.3 Basic permit requirements.

Every person, except an agency of a State or political subdivision thereof, who intends to engage in the business of purchasing distilled spirits, wines, or beer for sale to other dealers for nonindustrial use, or to engage in the business of importing distilled spirits, wines, or beer for nonindustrial use, is required under part 1 of this chapter to obtain a basic permit authorizing such person to engage in such business.

§ 31.4 Relation to State and municipal law.

Compliance with the requirements of this part shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on any trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall such compliance be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

Subpart B—Administrative Provisions

§ 31.11 Forms prescribed.

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

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, OH 45202.

(5 U.S.C. 552(a))

§ 31.12 Right of entry and examination.

Any appropriate TTB officer may enter during business hours the premises (including places of storage) of any dealer for the purpose of inspecting

or examining any records or other documents required to be kept by such dealer under this part and any distilled spirits, wines, or beer kept or stored by such dealer on such premises.

(26 U.S.C. 5123)

§ 31.13 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.31, Delegation of the Administrator's Authorities in 27 CFR Part 31, Alcohol Beverage Dealers. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 31.14 Penalties.

(a) *Criminal penalties.* Criminal penalties for failure to comply with the requirements of this part are imposed by 26 U.S.C. 5603 and 5687. A failure to register as required by this part may result in a penalty under 26 U.S.C. 5603(b).

(b) *Administrative penalty.* An administrative penalty for failure to supply the required identifying number (employer identification number) in a dealer's registration is imposed by 26 U.S.C. 6723. The penalty is \$50 for each such failure, but not more than \$100,000 for all such failures during a calendar year. A failure to submit a registration includes a failure to include the identifying number on the registration.

(c) *Reasonable cause.* The administrative penalty described in paragraph (b) of this section is not imposed when it is shown that the failure was due to reasonable cause and not due to willful neglect. A dealer who believes that the circumstances that led to the failure were reasonable and who desires to have the penalty waived shall submit a written statement, under the penalty of perjury, affirmatively showing all of the circumstances alleged as reasonable causes for the failure. If the appropriate TTB officer determines that the failure was due to a reasonable cause and not to willful neglect, the penalty will not be assessed. If the dealer exercised ordinary business care and prudence but was nevertheless unable to comply with the requirement, then the failure was due to reasonable cause. Mere ignorance of the law will not be considered a reasonable cause.

(26 U.S.C. 5603, 5687, 6109, 6723, 6724)

§ 31.15 Disclosure of information.

Alcohol dealer registration forms are "information returns" as that term is used in 26 U.S.C. 6103 and, as such, are not subject to disclosure except as provided in that law.

(26 U.S.C. 6103)

Subpart C—Activities Subject to This Part

§ 31.21 Basis of regulation.

Persons engaging in or carrying on the business or occupation of selling or offering for sale alcoholic liquors fit for use as a beverage, or any alcoholic liquors sold for use as a beverage, are subject to the provisions of this part. The classes of liquor dealer business and the conditions under which the provisions of this part apply to them are specified in §§ 31.31 through 31.34.

§ 31.22 Selling or offering for sale.

Whether the activities of any person constitute engaging in the business of selling or offering for sale is to be determined by the facts in each case. Any manner of selling or offering for sale, even though to a restricted class of persons or without a view to profit, is within the scope of this part.

Dealers Classified

§ 31.31 Retail dealer in liquors.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who sells or offers for sale distilled spirits, wines, or beer to any person other than a dealer is a retail dealer in liquors for purposes of this part. Every retail dealer in liquors must comply with the registration and other requirements of this part, unless the dealer is covered by an applicable exemption under subpart D of this part.

(b) *Persons not deemed to be retail dealers in liquors.* The following persons are not retail dealers in liquors within the meaning of this part:

- (1) A retail dealer in beer as described in § 31.33(a),
- (2) A limited retail dealer as described in § 31.35, or
- (3) A person who sells or offers for sale distilled spirits, wines, or beer only as provided in § 31.61 through § 31.64 or § 31.65(a).

(26 U.S.C. 5122)

§ 31.32 Wholesale dealer in liquors.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who sells or offers for sale distilled spirits, wines, or beer to another dealer is a wholesale dealer in liquors for purposes of this part. Every wholesale dealer in liquors must comply with the registration and other

requirements of this part, unless the dealer is covered by an applicable exemption under subpart D of this part.

(b) *Persons not deemed to be wholesale dealers in liquors.* The following persons are not wholesale dealers in liquors within the meaning of this part:

- (1) A wholesale dealer in beer as described in § 31.34(a);
- (2) A person who sells or offers for sale distilled spirits, wines, or beer only as provided in §§ 31.61 through 31.64, § 31.65(a), or § 31.66; or
- (3) A person returning liquors for credit, refund, or exchange as provided in § 31.67.

(26 U.S.C. 5121)

§ 31.33 Retail dealer in beer.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who sells or offers for sale beer, but not distilled spirits or wines, to any person other than a dealer is a retail dealer in beer for purposes of this part. Every retail dealer in beer must comply with the registration and other requirements of this part, unless the dealer is covered by an applicable exemption under subpart D of this part.

(b) *Persons not deemed to be retail dealers in beer.* The following persons are not retail dealers in beer within the meaning of this part:

- (1) A limited retail dealer as described in § 31.35, or
- (2) A person who does not sell or offer for sale distilled spirits or wines and sells beer or offers beer for sale only as provided in § 31.61 through § 31.63 or § 31.65(a).

(26 U.S.C. 5122)

§ 31.34 Wholesale dealer in beer.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who sells or offers for sale beer, but not distilled spirits or wines, to another dealer is a wholesale dealer in beer for purposes of this part. Every wholesale dealer in beer must comply with the registration and other requirements of this part, unless the dealer is covered by an applicable exemption under subpart D of this part.

(b) *Persons not deemed to be wholesale dealers in beer.* The following persons are not wholesale dealers in beer within the meaning of this part:

- (1) A person who does not sell or offer for sale distilled spirits or wines and sells beer or offers beer for sale only as provided in §§ 31.61 through 31.63, § 31.65(a), § 31.66, or § 31.67; or
- (2) A person returning beer for credit, refund or exchange as provided in § 31.56.

(26 U.S.C. 5121)

§ 31.35 Limited retail dealer; persons eligible.

Any person selling distilled spirits, beer, or wine, or any combination thereof, to members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or similar outings, and any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization selling distilled spirits, beer, or wine, or any combination thereof, on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, is a "limited retail dealer" if the person or organization is not otherwise engaged in business as a dealer.

(26 U.S.C. 5122)

§ 31.36 Sales of 20 wine gallons (75.7 liters) or more.

Any person who sells or offers for sale distilled spirits, wines, or beer, in quantities of 20 wine gallons (75.7 liters) or more, to the same person at the same time, shall be presumed and held to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, unless the seller shows by satisfactory evidence that the sale, or offer for sale, was made to a person other than a dealer.

(26 U.S.C. 5121)

Certain Organizations, Agencies, and Persons**§ 31.41 Clubs or similar organizations.**

(a) Subject to paragraph (b) of this section, a club or similar organization is a dealer for purposes of this part if the club or organization:

(1) Furnishes liquors to members under conditions constituting a sale (including the acceptance of orders therefor, furnishing the liquors ordered and collecting the price thereof); or

(2) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a "limited retail dealer" described in § 31.35. The registration of the proprietor of the premises where the bar is located will not relieve the club or organization from its own obligation to register; or

(3) Purchases liquors for members without prior agreement concerning payment therefor and such organization subsequently recoups those costs.

(b) Compliance with the registration and other requirements of this part is not required if money is collected in advance from members for the purchase of liquors, or if money is advanced for the purchase of liquors pursuant to an agreement with the members for reimbursement.

(26 U.S.C. 5122)

§ 31.42 Restaurants serving liquors with meals.

Proprietors of restaurants and other persons who serve liquors with meals to paying customers, even if no separate or specific charge for the liquors is made, are dealers subject to the provisions of this part.

(26 U.S.C. 5122)

§ 31.43 States, political subdivisions of States, or the District of Columbia.

A State, a political subdivision of a State, or the District of Columbia, that engages in the business of selling, or offering for sale, distilled spirits, wines, or beer is not exempt from the requirements of this part. However, no such governmental entity shall be required to register more than once as a retail dealer in liquors regardless of the number of locations at which the entity carries on business as a retail dealer in liquors. Any such governmental entity that has properly registered as a wholesale dealer at its principal office, and that has properly registered once as a retail dealer in liquors or beer, is not required to register again at its retail stores by reason of the sale of distilled spirits, wines, or beer at any of those locations to dealers qualified to do business as a dealer within the jurisdiction of that governmental entity.

(26 U.S.C. 5121)

§ 31.44 Sales of denatured spirits or articles.

It is illegal to sell denatured spirits, or any article containing denatured spirits, for beverage purposes. Any person who sells denatured spirits, or any substance or preparation made with or containing denatured spirits, for use, or for sale for use, for beverage purposes, or who sells any such products under circumstances in which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, is subject to the registration and other requirements of this part.

(26 U.S.C. 5273)

§ 31.45 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

(a) *General.* Compliance with the provisions of this part is required with respect to the sale, or offering for sale, of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer, unless those compounds, preparations, or mixtures are unfit for use for beverage purposes and are sold solely for use for nonbeverage purposes.

(b) *Products unfit for beverage use.* Products described in § 19.58 of this chapter, for which manufacturers are exempt from qualification requirements, shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 31.46 Sales by agencies and instrumentalities of the United States.

Unless specifically exempt by statute, any agency or instrumentality of the United States, including post exchanges, ship's stores, ship's service stores, and commissaries, or any canteen, club, mess, or similar organization operated under regulations of any such agency or instrumentality, that sells, or offers for sale, distilled spirits, wines, or beer must comply with the registration and other requirements of this part as a dealer in liquors or a dealer in beer, as the case may be.

(26 U.S.C. 5121, 5122)

§ 31.47 Warehouse receipts covering spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, every person who sells, or offers for sale, warehouse receipts for distilled spirits held or stored in a distilled spirits plant, customs bonded warehouse, or elsewhere, is required to register and keep records as a wholesale dealer in liquors, or as a retail dealer in liquors, as the case may be, at the place where those warehouse receipts are sold, or offered for sale, unless the person is exempt from those requirements under subpart D of this part.

(26 U.S.C. 5121, 5122)

§ 31.48 Alcohol beverage producers, processors, and bonded warehousemen.

Brewers and proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses who make sales, whether of their own alcohol beverage products or of such products produced by others, are not exempt from registration and recordkeeping as dealers under this part. However, the registration and recordkeeping requirements applicable to such persons are prescribed in parts 19 (Distilled Spirits Plants), 24 (Wine), and 25 (Beer) of this chapter.

Subpart D—Exemptions and Exceptions**Persons Exempt From Registration and/or Recordkeeping****§ 31.51 Wholesale dealers making retail sales.**

A wholesale dealer in liquors who sells, or offers for sale, distilled spirits,

wines, or beer, and a wholesale dealer in beer who sells, or offers for sale, only beer, whether to dealers or to persons other than dealers, at any place where the wholesale dealer in liquors or beer has appropriately registered under this part, is exempt from registration at that place as a retail dealer in liquors or in beer.

§ 31.52 Wholesale dealers in liquors consummating sales of wines or beer at premises of other dealers.

(a) *Sales of wines.* Any wholesale dealer in liquors (including the proprietor of a bonded wine cellar) who has registered as a wholesale dealer in liquors for the place from which that dealer conducts selling operations may consummate sales of wines to other wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' places of business without having to register again as a wholesale dealer on account of those sales.

(b) *Sales of beer.* Any wholesale dealer in liquors who has already registered as such may also consummate sales of beer to wholesale or retail dealers in beer, to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' place of business without having to register again as a wholesale dealer on account of those sales.

§ 31.53 Wholesale dealers in beer consummating sales at premises of other dealers.

Any dealer who has registered as a wholesale dealer in beer for the place from which that dealer conducts selling operations may consummate sales of beer (but not wines or distilled spirits) to other dealers at the purchasers' places of business without having to register again as a wholesale dealer on account of those sales.

§ 31.54 Hospitals.

Hospitals and similar institutions furnishing liquors to patients are not required to register or keep records under this part, provided that no specific or additional charge is made for the liquors so furnished.

§ 31.55 Limited retail dealers.

(a) *Sales by limited retail dealers.* Limited retail dealers, as described in § 31.35, are not required to register or keep records under this part.

(b) *Sales to limited retail dealers.* Retail dealers in liquors or beer who make sales at their registered places of business to limited retail dealers are not required under this part, solely by virtue of those sales, to register or keep records as wholesale dealers.

Persons Who Are Not Dealers in Liquors or Beer

§ 31.61 Single sale of liquors or warehouse receipts.

A single sale of distilled spirits, wines, or beer, or a single sale of one or more warehouse receipts for distilled spirits, unattended by circumstances showing the person making the sale to be engaged in that activity as a business, does not subject the vendor to the registration and other requirements of this part.

(26 U.S.C. 5121, 5122)

§ 31.62 Persons making casual sales.

Certain persons making casual sales of liquors are not dealers for purposes of this part and therefore are not required to register, keep records, or submit a report as required of dealers under this part. These persons are:

(a) Administrators, executors, receivers, and other fiduciaries who receive liquors in their fiduciary capacities and sell them in one parcel or at public auction in parcels of not less than 20 wine gallons (75.7 liters);

(b) Creditors who receive liquors as security for, or in payment of, debts and sell them in one parcel or at a public auction in parcels of not less than 20 wine gallons (75.7 liters);

(c) Public officers or court officials who levy on liquors under order or process of any court or magistrate and sell them in one parcel or at public auction in parcels of not less than 20 wine gallons (75.7 liters); and

(d) A retiring partner, or representative of a deceased partner, who sells liquors to the incoming or remaining partner, or partners, of a partnership.

§ 31.63 Agents, auctioneers, brokers, etc., acting on behalf of others.

Certain persons may sell liquors as agents or employees of others (principals), or may receive and transmit orders therefor to a dealer, without being considered a dealer on account of those activities. Those persons, who have no property rights in the liquors sold, may make collections for their principals and receive commissions for their services, or may guarantee the payment of accounts, without being required to register or keep records under this part. In all such cases, however, the principal is required to register and keep records, as provided in this part, at each place where sales are consummated, unless the principal is exempt from those requirements under the provisions of this subpart. The persons covered by this section are:

(a) Auctioneers who merely sell liquors at auction on behalf of others;

(b) Agents or brokers who solicit orders for liquors in the name of a principal, but who neither stock nor deliver the liquors for which orders are taken;

(c) Employees who merely sell liquors on behalf of their employers; and

(d) Retail dealers in liquors or retail dealers in beer who merely receive and transmit to a wholesale dealer orders for liquors or beer to be billed, charged, and shipped to customers by such wholesale dealers.

§ 31.64 Apothecaries or druggists selling medicines and tinctures.

Apothecaries and druggists who use wines or spirituous liquors for compounding medicines and in making tinctures that are unfit for use for beverage purposes are not considered to be dealers by reason of the sale of those compounds or tinctures for nonbeverage purposes.

(26 U.S.C. 5002)

§ 31.65 Persons selling products unfit for beverage use.

(a) *Vendors not deemed to be dealers.* No person selling or offering for sale for nonbeverage purposes products qualifying as unfit for use for beverage purposes under § 19.58 of this chapter shall be deemed, solely by reason of such sales, to be a dealer.

(b) *Restrictions.* Any person who sells or offers for sale any nonbeverage products for use, or for sale for use, for beverage purposes, or who sells any of such products under circumstances in which it might reasonably appear that it is the intention of the purchaser to procure the product for sale or use for beverage purposes, must register and keep records as required under this part as a wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, or retail dealer in beer, as appropriate.

§ 31.66 Retail dealer selling entire stock in liquidation.

No retail dealer in liquors or retail dealer in beer shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer by virtue of selling in liquidation that dealer's entire stock of liquors in one parcel, or in parcels, each of which embraces not less than the entire stock of distilled spirits, of wines, or of beer, which parcels may contain a combination of any or all such liquors, to any other dealer. A retail dealer making such sale or sales is not required to register or to keep records or submit reports of those sales.

§ 31.67 Persons returning liquors for credit, refund, or exchange.

No retail dealer in liquors or retail dealer in beer, or other person, shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer by virtue of a bona fide return of distilled spirits, wines, or beer to the dealer from whom the distilled spirits, wines, or beer were purchased (or to the successor of such vendor's business or line of merchandise) for credit, refund, or exchange; and the giving of such credit, refund or exchange shall not be deemed to be a purchase within the meaning of § 31.141 of this part. Except in the case of wholesale dealers in liquors required to keep records of their transactions under §§ 31.155 and 31.156, or retail dealers required to keep records under § 31.171, persons returning liquors as provided in this section are not required to keep records or submit reports of such transactions.

(26 U.S.C. 5132)

Subpart E—Places Subject to Registration**§ 31.71 Registration required at each place of business.**

Except as otherwise provided in § 31.43 and in subpart D of this part, registration is required under this part for each and every place where distilled spirits, wines, or beer are sold or offered for sale. No person may engage in any business for which registration is required until the place of business has been registered in accordance with this part.

§ 31.72 Place of sale.

For purposes of this part, the place at which ownership of liquors is transferred, actually or constructively, is the place of sale.

§ 31.73 Place of offering for sale.

Liquors are considered to be offered for sale at the place where they are kept for sale and where a sale could take place, and at any place where sales are in fact consummated. Liquors are not considered to be offered for sale by sending an agent out to take orders, or by establishing an office for the mere purpose of taking orders, so long as in each case the orders received are transmitted to the principal for acceptance at the place where that principal has registered under this part or where the principal is exempt from registration as provided in subpart D of this part.

§ 31.74 Places of storage; deliveries therefrom.

Registration is not required under this part for warehouses and similar places

that are used by dealers merely for the storage of liquors and that are not places where orders for liquors are accepted. When orders for liquors are received and duly accepted at a place that the dealer has registered under this part, the subsequent actual delivery of the liquors from a place of storage does not require registration at that place of storage. Except as otherwise provided in §§ 31.52 and 31.53, a dealer who registered a given place, and who makes actual delivery of liquors from a warehouse at another place, must register for the place where ownership of the liquors is transferred if there was no prior constructive delivery by the acceptance of an order for the liquors at the place covered by the existing registration.

§ 31.75 Dealer in beer and dealer in liquors at the same location.

Any person who registers as a wholesale dealer in beer or retail dealer in beer and who thereafter begins to sell distilled spirits or wine must also register as a wholesale dealer in liquors or retail dealer in liquors before commencing the sale, or offering for sale, of distilled spirits or wine.

(26 U.S.C. 5124)

Sales in Two or More Areas on the Same Premises**§ 31.81 General.**

When liquors are sold by a proprietor in two or more areas within the proprietor's place of business, only one registration is required under this part. When the proprietor leases to another person or persons the privilege of selling liquors in two or more areas within the proprietor's place of business, whether the privilege is exercised separately or simultaneously with the proprietor or another concessionaire, each lessee is required to register only once.

§ 31.82 Hotels.

The proprietor of a hotel who conducts the sale of liquors throughout the hotel premises is only required to register under this part for one place. For example, different areas operated by the proprietor in the hotel, such as banquet rooms, meeting rooms, and guest rooms, collectively constitute a single place of business. When a concessionaire conducts the sale of liquors at two or more areas in a hotel, those areas are regarded as a single place of business, and the concessionaire is required to register only once.

§ 31.83 Ball park, race track, etc.; sales throughout the premises.

The proprietor of a ball park, race track, stadium, pavilion, or other similar enclosure constituting one premises, who engages in the business of selling liquors throughout that enclosure, including sales from baskets or containers by employees on the proprietor's behalf, is required to register only once for the entire enclosure. Each concessionaire having the same privilege throughout the enclosure, whether the privilege is exercised separately or simultaneously with the proprietor or another concessionaire, is required to register only once for the entire enclosure.

Sales in Multiple Locations**§ 31.91 Passenger trains, aircraft, and vessels.**

Persons who carry on the business of a retail dealer in liquors or of a retail dealer in beer on trains, aircraft, boats, or other conveyances engaged in the business of carrying passengers may conduct that business throughout the passenger carrying train, aircraft, boat, or other vessel, after filing only one registration under this part. Such persons must specify on the registration form the number of passenger carriers for which registration is being completed.

§ 31.92 Carriers not engaged in passenger service.

Except as otherwise provided in § 31.93, the retailing of liquors on any train, aircraft, boat, or other conveyance that is not engaged in the business of carrying passengers is prohibited.

§ 31.93 Supply boats or vessels.

Persons may carry on the business of a retail dealer in liquor or of a retail dealer in beer on supply boats or vessels operated by them when those persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at that port or harbor. Such persons must specify, on an attachment to the registration form, the following: that the business will consist of supplying exclusively boats, vessels, or persons thereon; the name of the port or harbor at which the business is to be carried on; and the fixed address from which operations are to be conducted. When such sales are to be made from two or more supply boats or vessels, the dealer must also specify on the attachment the number of supply boats or vessels for which registration is being made. If the dealer operates from two or more fixed addresses, the dealer must prepare one registration form covering all of those

addresses and must include on the attachment to the registration form the number of supply boats or vessels operating from each address.

§ 31.94 Retail dealers “At Large.”

A retail dealer in liquors or a retail dealer in beer whose business requires the dealer to travel from place to place, such as a dealer who sells at carnivals or circuses, must register “At Large” covering the dealer’s activities throughout the United States by filing only one registration. A dealer submitting such a registration must state on the registration form, or on an attachment thereto, the nature of the dealer’s business and the reason the dealer requires registration “At Large.”

§ 31.95 Caterers.

(a) *General.* When a contract to furnish liquors is made by a caterer at a place of business for which the caterer has registered under this part, no additional registration is required by virtue of the serving of the liquors at a different location.

(b) *Additional registration.* When the contract of a caterer provides for the sale of liquors by the drink at a place, or simultaneously at different places, other than the place of business for which the caterer has registered under this part, a separate registration is required for each such place if the caterer does not keep the records specified in paragraph (c) of this section.

(c) *Records.* Caterers must maintain sufficient commercial records to identify all locations where activities subject to registration occur. These commercial records must indicate the names and addresses of locations where alcoholic beverages have been sold or offered for sale and the dates and times that those activities occurred. These commercial records must be available to an appropriate TTB officer upon request.

(26 U.S.C. 5121, 5122)

§ 31.96 Peddling.

No person shall peddle distilled spirits, wines, or beer, except in the circumstances described in §§ 31.52, 31.53, and 31.93. Persons peddling liquors to whom §§ 31.52, 31.53, and 31.93 do not apply are required to register at each place where sales are consummated.

Subpart F—Partnerships

§ 31.101 Registration of partners.

Any number of persons carrying on one business in partnership at any one place must register only once for that business.

§ 31.102 Addition of partners or incorporation of partnership.

Where a number of persons who have filed a registration under this part as partners admit one or more new members to the partnership or form a corporation (a separate legal entity) to take over the business, the new partnership or corporation must register as a new dealer before commencing business.

(26 U.S.C. 5121, 5122, 5124)

§ 31.103 Formation of a partnership by two dealers.

Where two persons form a partnership after each has registered for a business carried on by himself, the partnership must register as a new dealer to cover the business conducted by the partnership.

(26 U.S.C. 5121, 5122, 5124)

§ 31.104 Withdrawal of one or more partners.

When one or more partners withdraw from a partnership that has registered under this part, the remaining partner, or partners, must register the change in control by filing an amended registration form on or before the following July 1.

Subpart G—Registration Form, TTB Form 5630.5d

§ 31.111 Date registration form is due.

(a) *General.* Dealers must register by filing the registration form, TTB Form 5630.5d, before engaging in business and on or before July 1 of each year thereafter. However, as long as none of the information specified on the form has changed since the previous registration form was filed, no additional registration is required. If the registration form is received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper that was properly addressed with postage prepaid, the form will be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used, the date of postal registration will be accepted as the postmark date.

(b) *Transition rule.* Dealers already engaged in business prior to July 1, 2008, must register as an “existing business” unless they had registered, in accordance with regulations in effect at the time of registration, on or after January 1, 2007. This one-time registration is due on or before July 1, 2009.

(26 U.S.C. 6071)

§ 31.112 Registration of multiple locations.

A dealer required to register at two or more locations shall file one registration form, prepared as provided in § 31.114(c), to cover all such locations.

§ 31.113 Place for filing registration form.

The registration form, TTB Form 5630.5d, must be filed with TTB in accordance with the instructions on the form.

§ 31.114 Completion of registration form.

(a) *General.* Dealers must register by filing the registration form, TTB Form 5630.5d, Alcohol Dealer Registration. The registration form must be filed with TTB in accordance with this subpart and the instructions on the form.

(b) *Preparation of TTB Form 5630.5d.* All of the information called for on TTB Form 5630.5d must be provided. This information includes the following:

- (1) The true name of the dealer.
- (2) The trade name(s) (if any) of the business(es) subject to the registration requirement.
- (3) The employer identification number (see § 31.115).
- (4) The mailing address of the dealer’s principal place of business (or principal office, in the case of a corporate dealer).
- (5) The exact location of each place of business, by name and number of building or street, or if these do not exist, by some specific description in addition to the post office address.
- (6) The business telephone number of each place of business.
- (7) The class(es) of dealer in which the dealer operates a business.
- (8) Ownership and control information. This consists of the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to registration. “Owner of the business” includes every partner, if the dealer is a partnership, and every person owning 10 percent or more of its stock, if the dealer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to TTB and that previously provided information is still current.

(c) *Multiple locations and/or classes of dealers.* A dealer required to register at more than one location or for more than one class of dealers must—

- (1) File one registration form, TTB Form 5630.5d, to cover all locations and classes of dealers; and
- (2) Prepare, on the form, or on an attachment identified with the

taxpayer's name, mailing address (as shown on TTB Form 5630.5d), and employer identification number, a list showing, by States, the trade name, address, telephone number, and dealer class of each location for which registration is being made. The original of the list must be filed with TTB on or with the registration form, and a copy must be retained at the dealer's principal place of business (or principal office, in the case of a corporate dealer) for the period specified in § 31.191.

(26 U.S.C. 7805)

§ 31.115 Employer identification number.

(a) *Requirement.* The employer identification number (as defined in 26 CFR 301.7701-12) of a dealer who has been assigned such a number must be shown on each registration form filed under this part. A dealer who does not have such a number must apply for one as provided in paragraph (b) of this section and enter "number applied for" in the space for the number on the registration form; then, upon receipt of the number from the Internal Revenue Service, the dealer must provide it to TTB by separate correspondence. Failure of a dealer to include the employer identification number may result in the imposition of the penalty specified in § 31.14(b).

(b) *Application for employer identification number.* Each dealer who files a registration form and who has not already been assigned an employer identification number must file Internal Revenue Service (IRS) Form SS-4 to apply for one. The dealer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the dealer is required to file a registration form under this part. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first registration form. IRS Form SS-4 may be obtained from the director of an IRS service center, from any IRS district director, from <http://www.irs.gov/>, or from TTB's National Revenue Center.

(26 U.S.C. 6109)

§ 31.116 Execution of registration form.

The registration of an individual proprietor shall be signed by the proprietor, the registration of a partnership shall be signed by a member of the firm, and the registration of a corporation shall be signed by a duly authorized officer thereof; however, any individual, partnership, or corporation that is a proprietor may appoint an agent to sign on the proprietor's behalf. The person signing the registration form

must identify his or her signing capacity as "individual owner," "member of firm," "agent," or "attorney-in-fact," as appropriate, or, in the case of a corporation, by the title of the signing officer. A receiver, trustee, assignee, executor, administrator, or other legal representative who continues the business of a dealer by reason of death, insolvency, or other circumstance must indicate the fiduciary capacity in which he or she acts. Registration forms signed by persons as agents or attorneys-in-fact will not be accepted unless, in each instance, the principal named on the form has executed a power of attorney authorizing that person to sign and that power of attorney is filed with the TTB officer with whom the TTB Form 5630.5d is required to be filed. Form 5630.5d must be verified by a written declaration that it has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065)

Subpart H—Changes in Registration Information

Changes Requiring Registration as a New Business

§ 31.121 Sale of business.

Under this part, registration is personal to the one who registered and is not transferable from one dealer to another. Where a change occurs in the proprietorship of a business for which registration has been completed, the successor must register as a new business.

(26 U.S.C. 5124)

§ 31.122 Incorporation of business.

Where an individual or a firm engaged in business requiring registration under this part forms a corporation to take over and conduct the business, the corporation, as a separate legal entity, must register in its own name as a new business.

(26 U.S.C. 5124)

§ 31.123 New corporation.

Where a new corporation is formed to take over and conduct the business of one or more corporations that have registered under this part, the new corporation must register in its own name as a new business.

(26 U.S.C. 5124)

§ 31.124 Stockholder continuing business of corporation.

A registration completed by a corporation as a dealer in liquors, or as a dealer in beer, cannot cover the same business carried on by one or more of its stockholders after dissolution of the

corporation. The stockholder(s) must register as a new business.

(26 U.S.C. 5124)

§ 31.125 Cross references.

See also §§ 31.75, 31.102, and 31.103 for other situations requiring registration as a new dealer.

Other Changes

§ 31.131 Change of address.

(a) *General.* A dealer who removes the business to a place other than that for which the dealer is registered must register the change with TTB by filing an amended registration form, TTB Form 5630.5d, on or before the next July 1 following the change.

(b) *Caterers.* A caterer who sells liquor by the drink at locations other than his or her principal place of business shall not be required to provide the change of location registration prescribed in paragraph (a) of this section for those catering activities, provided that the caterer maintains the records required by § 31.95(c). For a permanent change in location of the principal place of business, the caterer must file an amended registration form in accordance with paragraph (a) of this section.

§ 31.132 Change in name or style of business.

A dealer who has registered for a business at a given location must complete an amended registration, and submit it on or before the next July 1, to report a change in the name or style (trade name) under which the dealer conducts that business.

§ 31.133 Change in management.

A change in management that involves no change in ownership of the business requires an amended registration only if the change involves a person who is responsible for controlling the management policies or buying or selling practices of the business pertaining to alcohol beverages. The amended registration must be submitted on TTB Form 5630.5d on or before the next July 1 following the change.

(26 U.S.C. 5124)

§ 31.134 Increase in capital stock of a corporation.

An amended registration is not required by reason of an increase in the capital stock of a corporation so long as a new corporation is not created under the laws of the State of incorporation and provided that the change does not alter the list of stockholders owning 10 percent or more of the capital stock.

(26 U.S.C. 5121, 5122, 5124)

§ 31.135 Change in ownership of capital stock.

Registration as a new business is not required merely by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation. However, an amended registration is required if the sale or transfer alters the list of stockholders owning 10 percent or more of the capital stock. The amended registration must be filed on or before the next July 1 following the sale or transfer.

§ 31.136 Change in membership of unincorporated club.

Registration of an unincorporated club is not required by reason of changes in membership, when those changes do not result in the dissolution of the club and the formation of a new club, unless the changes involve a person with the power to control the management policies or buying or selling practices pertaining to alcohol. In the latter case, the filing of an amended registration is required on or before the next July 1.

§ 31.137 Withdrawal of partner(s).

Withdrawal of partner(s) requires an amended registration. See § 31.104.

§ 31.138 Discontinuance of business.

A dealer going out of business must register that event within 30 days by filing a registration form, TTB Form 5630.5d, in accordance with instructions on the form.

Subpart I—Restrictions Relating to Purchases of Distilled Spirits**§ 31.141 Unlawful purchases of distilled spirits.**

(a) *General.* It is unlawful for any dealer to purchase distilled spirits for resale from any person other than:

(1) A wholesale dealer (including a State, a political subdivision of a State, the District of Columbia, and a distilled spirits plant) who is required to keep records under §§ 31.151 through 31.163 pertaining to the place where the distilled spirits are purchased;

(2) A retail liquor store operated by a State, a political subdivision of a State, or the District of Columbia; or

(3) A person not required to register as a wholesale liquor dealer, as provided in §§ 31.62, 31.63, 31.66, and 31.67.

(b) *Special provision for limited retail dealers.* A limited retail dealer may purchase distilled spirits from a retail dealer in liquors for resale.

(26 U.S.C. 5132)

Subpart J—Records and Reports**Wholesale Dealers' Records and Reports****§ 31.151 General requirements as to distilled spirits.**

Except as otherwise provided in §§ 31.153 and 31.154, every wholesale dealer in liquors must keep daily records of the physical receipt and disposition of distilled spirits in accordance with §§ 31.155 and 31.156. When required in writing by the appropriate TTB officer, a wholesale dealer in liquors must also prepare and file a monthly summary report totaling the daily receipts and disposition of distilled spirits in accordance with § 31.160.

(26 U.S.C. 5121)

§ 31.152 Requirements as to wines and beer.

Every wholesale dealer in liquors who receives wines, or wines and beer, and every wholesale dealer in beer must keep at the dealer's place of business a complete record showing the quantities of wine and beer received, from whom the wine and beer were received, and the dates of receipt. This record, which must be kept for a period of not less than three years as prescribed in § 31.191, shall consist of all purchase invoices or bills covering wines and beer received or, at the option of the dealer, a book record containing all of the required information. Wholesale dealers are not required to prepare or submit reports to the appropriate TTB officer of transactions relating to wines and beer.

(Approved by the Office of Management and Budget under control number 1513-0065) (26 U.S.C. 5121)

§ 31.153 Records to be kept by States, political subdivisions of States, or the District of Columbia.

The provisions of this subpart regarding the maintenance of records and the submission of reports shall not apply to States, political subdivisions of States, or the District of Columbia, or to any liquor stores operated by such entities that maintain, and make available for inspection by appropriate TTB officers, records that will enable TTB to verify receipts of wines and beer and to trace readily all distilled spirits received and disposed of by those entities. However, States, political subdivisions of States, and the District of Columbia, and liquor stores operated by such entities, must, on request of the appropriate TTB officer, furnish such transcripts, summaries, and copies of records with respect to distilled spirits as that TTB officer may require.

(26 U.S.C. 5121)

§ 31.154 Records to be kept by alcohol beverage producers, processors, and bonded warehousemen.

Wholesale liquor dealer operations conducted by brewers and by proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses must be recorded and reported in accordance with the applicable provisions of parts 19, 24, and 25 of this chapter. To the extent that the same transactions are required to be recorded or reported by this part and by part 19, 24, or 25, the records and reports required by those parts will satisfy the requirements of this part.

(26 U.S.C. 5207, 5367, 5415)

§ 31.155 Records of receipt.

(a) *Information required.* Every wholesale dealer in liquors must maintain a daily record of the physical receipt of each individual lot or shipment of distilled spirits. This record must show, at a minimum, the following:

- (1) Name and address of consignor;
- (2) Date of receipt, including date of inventory for recorded gains;
- (3) Brand name;
- (4) Name of producer or bottler.

However, this may be omitted if the dealer keeps available for inspection a separate list or record identifying the producer or bottler with the brand name;

(5) Kind of spirits. However, this may be omitted if the dealer keeps available for inspection a separate list or record identifying "kind" with the brand name;

(6) Quantity actually received, showing number of packages, if any, and number of cases by size of bottle, and explaining any difference from the quantity shown on the commercial papers covering the shipment; and

(7) Package identification numbers of containers of alcohol received for repackaging for industrial use pursuant to subpart L of this part.

(b) *Form of record.* The record required by paragraph (a) of this section must be a part of the accounting system and must consist of consignors' invoices (or, if those invoices are not available on the day the shipment is received, memorandum receiving records prepared on the day of receipt of the distilled spirits, including records of inventory for recorded gains) and credit memorandums covering distilled spirits returned to the dealer.

(Approved by the Office of Management and Budget under control number 1513-0065) (26 U.S.C. 5121)

§ 31.156 Records of disposition.

(a) *Information required.* Every wholesale dealer in liquors must prepare a daily record of the physical disposition of each individual lot of distilled spirits. This record must show, at a minimum, the following:

(1) Name and address of consignee;
 (2) Date of disposition, including date of discovery in the case of casualty, theft or recorded inventory losses;

(3) Brand name;

(4) Kind of spirits. However, this may be omitted if the dealer keeps available for inspection a separate list or record identifying "kind" with the brand name;

(5) Number of packages, if any, and number of cases by size of bottle; and

(6) Package identification numbers of containers of alcohol repackaged for industrial use pursuant to subpart L of this part.

(b) *Form of record.* The record required by paragraph (a) of this section must be part of the accounting system and must consist of wholesale dealer's invoices (or, if those invoices are not available at the time the spirits are removed, memorandum shipping records prepared at the time of removal of the distilled spirits, including date of discovery in the case of casualty, theft or recorded inventory losses).

(Approved by the Office of Management and Budget under control number 1513-0065) (26 U.S.C. 5121)

§ 31.157 Canceled or corrected records.

Entries on the records of receipt and disposition prescribed by §§ 31.155 and 31.156 must not be erased or obliterated. Correction or deletion of any entry must be accomplished by drawing a line through the entry and inserting an appropriate correction or explanation. If a wholesale dealer in liquors voids an invoice for any reason, the file copy prescribed in § 31.181 must be marked "Cancelled" and must be filed as provided in that section; any remaining copy of the voided invoice must be destroyed or similarly cancelled and filed. If a new invoice is prepared, its serial number must be cross referenced on any retained copies of the cancelled invoice.

(26 U.S.C. 5121)

§ 31.158 Previously prescribed or approved records of receipt and disposition.

A wholesale dealer in liquors may continue to use records of receipt and disposition in a format previously prescribed or approved. Those records must show the information required by paragraph (a) of § 31.155 or paragraph (a) of § 31.156, as applicable. The records must be preprinted with the

name and address of the wholesale dealer. Each sheet or page must bear a preprinted serial number, or page serial numbers may be affixed in unbroken sequence during the preparation or processing of the records. A serial number must not be duplicated within a period of 6 months.

(26 U.S.C. 5121)

§ 31.159 Variations in format or preparation of records.

(a) *Authorization.* The appropriate TTB officer may approve variations in the type and format of records of receipt and disposition required under §§ 31.155 and 31.156, or in the methods of preparing those records, when it is shown that variations from the requirements are necessary in order to use data processing equipment, other business machines, or existing accounting systems, and provided that the variation will not unduly hinder the effective administration of this part, jeopardize the revenue, or be contrary to any provision of law. A dealer who wishes to employ such a variation must submit a written application to the appropriate TTB officer. The application must describe the proposed variation and set forth the need for it. Variations in type and format of records or methods of preparation must not be employed until approval is received from the appropriate TTB officer.

(b) *Requirements.* Any information required by this part to be kept or filed is subject to the provisions of law and this part relating to required records and reports, regardless of the form or manner in which kept or filed.

(Approved by the Office of Management and Budget under control number 1513-0067)

§ 31.160 Monthly summary report.

(a) *Requirement.* Every wholesale dealer in liquors must, when required, submit monthly to the appropriate TTB officer a summary report of the total quantities of all distilled spirits received and disposed of daily during the month (including the date of discovery for theft, casualty and inventory losses and inventory gains). This report must be posted by the wholesaler on a daily basis. If there were no receipts or disposals of distilled spirits during the month, the report must be marked "No Transactions During Month." This report must be filed not later than the 15th day of the month following the report period, with a copy retained by the dealer. The appropriate TTB officer may authorize a dealer, upon request, to post the report less frequently until otherwise notified; the appropriate TTB officer's authorization will specify the intervals at which the posting will be

accomplished, but not less frequently than monthly.

(b) *Form of report.* When required under paragraph (a) of this section, the monthly summary report may be prepared in a format that is adapted to the dealer's accounting and recordkeeping systems. In addition to any other information shown therein, the report must include:

(1) Daily totals of all bottled spirits received and disposed of, recorded by wine gallons or liters;

(2) Daily totals of all bulk spirits in packages received and disposed of, recorded by proof gallons; and

(3) Entries showing, by date, each disposition caused by an inventory, casualty, or theft loss and each receipt caused by a recorded gain in inventory.

(c) *Declaration.* When required to be filed, the monthly summary report must bear the following declaration signed by the dealer or an authorized agent:

I declare under the penalties of perjury that I have examined this report and, to the best of my knowledge and belief, it is true, correct, and complete and is supported by true, correct, and complete records which are available for inspection.

(d) *Other records.* Even if the monthly summary report is not required by the appropriate TTB officer, every wholesale dealer in distilled spirits must maintain and make available for review by appropriate TTB officers:

(1) Records of receipt required by § 31.155;

(2) Records of disposition, required by § 31.156; and

(3) Any other supporting information or documents regarding the receipt and disposition of distilled spirits that have a direct role in determining the completeness and accuracy of the receipt and disposition records.

(Approved by the Office of Management and Budget under control number 1513-0065) (26 U.S.C. 5121)

§ 31.161 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters must be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Once converted to wine gallons, the proof gallons of spirits in cases must be determined as provided in § 30.52 of this chapter. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S.

units must be rounded to the sixth decimal; and

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units must be rounded to the nearest hundredth.

(26 U.S.C. 7805; 27 U.S.C. 205)

§ 31.162 Discontinuance of business.

When a wholesale dealer in liquors who is required, under § 31.160, to file a monthly summary report discontinues business, a monthly summary report marked "Final" must be filed covering transactions through the date of discontinuance.

(26 U.S.C. 5121)

§ 31.163 Requirements when a wholesale dealer in liquors maintains a retail department.

(a) *Constructive receipt and sale.* When a wholesale dealer in liquors maintains a separate department on the premises for the retailing of distilled spirits, and the retail sales of distilled spirits normally represent 90 percent or more of the volume of distilled spirits sold, the dealer may "constructively" receive all distilled spirits in the retail department. Sales involving a wholesale transaction may be "constructively" sold through the wholesale department.

(1) *Receipts.* In lieu of maintaining and preparing the records required by § 31.155, a wholesale dealer may constructively receive all distilled spirits in its retail department. In this case, the receiving document will serve as a receipt for (through) the wholesale department and a disposition (transfer) to the retail department. The receiving document must be maintained by the retail department in accordance with § 31.171.

(2) *Dispositions.* In lieu of maintaining and preparing the records required by § 31.156, a wholesale dealer may constructively sell distilled spirits from its retail department to other dealers. The sales invoice or bill must be filed in the wholesaler's disposition records and will serve as a record of receipt from the retail department and a record of disposition to another dealer.

(b) *Receipt and disposition records.* Except as provided in paragraph (a) of this section, a wholesale dealer must prepare and maintain the required records of receipt and disposition as prescribed in §§ 31.155 and 31.156. Transfers between the wholesale and retail departments will be treated in the same manner as any other transaction involving the wholesale department.

(c) *Monthly summary report.* When required by § 31.160, a wholesale dealer must prepare and file the monthly summary report of actual or

constructive receipts and dispositions of all distilled spirits.

(d) *Physical separation.* Wholesale and retail departments need not be physically separated.

(26 U.S.C. 5121)

Filing of Wholesale Dealers' Records and Reports

§ 31.171 Method of filing.

A wholesale dealer may file the records of receipt and disposition required by §§ 31.155 and 31.156 in accordance with the wholesaler's regular accounting and recordkeeping systems. The required records must include the dealer's own file copies of the receiving or shipping invoices and must be filed according to the following rules:

(a) Wholesale dealers may file records of receipt and disposition in accordance with their own filing system as long as the records are filed by transaction or reporting date and the filing system systematically and accurately accounts for all receipts and dispositions of distilled spirits.

(b) The required records of receipt and disposition must be filed not later than one business day following the date the transaction occurred.

(c) Supporting documents for receipts and dispositions, such as delivery receipts and bills of lading, also may be filed in accordance with the wholesaler's regular accounting and recordkeeping practices.

(26 U.S.C. 5121, 5122, 5123)

§ 31.172 Place of filing.

Records of receipt and disposition and monthly summary reports required by §§ 31.155, 31.156, and 31.160 must be maintained at the dealer's place of business. The appropriate TTB officer may, upon request, authorize maintenance of files, or an individual file, at another business location under the control of the same wholesale dealer, when it is determined that such maintenance will not cause undue inconvenience to TTB officers desiring to examine those files.

(26 U.S.C. 5123)

Retail Dealer's Records

§ 31.181 Requirements for retail dealers.

(a) *Records of receipt.* All retail dealers must keep at their place of business complete records showing the quantities of all distilled spirits, wines, and beer received, from whom the distilled spirits, wines, and beer were received, and the dates of receipt. However, the appropriate TTB officer may, upon request, authorize the

maintenance of records at another business premises also under the control of the same retail dealer when it is determined that such maintenance will not cause undue inconvenience to TTB officers desiring to examine those records. Records of receipts shall consist of all purchase invoices or bills covering distilled spirits, wines, and beer received, or, at the option of the retail dealer, a book record containing all of the required information.

(b) *Records of sales of 20 wine gallons (75.7 liters) or more.* Every retail dealer who makes sales of distilled spirits, of wines, or of beer in quantities of 20 wine gallons (75.7 liters) or more to the same person at the same time must prepare and keep a record of each sale. The record must show the date of sale, the name and address of the purchaser, the kind and quantity of each kind of liquors sold, and the serial numbers of all full cases of distilled spirits included in the sale. Each entry on that record must be supported by a corresponding delivery receipt (which may be executed on a copy of the sales slip) signed by the purchaser or the purchaser's agent.

(Approved by the Office of Management and Budget under control number 1513-0066) (26 U.S.C. 5122, 5123)

Retention of Records and Files

§ 31.191 Period of retention.

All records and files, all documents or copies of documents supporting these records and files, and all file copies of reports, submitted as required by this part, must be retained by the person required to have them, for a period of not less than three years and, during the retention period, must be available, during business hours, for inspection and copying by the appropriate TTB officers. In addition, the appropriate TTB officer may require retention of the documents and other records for an additional period of not more than three years if it is determined that such additional retention is necessary.

(26 U.S.C. 5123)

§ 31.192 Photographic copies of records.

(a) *General.* Dealers may record, copy, or reproduce records required by this part. Dealers may use any process that accurately reproduces the original record and that forms a durable medium for preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records must be preserved in conveniently accessible files, and provision must be made for examining, viewing, and using the reproduced record in the same manner as if it were

the original record. A reproduced record will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by a dealer, even though it may be an executed duplicate or other copy of the document.

(26 U.S.C. 5555)

Subpart K—Reuse and Possession of Used Liquor Bottles

§ 31.201 Refilling of liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall:

(a) Place in any liquor bottle any distilled spirits whatsoever other than those contained in that bottle at the time of closing under the provisions of 26 U.S.C. chapter 51; or

(b) By the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in that bottle at the time of closing under the provisions of 26 U.S.C. chapter 51.

(26 U.S.C. 5301)

§ 31.202 Possession of refilled liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall:

(a) Possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of § 31.201; or

(b) Possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of § 31.201.

(26 U.S.C. 5301)

§ 31.203 Possession of used liquor bottles.

The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited except in the following circumstances:

(a) The owner or occupant of any premises on which the used bottles have been lawfully emptied may assemble the bottles on such premises—

(1) For delivery to a bottler or importer on specific request of that bottler or importer;

(2) For destruction, either on the premises on which the bottles are emptied or elsewhere, including disposition for purposes that will result in the bottles being rendered unusable as bottles; or

(3) In the case of unusual or distinctive bottles, for disposition or sale as collectors' items or for other purposes not involving the packaging of any product for sale;

(b) Any person may possess, offer for sale, or sell unusual or distinctive bottles for purposes not involving the packaging of any product for sale; and

(c) Any person may assemble used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material.

(26 U.S.C. 5301)

§ 31.204 Mixed cocktails.

A retail liquor dealer who mixes cocktails or compounds any alcoholic liquors in advance of sale, as provided in § 31.233, may not use liquor bottles in which distilled spirits have been previously packaged for the storage of the mixture or compound pending that sale.

(26 U.S.C. 5301)

Subpart L—Packaging of Alcohol for Industrial Uses

§ 31.211 Requirements and procedure.

Upon compliance with the provisions of part 19 of this chapter applicable to persons repackaging distilled spirits, and subject to the requirements of paragraphs (a) through (c) of this section, a dealer engaged in the business of supplying distilled spirits for industrial use may obtain bulk alcohol on which the tax has been paid or determined and repackage the alcohol for sale for industrial use in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(a) *Qualification procedure.* An application for registration, TTB Form 5110.41, and an application for an operating permit, TTB Form 5110.25, modified in accordance with instructions of the appropriate TTB officer, must be executed and filed with the appropriate TTB officer. No alcohol shall be repackaged until the approved application for registration and the approved operating permit are received.

(b) *Operations.* Repackaging operations must be conducted in accordance with the bottling and packaging requirements of part 19 of this chapter. Packaging and labeling operations may be carried on without supervision of a TTB officer unless the appropriate TTB officer requires supervision.

(c) *Records.* The dealer must keep daily records showing the bulk alcohol received, dumped for packaging, packaged, and disposed of, including the name and address of each consignor and consignee. The dealer must prepare

a monthly report on TTB Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5110.28 must be submitted to the appropriate TTB officer not later than the 15th day of the month following the period covered by the report. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the appropriate TTB officer, must be filed and retained as prescribed in §§ 31.172 and 31.191.

(26 U.S.C. 5131, 5206)

§ 31.212 Labeling.

Every dealer packaging alcohol for industrial use must affix to each package filled a label bearing in conspicuous print the words "Alcohol" and "For Industrial Use," the proof of the alcohol, the capacity of the container, and the packaging dealer's name and address. The dealer may incorporate in the label other appropriate statements; however, such statements must not obscure or contradict the data required by this section to be shown on such labels.

(26 U.S.C. 5131, 5206)

Subpart M—Distilled Spirits for Export with Benefit of Drawback

§ 31.221 General.

A State, a political subdivision of a State, or a person holding a wholesale liquor dealer's basic permit issued under part 1 of this chapter may export bottled taxpaid distilled spirits with benefit of drawback as provided in § 28.171 of this chapter. The marking of cases, the preparation of notice of shipment on TTB Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits must be in accordance with the applicable provisions of parts 19 and 28 of this chapter.

§ 31.223 Records and reports.

The provisions of subpart J of this part regarding records and reports relating to liquors for domestic use also apply to export transactions permitted under this subpart.

Subpart N—Miscellaneous

§ 31.231 Destruction of marks and brands on wine containers.

A dealer who empties any cask, barrel, keg, or other bulk container of wine must scrape or obliterate from the empty container all marks, brands, tags, or labels placed thereon under the provisions of part 24 of this chapter as evidence of the payment or determination of the tax on the wine

removed in the container from the bonded wine cellar.

§ 31.232 Wine bottling.

Each person desiring to bottle, package, or repackage taxpaid wines must, before carrying on those operations, apply and receive permission from the appropriate TTB officer in accordance with part 24 of this chapter. The decanting of wine by caterers or other retail dealers for table or room service, banquets, and similar purposes shall not be considered as "bottling," if the decanters are not furnished for the purpose of carrying wine away from the area where served. (26 U.S.C. 5352)

§ 31.233 Mixing cocktails in advance of sale.

A retail liquor dealer shall not mix cocktails, or compound any alcoholic liquors in advance of sale, except for the purpose of filling, for immediate consumption on the premises, orders received, or expected to be immediately received, at the bar. See § 31.204 for additional mixed cocktail rules. (26 U.S.C. 5002)

§ 31.234 Liability for special (occupational) tax.

The special (occupational) tax on alcohol beverage dealers was suspended for the period July 1, 2005, through June 30, 2008, and was repealed effective July 1, 2008. Dealers who were engaged in business prior to the suspension period remain liable for payment of the special (occupational) tax in accordance with the laws and regulations in effect at that time. The tax return to be used for payment of any past-due special (occupational) tax is TTB Form 5630.5a. (Section 11125, Pub. L. 109-59, 119 Stat. 1953)

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

■ 65. The authority citation for part 40 is revised 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.

■ 66. Section 40.11 is amended by adding, in alphabetical order, a definition of "special tax" to read as follows:

§ 40.11 Meaning of terms.

* * * * *

Special tax. The special (occupational) tax on manufacturers of

tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors, imposed by 26 U.S.C. 5731.

* * * * *

■ 67. Section 40.31 is amended by removing and reserving paragraph (b) and by adding new paragraph (d) and revising the informational reference at the end of the section to read as follows:

§ 40.31 Liability for special tax.

* * * * *

(d) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

■ 68. Section 40.33 is revised to read as follows:

§ 40.33 Cross reference.

For additional rules pertaining to liability for special tax, filing special tax returns, issuance and examination of special (occupational) tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

§§ 40.34, 40.35, and 40.36 [Removed and reserved]

■ 69. Sections 40.34, 40.35, and 40.36 are removed and reserved.

■ 70. Section 40.371 is amended by adding a new paragraph (c) and revising the informational reference at the end of the section to read as follows:

§ 40.371 Liability for special tax.

* * * * *

(c) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

■ 71. Section 40.373 is revised to read as follows:

§ 40.373 Cross reference.

For additional rules pertaining to liability for special tax, filing special tax returns, issuance and examination of special tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

§§ 40.374 and 40.375 [Removed and reserved]

■ 72. Sections 40.374 and 40.375 are removed and reserved.

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 73. The authority citation for part 44 is revised to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703-5705, 5711-5713, 5721-5723, 5731-5734, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 74. Section 44.11 is amended by adding, in alphabetical order, a definition of "special tax" to read as follows:

§ 44.11 Meaning of terms.

* * * * *

Special tax. The special (occupational) tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors, imposed by 26 U.S.C. 5731.

* * * * *

■ 75. Section 44.31 is amended by removing and reserving paragraph (b) and by adding new a paragraph (d) and revising the informational reference at the end of the section to read as follows:

§ 44.31 Liability for special tax.

* * * * *

(d) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

■ 76. Section 44.33 is revised to read as follows:

§ 44.33 Cross reference.

For additional rules pertaining to liability for special (occupational) tax, filing special tax returns, issuance and examination of special tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

§§ 44.34, 44.35, and 44.36 [Removed and reserved]

■ 77. Sections 44.34, 44.35, and 44.36 are removed and reserved.

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 78. The authority citation for part 46 is revised to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5061, 5704, 5708, 5731–5734, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

■ 79. Part 46 is amended by adding a new subpart D to read as follows:

Subpart D—Rules for Special (Occupational) Tax

Sec.

- 46.91 Scope of subpart.
- 46.92 Meaning of terms.
- 46.93 Multiple businesses of same ownership and location.
- 46.94 Relation to State and municipal law.
- 46.95 Liability of partners.

Payment of Special Tax

- 46.101 Special tax returns.
- 46.102 Employer identification number.
- 46.103 Time for filing return and paying tax.
- 46.104 Method of payment.
- 46.105 Receipt for taxes.
- 46.106 Receipt in lieu of stamp prohibited.
- 46.107 Penalty for failure to file return or to pay tax.
- 46.108 Interest on unpaid tax.
- 46.109 Waiver of penalties.

Special Tax Stamps

- 46.116 Issuance, distribution, and examination of special tax stamps.
- 46.117 Lost or destroyed stamps.
- 46.118 Certificate in lieu of lost or destroyed special tax stamp.
- 46.119 Errors disclosed by taxpayers.
- 46.120 Errors discovered on inspection.

Changes in Businesses Holding Special Tax Stamps

- 46.126 Change in name or address.
- 46.127 Change in ownership.

Stamps for Incorrect Period or Incorrect Liability

- 46.131 General.
- 46.132 Credit for incorrect stamp.

Abatement or Refund of Special Taxes

- 46.136 Claims.
- 46.137 Time limit on filing of claim for refund.
- 46.138 Discontinuance of business.

Subpart D—Rules for Special (Occupational) Tax

§ 46.91 Scope of subpart.

This subpart contains rules relating to special (occupational) taxes that must be paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors.

§ 46.92 Meaning of terms.

As used in this subpart, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning, or a different definition is prescribed for a particular section or portion of this subpart:

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

CFR. The Code of Federal Regulations.

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

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

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Manufacturer of cigarette papers and tubes. Any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures tobacco products.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Special tax. The special (occupational) tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors, imposed by 26 U.S.C. 5731.

Tax year. The period from July 1 of one calendar year through June 30 of the following calendar year.

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

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

U.S.C. The United States Code.

§ 46.93 Multiple businesses of same ownership and location.

(a) Where more than one type of taxable business is conducted by the same person at the same place, special tax for each business must be paid at the rates prescribed for each.

(b) Where the same type of taxable business is conducted by the same person in different areas of the same premises, only one special tax payment is required.

(26 U.S.C. 5733)

§ 46.94 Relation to State and municipal law.

(a) *General.* The payment of special (occupational) tax does not exempt any person from any penalty or punishment provided by the laws of any State for carrying on any trade or business within that State, nor does it authorize the commencement or continuance of any trade or business contrary to State law or in places prohibited by county or municipal law. Payment of this tax does not prohibit any State from placing an additional duty or tax on the same trade or business, for State or other purposes.

(b) *Special tax stamps.* TTB officers are without authority to refuse to issue a special tax stamp to a person engaged in business in violation of State law. The stamp is not a Federal permit or license, but is merely a receipt for the tax. The stamp affords the holder no protection against prosecution for violation of State law.

(26 U.S.C. 5734)

§ 46.95 Liability of partners.

Any number of persons carrying on one business in partnership at any one place during any tax year are required to pay only one special tax.

(26 U.S.C. 5733)

Payment of Special Tax

§ 46.101 Special tax returns.

(a) *Preparation of TTB Form 5630.5t.* Every manufacturer of tobacco products, manufacturer of cigarette papers and tubes, and export warehouse proprietor is required to pay special (occupational) tax and file a return on TTB Form 5630.5t, "Special Tax Registration and Return—Tobacco." TTB Form 5630.5t must be completed in accordance with the instructions on the form, and all of the information called for on the form must be provided, including the following:

- (1) Name of the taxpayer.
- (2) Trade name(s) (if any) of the business(es) subject to special (occupational) tax.

(3) Employer identification number (see § 46.102).

(4) Exact location of the place of business, by name and number of building or street, or if these do not exist, by some specific description in addition to the post office address. In the case of one return for two or more locations, the address to be shown must be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) Class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information. This consists of the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" includes every partner, if the taxpayer is a partnership, and every person owning 10 percent or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to TTB in connection with a permit application and that previously provided information is still current.

(b) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax must—

(1) File one special tax return, TTB Form 5630.5t, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on TTB Form 5630.5t), employer identification number, and period covered by the return. The list must show, by State, the name, address, and tax class of each location for which special tax is being paid. The original of the list must be filed with TTB as an attachment to TTB Form 5630.5t, and the copy must be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for a period of three years from the date of the return.

(c) *Signing of TTB Form 5630.5t—(1) By principal.* The return of an individual proprietor must be signed by the individual. The return of a partnership must be signed by a general partner. The return of a corporation must be signed by an officer. In each case, the person signing the return must designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the officer's title.

(2) *By fiduciary.* A receiver, trustee, assignee, executor, administrator, or other legal representative who continues the business of a bankrupt, insolvent, deceased, or otherwise incapacitated person must indicate the capacity in which the fiduciary acts.

(3) *By agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature must be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* Each TTB Form 5630.5t must contain, or be verified by, a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5732, 6061, 6065, 6151, 7011)
(Approved by the Office of Management and Budget under control number 1513-0112)

§ 46.102 Employer identification number.

(a) *Requirement.* The employer identification number (as defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number must be shown on each special tax return, including each amended return, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return and who has not already been assigned an employer identification number must file Internal Revenue Service (IRS) Form SS-4 to apply for one. The taxpayer must apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The taxpayer must apply for the employer identification number no later than 7 days after the filing of the taxpayer's first special (occupational) tax return. IRS Form SS-4 may be obtained from the director of an IRS service center, from any IRS district director, or from <http://www.irs.gov/>.

(26 U.S.C. 6109)

§ 46.103 Time for filing return and paying tax.

The return, along with remittance of special tax, must be filed on or before the date of commencing business as a manufacturer of tobacco products, manufacturer of cigarette papers or tubes, or export warehouse proprietor,

and thereafter every year on or before July 1. If the return and applicable tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return will be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used, the date of registration will be accepted as the postmark date. When certified mail is used, the date of the postmark on the sender's receipt of certified mail is treated as the postmark date.

(26 U.S.C. 5732, 6011, 6071)

§ 46.104 Method of payment.

Payment of special tax must be made in cash, or by check or money order payable to Alcohol and Tobacco Tax and Trade Bureau. If a check or money order so tendered is not honored when presented for payment, the person who tendered the check or money order will remain liable for the payment of the special tax, and for all penalties and additions, to the same extent as if the check or money order had not been tendered. In addition, unless the person who tendered the check or money order can show that the check or money order was issued in good faith, and with reasonable cause to believe that it would be duly paid, there must be paid as penalty an amount equal to 1 percent of the amount of the check or money order, except that if the amount of the check or money order is less than \$500, the penalty will be \$5, or the amount of the check or money order, whichever is less.

(26 U.S.C. 6311, 6657)

§ 46.105 Receipt for taxes.

Subject to § 46.106, the appropriate TTB officer will issue a receipt to a taxpayer if cash is received as a remittance in payment of special tax (including penalties and interest, if any), or for any type of remittance received if the taxpayer requests a receipt.

§ 46.106 Receipt in lieu of stamp prohibited.

No receipt will be issued in lieu of issuance of a special tax stamp under § 46.116. A receipt may be given only pending the issuance of a stamp, or where the tax liability relates to a prior tax year.

(26 U.S.C. 6314)

§ 46.107 Penalty for failure to file return or to pay tax.

(a) *Failure to file return.* Any person required by this subpart to file a return on TTB Form 5630.5t who fails to file the return on or before the date for filing prescribed in § 46.103 must pay, in addition to the tax, a delinquency penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect (see § 46.109). The delinquency penalty for failure to file the return on or before the last date prescribed will be 5 percent of the amount required to be shown as tax on the return if the failure to file is for not more than one month; with an additional 5 percent for each additional month or fraction thereof during which the delinquency continues, but not more than 25 percent in the aggregate.

(b) *Failure to pay tax.* Any person who files a return on TTB Form 5630.5t under this subpart and who fails to pay the amount shown as tax on the return on or before the date prescribed in § 46.103 for payment of such tax, must pay a penalty, in addition to the tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect (see § 46.109). The penalty for failure to pay the tax on or before the date prescribed for payment is 0.5 percent of the amount shown as tax on the return if the failure to pay is not for more than one month; with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not more than 25 percent in the aggregate. Any person required to pay the special tax who willfully fails to pay the tax shall be fined not more than \$5,000, or imprisoned not more than 2 years, or both, for each such offense.

(c) *Limitations.* With respect to any return on Form 5630.5t, the amount of the addition under paragraph (a) of this section will be reduced by the amount of the addition under paragraph (b) of this section for any month to which an addition to tax applies under both paragraph (a) and paragraph (b) of this section. If the amount of tax required to be shown as tax on the return is less than the amount shown as tax on such return, the penalties prescribed in paragraphs (a) and (b) of this section will be applied by substituting that lower amount.

(26 U.S.C. 5731, 6651)

§ 46.108 Interest on unpaid tax.

(a) *General.* Interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest will be charged for each day at the rate prescribed by law in effect on that day. Interest accruing after

December 31, 1982, is compounded daily.

(b) *Adjusted interest rates.* Adjusted interest rates, determined in accordance with the procedure prescribed by 26 U.S.C. 6621(b), are announced quarterly by the Commissioner of Internal Revenue. The appropriate TTB officer will provide information, when requested, regarding interest rates applicable to specific time periods.

(26 U.S.C. 6601, 6621)

§ 46.109 Waiver of penalties.

In every case where a special tax return is not filed, or the tax is not paid, at the time prescribed in § 46.103, the delinquency penalties specified in § 46.107 for failure to file a return or for failure to pay the amount shown as tax on the return will be asserted and collected unless a reasonable cause for delay in filing the return or payment of the tax is clearly established. A taxpayer who believes the circumstances that delayed such taxpayer's filing of the return or payment of the tax are reasonable, and who desires to have the penalties waived, must submit with the return a written statement under the penalty of perjury, affirmatively showing all of the circumstances alleged as reasonable causes for delay. If the appropriate TTB officer determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will be waived. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, or if the taxpayer made a satisfactory showing that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would have suffered an undue hardship if the taxpayer had paid on the due date, then the delay is due to reasonable cause. Mere ignorance of the law will not be considered a reasonable cause.

(26 U.S.C. 6651)

Special Tax Stamps**§ 46.116 Issuance, distribution, and examination of special tax stamps.**

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on TTB Form 5630.5t together with the full tax remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, TTB will send to the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) one appropriately designated stamp for each location

listed on the attachment to TTB Form 5630.5t required by § 46.101(b)(2).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer must verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5t and that the information on each stamp is correct. The taxpayer must then forward each stamp to the place of business designated on the stamp. Incorrect stamps must be returned to the appropriate TTB officer as provided in § 46.120.

(c) *Examination of special tax stamps.* Each stamp denoting payment of special tax must be kept available for inspection by an appropriate TTB officer during business hours at the location for which the stamp is designated.

(26 U.S.C. 5732)

§ 46.117 Lost or destroyed stamps.

If a special tax stamp has been lost or destroyed, the taxpayer must immediately notify the TTB officer who issued the stamp. A "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" will be issued to the taxpayer who submits an affidavit explaining to the satisfaction of the appropriate TTB officer that the stamp was lost or destroyed. The certificate must be kept available for inspection in the same manner as prescribed for a special tax stamp in § 46.116(c).

§ 46.118 Certificate in lieu of lost or destroyed special tax stamp.

The provisions of this subpart relating to special tax stamps apply as well to certificates in lieu of lost or destroyed special tax stamps issued to taxpayers under § 46.117.

§ 46.119 Errors disclosed by taxpayers.

On receipt of a special tax stamp, the taxpayer must examine it to ensure that the name and address are correctly stated; if not, the taxpayer must return the stamp to the TTB officer who issued it, with a statement showing the nature of the error and the correct name or address. The appropriate TTB officer, on receipt of such stamp and statement, will compare the data on the stamp with that of the Form 5630.5t in TTB files, correct the error if made in the TTB office, and return the stamp to the taxpayer. However, if the error was in the taxpayer's preparation of the Form 5630.5t, the appropriate TTB officer will require the taxpayer to file a new Form 5630.5t, designated "Amended Return," setting forth the taxpayer's correct name and address, and a statement explaining the error on the original Form 5630.5t. On receipt of the amended Form 5630.5t and a satisfactory explanation of the

error, the appropriate TTB officer will make the proper correction on the stamp and return it to the taxpayer.

§ 46.120 Errors discovered on inspection.

When a TTB officer discovers on a special tax stamp a material error in the name, ownership, or address of the taxpayer, that officer will require the taxpayer to surrender the erroneous tax stamp and prepare a new Form 5630.5t, designated "Amended Return," showing correctly all of the information required in § 46.101 and containing, in the body of the form or in an attachment thereto, a statement of the reason for requesting correction of the stamp. On receipt of the amended return and an acceptable explanation for the error, the officer will make the proper correction on the stamp and return it to the taxpayer. However, if the error found by the TTB officer is on a special tax stamp issued as a result of a return on Form 5630.5t filed under § 46.101(b), that officer will instruct the taxpayer to return the stamp, with a statement showing the nature of the error and the correct data, to the TTB officer who issued the stamp, for correction in accordance with § 46.119.

Changes in Businesses Holding Special (Occupational) Tax Stamps

§ 46.126 Change in name or address.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5t, the taxpayer must file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The taxpayer must attach the special tax stamp for endorsement of the change in name.

(b) *Change in location*—(1) *General.* If there is a change in location of a taxable place of business, the taxpayer must, within 30 days after the change, file with TTB an amended special tax return covering the new location. The taxpayer must attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the taxpayer does not file the amended return within 30 days, the taxpayer is required to pay a new special tax and obtain a new special tax stamp.

(2) *Procedure.* If the taxpayer's original return on TTB Form 5630.5t covered only one location, the taxpayer may deliver the amended return and the stamp at any TTB office, or to any TTB officer inspecting the business, in lieu of mailing them to TTB. If the taxpayer's original return covered multiple locations under the provisions of § 46.101(b), he or she must forward with

the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The appropriate TTB officer receiving such return or stamp will, if the return is submitted within the 30-day period, enter the proper endorsement on the stamp and return it to the taxpayer. (26 U.S.C. 5733, 7011)

§ 46.127 Change in ownership.

(a) *General.* A special tax stamp is a receipt for tax, personal to the one to whom issued, and is not transferable from one manufacturer of tobacco products, manufacturer of cigarette papers and tubes, or export warehouse proprietor to another. If there is a change in the ownership of a special-tax payer, the successor must pay a new special (occupational) tax and obtain the required special tax stamp(s). Examples of changes in ownership that require payment of a new special tax include, but are not limited to, the following:

- (1) Sale of business;
- (2) Formation of a partnership by two persons who have paid special tax;
- (3) Addition of a partner;
- (4) Incorporation of the business;
- (5) Creation of a new corporation to replace one or more corporations that have paid special tax; and
- (6) Stockholder continuing the business of a corporation after its dissolution.

(b) *Changes that do not require payment of a new special tax.* The following changes do not require payment of a special tax:

- (1) Increase in capital stock of a corporation.
- (2) Change in ownership of any or all of the capital stock of a corporation.

(c) *Exemption for certain successors.* Persons identified in paragraph (d) of this section as having the right of succession may carry on the business for the remainder of the tax year for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files with TTB a special tax return on TTB Form 5630.5t showing the basis of succession. A person who is a successor to a business for which special tax has been paid, and who fails to register the succession, is liable for special tax computed from the first day of the calendar month in which the successor began to carry on the business.

(d) *Persons having right of succession.* The right of succession referred to in paragraph (c) of this section will pass to

the identified persons in the following circumstances:

(1) *Death.* The surviving spouse or child, or the executor, administrator, or other legal representative, of a deceased taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her living spouse;

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after the death or withdrawal of a member of a partnership.

(26 U.S.C. 5733)

Stamps for Incorrect Period or Incorrect Liability

§ 46.131 General.

If a taxpayer through error has filed a return and paid special tax for an incorrect period of liability or for an incorrect class of business, the taxpayer must prepare a corrected TTB Form 5630.5t, designated "Amended Return," for each tax year involved and must submit the amended return, or returns, with remittance for the total applicable tax and additions to the tax (delinquency penalties and interest), to TTB in accordance with the instructions on the Form 5630.5t or, if the error is discovered by a TTB officer inspecting the premises, to that officer. Subject to the limitations imposed by 26 U.S.C. 6511, the incorrectly paid tax (including additions thereto) may be allowed as a credit against the correct tax (including any additions thereto), as provided in § 46.132, on surrender of the incorrect stamp or stamps, with the amended return or returns noted to show that credit is requested. Any incorrectly paid tax (including additions thereto) that is not credited as provided in § 46.132, including any creditable tax and additions thereto in excess of the correct tax (including additions thereto), may be refunded pursuant to §§ 46.136 through 46.138 if the taxpayer files a corrected return on Form 5630.5t with remittance of the correct amount of tax (including any additions thereto). A new stamp will be issued only for a current period of liability.

(26 U.S.C. 6011)

§ 46.132 Credit for incorrect stamp.

(a) *General.* The appropriate TTB officer may credit the tax (including additions thereto) paid for an incorrect stamp if the taxpayer has filed an amended return showing the correct tax on TTB Form 5630.5t and has, with the amended return, surrendered the incorrect stamp for credit.

(b) *Underpayment.* Where the correct tax (including any additions thereto) exceeds the incorrect tax paid, the appropriate TTB officer may credit the tax paid against the correct tax upon remittance of the difference between the tax paid and the correct tax plus any additions thereto.

(c) *Overpayment.* Where the tax (and additions thereto) paid for the surrendered incorrect stamp exceeds the amount due, the appropriate TTB officer will advise the taxpayer to file a claim for refund of that excess on TTB Form 5620.8. Sections 46.136 through 46.138 apply to all claims for refund. (26 U.S.C. 6402, 6511)

Abatement or Refund of Special Taxes

§ 46.136 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), must be filed on TTB Form 5620.8. The claim must be filed with the appropriate TTB officer. Each claim must set forth in detail each ground on which it is based and must contain facts sufficient to explain to the appropriate TTB officer the exact basis for the claim. If the claim is for refund of special tax for which a stamp was issued, either the stamp must be attached to and be made a part of the claim, or the claimant must include in the claim a satisfactory explanation of the reason why the stamp cannot be submitted.

§ 46.137 Time limit on filing of claim for refund.

No claim for the refund of a special tax or penalty will be allowed unless presented within 3 years after the filing of the related tax return or within 2 years after the payment of such tax or penalty, whichever of these periods expires later. (26 U.S.C. 6511)

§ 46.138 Discontinuance of business.

A dealer who for any reason discontinues business is not entitled to a refund of special tax for the unexpired portion of the tax year for which the special tax stamp was issued. (26 U.S.C. 5732)

PART 70—PROCEDURE AND ADMINISTRATION

■ 80. The authority citation for part 70 is revised 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.

§ 70.1 [Amended]

■ 81. In § 70.1, the last sentence of paragraph (a)(3) is amended by adding after “and firearms taxes,” the words “registration of dealers in alcohol fit for beverage use.”

§ 70.96 [Amended]

■ 82. In § 70.96, the third sentence of paragraph (c) is amended by removing the words “of liquor dealers”.

§ 70.321 [Amended]

■ 83. Section 70.321 is amended:
■ a. In paragraph (a), by removing and reserving paragraphs (a)(1) through (a)(5) and by removing the undesignated concluding text; and
■ b. By removing the OMB justification statement at the end of the section.

■ 84. Section 70.411 is amended:
■ a. In paragraph (a), by removing the second sentence;
■ b. In paragraph (b), by adding, after the first sentence, a new sentence to read as set forth below;

■ c. Also in paragraph (b), in the last sentence, by adding after “qualification” the words “and registration”;

■ d. In paragraph (c)(16), by removing the words “special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers” and adding, in their place, the words “registration requirement imposed on wholesale and retail dealers in liquors and wholesale and retail dealers in beer”;

■ e. In paragraph (c)(27), by removing the words “special (occupational) and”;

■ f. By removing the OMB justification statement at the end of the section.

■ g. In paragraph (c)(28), by removing the words “special (occupational) and”;

■ h. By removing the OMB justification statement at the end of the section.

■ i. In paragraph (c)(29), by removing the words “special (occupational) and”;

■ j. By removing the OMB justification statement at the end of the section.

■ k. In paragraph (c)(30), by removing the words “special (occupational) and”;

■ l. By removing the OMB justification statement at the end of the section.

■ m. In paragraph (c)(31), by removing the words “special (occupational) and”;

■ n. By removing the OMB justification statement at the end of the section.

■ o. In paragraph (c)(32), by removing the words “special (occupational) and”;

■ p. By removing the OMB justification statement at the end of the section.

■ q. In paragraph (c)(33), by removing the words “special (occupational) and”;

■ a. In paragraph (a), by removing the sixth sentence and, in the last sentence, by removing the words “and the payment of occupational taxes”; and
■ b. By removing the OMB justification statement at the end of the section.

§ 70.414 [Amended]

■ 86. Section 70.414 is amended:
■ a. By removing and reserving paragraph (h);

■ b. In paragraph (j), by removing the words “and claims for refund of special (occupational) tax,”; and

■ c. By removing the OMB justification statement at the end of the section.

■ 87. New §§ 70.421 and 70.422 are added between the end of the § 70.420 and the undesignated center heading below it, to read as follows:

§ 70.421 Alcohol dealer registration.

Every person who sells, or offers for sale, any alcohol product (distilled spirits, wines, or beer) fit for beverage use must register with the Alcohol and Tobacco Tax and Trade Bureau. The specific requirements are contained in the following regulations:

(a) For proprietors of distilled spirits plants, parts 19 and 31 of this chapter;

(b) For bonded wineries, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses, parts 24 and 31 of this chapter;

(c) For brewers, parts 25 and 31 of this chapter;

(d) For persons bringing distilled spirits, wines, or beer from Puerto Rico and the Virgin Islands to the United States, parts 26 and 31 of this chapter;

(e) For importers of distilled spirits, wines, or beer, parts 27 and 31 of this chapter; and

(f) For wholesalers and retailers of distilled spirits, wines, or beer, part 31 of this chapter.

§ 70.422 Registration of manufacturers of nonbeverage products.

For provisions regarding the registration of persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see part 17 of this chapter.

§ 70.431 [Amended]

■ 88. Section 70.431 is amended by removing the word “and” at the end of paragraph (b)(7)(ii), by removing the period at the end of paragraph (b)(7)(iii) and adding, in its place, a semicolon followed by the word “and”, and by adding a new paragraph (b)(7)(iv) to read as follows:

§ 70.431 Imposition of taxes; regulations.

(b) * * *

(7) * * *

(iv) Liability for special (occupational) tax, filing special tax returns, issuance and examination of special tax stamps, and notification of changes to special tax stamps.

* * * * *

Signed: October 17, 2008.

John J. Manfreda,
Administrator.

Approved: March 20, 2009.

Timothy E. Skud,
*Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).*

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