

conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of \$19.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: October 10, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-26653 Filed 10-16-96; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 285, and 295

[T.D. 384]

Manufacture of Cigarette Papers and Tubes and Recodification of Regulations Covering Manufacture of Tobacco Products and Cigarette Papers and Tubes (88D001)

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

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is revising and recodifying the regulations governing the operations of cigarette papers and tubes manufacturers. These revisions consist of a clear definition of the term "set," as such term is applied to cigarette papers. This term is clearly defined in ATF Ruling 81-2, A.T.F.Q.B. 1981-3 75, and is being incorporated in this final rule to provide its ready reference. We have also eliminated

obsolete terms and updated the regulations through the use of modernized language. ATF believes that these revisions will clarify requirements, thus simplifying compliance and relieving some regulatory burden on the industry.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Room 5000, 650 Massachusetts Avenue NW, Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those regulations which are obsolete or burdensome and those regulations whose goals could be better achieved through the private sector, self-regulation or state and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency was instructed to propose changes to its regulations as soon as possible.

The Bureau completed the page by page review of all regulations as directed by the President. In addition, on April 13, 1995, the Bureau published a notice in the Federal Register requesting comments from the public regarding which ATF regulations could be improved or eliminated. As a result of both the Bureau's analysis of its regulations and the public comments received, a number of regulatory initiatives were developed which are intended to accomplish the President's goals. However, no public comments were received on part 285. This final rule implements one of the regulatory initiatives identified by ATF personnel: to revise and recodify the regulations governing the operations of cigarette papers and tubes manufacturers from part 285 into 27 CFR part 270, subpart K. This consolidation in one part of all manufacturing regulations relating to tobacco products and cigarette papers and tubes is consistent with the existing consolidated approach in part 275 on the importation of these items.

Definitions

The Bureau held in ATF Ruling 81-2 that any packaging intended for delivery to the consumer as a unit which contains more than 25 cigarette papers is taxable. The definition of the

term "sets" is being added to the definitions in § 270.11. ATF Ruling 81-2 is therefore obsolete since its provisions are covered by these regulations.

Subpart K

Subpart K is added to part 270 and contains separate undesignated center headings for the taxation of cigarette papers and cigarette tubes, special (occupational) tax provisions, general administrative provisions, qualification requirements for manufacturers, changes subsequent to original qualification of manufacturers, bonds and extensions of coverage of bonds, operations by manufacturers, discontinuance of operations by manufacturers, and claims. Referring the reader to this material by means of the undesignated center headings will offer a more convenient method of locating this information. As a result of these changes, references to part 285 contained in parts 275 and 295 have been amended to references to part 270.

Bonds and Extensions of Coverage of Bonds

Section 270.407 in subpart K has been amended to include the title and new number of the "Extension of Coverage of Bond" form, ATF Form 2105 (5000.7).

Operations by Manufacturers

The Records, Reports and Inventory sections (§§ 270.421-270.434) of amended subpart K have also been amended to include new form numbers. To assist the industry in the transition to the new numbering system, the old form numbers will remain in these regulations. However, immediately after the old form number, the new number will appear enclosed in parentheses. These amendments do not make any substantive changes and are only intended to improve the clarity of Title 27 CFR or relieve regulatory requirements.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no new requirement to collect information is imposed. This final rule only transfers 27 CFR part 285 to 27 CFR subpart K.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not

required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small businesses in accordance with 26 U.S.C. 7805(f).

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is found to be unnecessary and contrary to the public interest to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is found to be unnecessary and contrary to the public interest to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal drafter of this document is Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Claims, Electronic fund

transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, (Government agencies), Cigarette papers and tubes, Cigars, Cigarettes, Claims, Electronic fund transfer, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 295

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

Authority and Issuance

Accordingly, ATF is amending Title 27 of the Code of Federal Regulations as follows:

Sec. A. Title 27 CFR part 270 is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Paragraph 1. The authority citation for part 270 continues to read as follows:

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

Par. 2. Section 270.1 is revised to read as follows:

§ 270.1 Manufacture of tobacco products and cigarette papers and tubes.

This part contains regulations relating to the manufacture of tobacco products and cigarette papers and tubes; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products.

Par. 3. Section 270.11 is amended by adding and revising the following definitions:

§ 270.11 Meaning of terms.

* * * * *

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

Cigarette papers. Taxable books or sets of cigarette papers, i.e., books or sets of cigarette papers containing more than 25 papers each.

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

* * * * *

Factory. The premises of a manufacturer of tobacco products as described in his permit issued under 26 U.S.C. chapter 52, or the premises of a manufacturer of cigarette papers and tubes on which such business is conducted.

* * * * *

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for personal use or consumption.

* * * * *

Package. The immediate container in which tobacco products or cigarette papers or tubes are put up in by the manufacturer and offered for sale or delivery to the consumer.

* * * * *

Removal or remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling of other unlawful importation of such articles into the United States.

* * * * *

Sets. Any collection, grouping, or packaging of cigarette papers made up by any person for delivery to the consumer as a unit.

* * * * *

Par. 4. Subpart K is added to read as follows:

Subpart K—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Taxes

Sec.

- 270.351 Cigarette papers.
- 270.352 Cigarette tubes.
- 270.353 Persons liable for tax.
- 270.354 Determination of tax and method of payment.
- 270.355 Return of manufacturer.
- 270.356 Adjustments in the return of manufacturer.
- 270.357 Payment of tax by electronic fund transfer.
- 270.358 Assessment.
- 270.359 Employer identification number.
- 270.360 Application for employer identification number.
- 270.361 Execution and filing of Form SS-4.

Special (Occupational) Taxes

- 270.371 Liability for special tax.
- 270.372 Rate of special tax.
- 270.373 Special tax returns.

- 270.374 Issuance, distribution, and examination of special tax stamps.
270.375 Changes in special tax stamps.

General

- 270.382 Authority of ATF officers to enter premises.
270.383 Interference with administration.
270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.
270.385 Alternate methods or procedures.
270.386 Emergency variations from requirements.
270.387 Penalties and forfeitures.

Qualification Requirements for Manufacturers

Original Qualifications

- 270.391 Persons required to qualify.
270.392 Bond.
270.393 Power of attorney.
270.394 Notice of approval of bond.

Changes After Original Qualification

- 270.395 Change in name.
270.396 Change in proprietorship.
270.397 Change in location.

Bonds and Extensions of Coverage of Bonds

- 270.401 Corporate surety.
270.402 Two or more corporate sureties.
270.403 Deposit of securities in lieu of corporate surety.
270.404 Amount of bond.
270.405 Strengthening bond.
270.406 Superseding bond.
270.407 Extension of coverage of bond.
270.408 Approval of bond and extension of coverage of bond.
270.409 Termination of liability of surety under bond.
270.410 Release of pledged securities.

Operations by Manufacturers

Records

- 270.421 General.

Reports

- 270.422 General.
270.423 Opening.
270.424 Monthly.
270.425 Special.
270.426 Closing.

Inventories

- 270.431 General.
270.432 Opening.
270.433 Special.
270.434 Closing.

Document Retention

- 270.435 General.

Packages

- 270.441 General.

Miscellaneous Operations

- 270.451 Transfer in bond.
270.452 Release from customs custody.
270.453 Use of the United States.
270.454 Removal for export purposes.

Permanent Discontinuance of Business

- 270.461 Discontinuance of operations.

Claims by Manufacturers

General

- 270.471 Abatement.
270.472 Credit or refund.
270.474 Remission.

Lost or Destroyed

- 270.475 Action by claimant.

Withdrawn From the Market

- 270.476 Action by claimant.
270.477 Action by regional director (compliance).
270.478 Disposition of cigarette papers and tubes and schedule.

§ 270.351 Cigarette papers.

On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, the following taxes are imposed by law:

- (a) Cigarette papers removed before January 1, 1991, 1/2 cent for each 50 papers or fractional part thereof.
(b) Cigarette papers removed on or after January 1, 1991, and before January 1, 1993, 0.625 cent for each 50 papers or fractional part thereof.
(c) Cigarette papers removed on or after January 1, 1993, 0.75 cent for each 50 papers or fractional part thereof.
(d) Where cigarette papers measure more than 6 1/2 inches in length, they shall be taxable at the above rates, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette paper.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.352 Cigarette tubes.

On cigarette tubes, manufactured in or imported into the United States, the following tax is imposed by law for each 50 tubes or fractional part thereof:

- (a) Cigarette tubes removed before January 1, 1991, 1 cent.
(b) Cigarette tubes removed on or after January 1, 1991 and before January 1, 1993, 1.25 cents.
(c) Cigarette tubes removed on or after January 1, 1993, 1.5 cents.
(d) Where cigarette tubes measure more than 6 1/2 inches in length, they shall be taxable at the above rates, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette tube.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.353 Persons liable for tax.

The manufacturer of cigarette papers and tubes shall be liable for the taxes imposed on such articles by 26 U.S.C. 5701. When a manufacturer of cigarette papers and tubes transfers such papers and tubes without payment of tax, pursuant to 26 U.S.C. 5704 to the bonded premises of another such manufacturer, a manufacturer of tobacco

products, or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt of such papers and tubes and the transferor shall thereupon be relieved of liability for the tax. When cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of such papers and tubes or a manufacturer of tobacco products, the transferee shall become liable for the tax on the papers and tubes upon release from customs custody. Any person who possesses cigarette papers and tubes in violation of 26 U.S.C. 5751(a) (1) or (2), shall be liable for a tax equal to the rate of tax applicable to such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 270.354 Determination of tax and method of payment.

Except for removals without payment of tax and transfers in bond, as authorized by law, no cigarette papers and tubes shall be removed until the taxes imposed by section 5701, I.R.C., have been determined. The payment of taxes on cigarette papers and tubes which are removed on determination of tax shall be made by return in accordance with the provisions of this subpart.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.355 Return of manufacturer.

(a) *Requirement for filing.* A manufacturer of cigarette papers and tubes shall file, for each factory, a semimonthly tax return on ATF Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if:

- (1) Cigarette papers and tubes were not removed subject to tax during the period, and
(2) The regional director (compliance) has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.*

Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the first day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

(d) *Preparation and filing.* The return shall be executed and filed with ATF in accordance with the instructions on the form.

(e) *Remittance of tax.* Except as provided in § 270.357, remittance of the tax, if any, shall accompany the return.

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each

semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 270.357, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

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

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26, as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date

falls on a Sunday, the return and remittance shall be due on the immediately following day.

(Approved by the Office of Management and Budget under Control Number 1512–0467).

§ 270.356 Adjustments in the return of manufacturer.

Adjustments may be made in Schedules A and B of the manufacturer's semimonthly tax return, ATF Form 5000.24, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, or where notice has been received from the regional director (compliance) that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim on ATF Form 2635 (5620.8) for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in 26 U.S.C. 6511. Any adjustment made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(72 Stat. 1417, 68A Stat. 791; 26 U.S.C. 5703, 6402)

§ 270.357 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five millions dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 270.355, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR §§ 1.563–1 through 1.1563–4. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, ATF Form 5000.24, for each factory from which cigarette papers or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account or the Federal Reserve Bank of New York as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 270.355. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 270.355. Upon filing the first return on

which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to ATF Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

c. *Remittance.* (1) Each taxpayer shall show on the return, ATF Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with ATF, in accordance with the instructions of ATF Form 5000.24.

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

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

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

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an AFT Procedure entitled Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1512-0457) (Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

§ 270.358 Assessment.

Whenever any person required by law to pay tax on cigarette papers and tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the

penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.359 Employer identification number.

The employer identification number (EIN) (defined at 26 CFR 301.7701-12) of a manufacturer of cigarette papers and/or tubes who has been assigned such a number shall be shown on each semimonthly tax return, ATF Form 5000.24, and special tax return (including amended returns), ATF Form 5630.5, filed under this subpart. Failure of the taxpayer to include the EIN on ATF Form 5000.24 may result in assertion and collection of the penalty specified in § 70.113 of this chapter. Failure of the taxpayer to include the EIN on ATF Form 5630.5 may result in the imposition of the penalty specified in 27 CFR 70.113 of this chapter.

(75 Stat. 828; 26 U.S.C. 6109, 6676)

§ 270.360 Application for employer identification number.

Each manufacturer of cigarette papers and tubes who has neither secured an EIN nor made application therefor shall file an application on IRS Form SS-4. IRS Form SS-4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this subpart is filed. Each manufacturer shall make application for and shall be assigned only one EIN for all internal revenue purposes.

(75 Stat. 828; 26 U.S.C. 6109)

§ 270.361 Execution and filing of Form SS-4.

The application on IRS form SS-4, together with any supplementary statement, shall be prepared in accordance with the applicable form, instructions, and regulations, and the data called for shall be set forth fully and clearly. The application shall be filed with the service center director serving the internal revenue district where the applicant is required to file returns under this subpart, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR § 301.6091-1. The application shall be signed by:

(a) the individual if the person is an individual;

(b) the president, vice president, or other principal officer if the person is a corporation;

(c) a responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or

(d) the fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

Special (Occupational) Taxes

§ 270.371 Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 270.372 of this part. The tax shall be paid on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.372 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of \$1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.371 relates) are less than \$500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who

commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.373 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 270.359-361).

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

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

(6) *Ownership and control information:* That is, 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" shall include every partner, if the taxpayer is a partnership, and every person owning 10% 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 ATF in connection with a permit application, and if the information previously provided is still current.

(c) *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 shall—

(1) File one special tax return, ATF Form 5630.5, 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 ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by State, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.371.

(d) *Signing of ATF Forms 5630.5.*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall 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 ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

§ 270.374 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.373(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

§ 270.375 Changes in special tax stamps.

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

(b) *Change in proprietorship.*—(1) *General.* If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a

new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period 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 a special tax return on ATF Form 5630.5 with ATF, which shows 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.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

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

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

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

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

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall 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 manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

General

§ 270.382 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where cigarette papers and tubes are produced or kept, so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his or her official duties. The owner of such premises, or person having the superintendence of the same, who

refuses to admit any ATF officer or permit any ATF officer to examine such cigarette papers and tubes shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872; 903 26 U.S.C. 7342, 7606)

§ 270.383 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any ATF officer acting in an official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation or intended violation of this subpart, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.

Forfeited, condemned, or abandoned cigarette papers or tubes in the custody of a Federal, State, or local officer upon which the Federal tax has not been paid shall not be sold or caused to be sold for consumption in the United States if, in the opinion of the officer, the sale of such papers and tubes will not bring a price equal to the tax due and payable, and the expenses incident to the sale.

Where the cigarette papers or tubes are not sold the officer may deliver them to a Federal or State institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such papers or tubes are sold, release by the officer having custody shall be made only after such papers and tubes are properly packaged and taxed. A receipt from the regional director (compliance) evidencing payment of tax on such papers or tubes shall be presented to the officer having custody of the articles, which tax shall be considered part of the sales price. Where cigarette papers or tubes which have been packaged under the provisions of part 295 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package "Federal Tax Paid (date)" before the officer having custody of the papers or tubes releases them. However, the articles may be released without such marking of the packages if the purchaser is a qualified manufacturer of cigarette papers and tubes and does not intend to place such papers or tubes on the domestic market for taxable articles but will otherwise dispose of them. A written statement of notification of disposal by destruction or return to

bond through claim for refund, shall be filed, in original only, with the officer having custody of the articles. In the case of cigarette papers and tubes forfeited under the internal revenue laws, the sale shall be subject to the provisions of part 72 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

§ 270.385 Alternate methods or procedures.

A manufacturer of cigarette papers and tubes, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when the Director finds that—

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

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

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

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. A manufacturer who desires to employ an alternate method or procedure shall submit a written application, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the revenue is jeopardized or the effective administration of this part is hindered. Any authorization of the Director under this section shall be retained as part of the manufacturer's record in accordance with this subpart.

§ 270.386 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications;

(b) Will not hinder the effective administration of this subpart; and

(c) Will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer shall submit a written application to do so (in triplicate) to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. In accordance with this subpart, any authorization of the Director under this section shall be retained as part of the manufacturer's records.

§ 270.387 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this subpart becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

Qualification Requirements for Manufacturers*Original Qualifications***§ 270.391 Persons required to qualify.**

Every person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his or her own personal use or consumption, shall first qualify as a manufacturer of cigarette papers and

tubes in accordance with the provisions of this subpart.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.392 Bond.

Every person, before commencing business as a manufacturer of cigarette papers and tubes, shall file a bond on ATF Form 2102 (5210.1). Such bond shall be filed in accordance with the applicable provisions of subpart G of this part and conditioned upon compliance with the provisions of 26 U.S.C. Chapter 52, and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which the manufacturer may become liable to the United States.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.393 Power of attorney.

If the bond or any other document required under this part is signed by an attorney in fact for an individual, partnership, association, company, or corporation, by one of the partners for a partnership, or by one of the members of an association, a power of attorney on ATF Form 1534 (5000.8) shall be furnished to the regional director (compliance). If such bond or other document is signed on behalf of a corporation by an officer thereof, it must be supported by duly authenticated extracts of the stockholders' meeting, by-laws, or directors' meeting authorizing such officer to execute such document for the corporation. ATF Form 5000.8 or support of authority does not have to be filed again with a regional director (compliance) where such form or support has previously been submitted to that regional director (compliance) and is still in effect.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.394 Notice of approval of bond.

If the bond required under this subpart is approved by the regional director (compliance), a number will be assigned to the factory of the manufacturer of cigarette papers and tubes for internal revenue purposes. The regional director (compliance) will immediately notify the manufacturer, in writing, of the bond approval, in order that the manufacturer may commence operations.

(72 Stat. 1421; 26 U.S.C. 5711)

*Changes after Original Qualifications***§ 270.395 Change in name.**

Where there is a change in the individual, trade, or corporate name of a manufacturer of cigarette papers and tubes, the manufacturer shall, within 30

days of the change, furnish the regional director (compliance) a written notice of such change.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.396 Change in proprietorship.

Where there is to be any change in proprietorship (including a change in the identity of the members of a partnership or association, but excluding any change in stock ownership in a corporation) of the business of a manufacturer of cigarette papers and tubes, the proposed successor shall, before commencing operations, qualify as a manufacturer of cigarette papers and tubes, in accordance with this part. If such manufacturer promptly files the required documentation with the regional director (compliance), an administrator, executor, receiver, trustee, assignee, or other fiduciary successor may liquidate the business without qualifying as a manufacturer. The manufacturer must promptly file with the regional director (compliance) a statement of the intent to liquidate and furnish a certified copy of the order of the court, or other pertinent documents. These documents must show the appointment and qualification of any administrator, executor, receiver, trustee, assignee, or other fiduciary, together with an extension of coverage of the predecessor's bond executed by the administrator, executor, receiver, trustee, assignee, or other fiduciary and the surety, in accordance with the provisions of § 270.407. The predecessor shall make a closing inventory and closing report in accordance with the provisions of §§ 270.434 and 270.426, respectively, and the successor shall make an opening inventory and opening report, in accordance with the provision of §§ 270.432 and 270.423, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

§ 270.397 Change in location.

Whenever a manufacturer of cigarette papers and tubes contemplates a change in location of a factory within the same region, the manufacturer shall, before commencing operations at the new location, file an extension of coverage of bond in accordance with the provisions of § 270.407. Whenever a manufacturer of cigarette papers and tubes contemplates changing the location of a factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as a manufacturer in the new region, in accordance with the applicable provisions of this subpart, and make a closing inventory and closing report, in

accordance with the provisions of §§ 270.434 and 270.426, respectively. (72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

Bonds and Extensions of Coverage of Bonds

§ 270.401 Corporate surety.

(a) Surety bonds required by this subpart may be given only with corporate sureties holding certificates of authority from, and subject to any limitations prescribed by the Secretary of the Treasury as set forth in the current revision of Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever deemed necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 is published in the Federal Register annually as of the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, D.C. 20220.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.402 Two or more corporate sureties.

A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties. However, each corporate surety may limit its liability in terms upon the face of the bond in a definite, specific amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as

Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). (See § 270.401(c)) When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required amount of the bond.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.403 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of cigarette papers and tubes may pledge and deposit, as security for the bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

(61 Stat. 650, 72 Stat. 1421, 31 U.S.C. 9301, 9303, 26 U.S.C. 5711, 5 U.S.C. 552(a) (80 Stat. 383, as amended))

§ 270.404 Amount of bond.

The amount of the bond of a manufacturer of cigarette papers and tubes shall be not less than the maximum amount of the tax liability on the cigarette papers and tubes manufactured in the factory, received without payment of tax from other factories, and released without payment of tax from customs custody as provided in § 270.452, during any month. In the case of a manufacturer commencing business, the production, receipts from other factories, and releases from customs custody, without payment of tax, shall be estimated for the purpose of this section. The amount of any such bond (or the total amount where strengthening bonds are filed) shall not exceed \$20,000, nor be less than \$1,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.405 Strengthening bond.

Where the regional director (compliance) determines that the amount of the bond, under which a manufacturer of cigarette papers and tubes is currently carrying on such business, no longer adequately protects the revenue, the regional director (compliance) may require the manufacturer to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 270.404. The regional director (compliance) shall refuse to approve any strengthening bond where any notation is made thereon which is intended or

which may be construed as a release of any former bond, or as limiting the amount of either bond to less than its full amount.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.406 Superseding bond.

A manufacturer of cigarette papers and tubes shall file a new bond to supersede the current bond immediately when:

- (a) The corporate surety on the current bond becomes insolvent,
- (b) The regional director (compliance) approves a request from the surety of the current bond to terminate liability under the bond,
- (c) Payment of any liability under a bond is made by the surety thereon, or
- (d) The regional director (compliance) considers such a superseding bond necessary for the protection of the revenue.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.407 Extension of coverage of bond.

An extension of the coverage of bond filed under this subpart shall be manifested on ATF Form 2105 (5000.7), Extension of Coverage of Bond, by the manufacturer of cigarette papers and tubes and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

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

No person shall commence operations under any bond, nor extend operations, until such person receives from the regional director (compliance) notice of approval of the bond or an appropriate extension of coverage of the bond required under this subpart. Upon receipt of an approved bond or extension of coverage of bond from the regional director (compliance), such bond or extension of coverage of bond shall be retained by the manufacturer of cigarette papers and tubes in factory and shall be made available for inspection by any ATF officer upon request.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.409 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the discontinuance of operations by the manufacturer of cigarette papers and tubes, or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in

respect of any liability for unpaid taxes, penalties and interest, not in excess of the amount of the bond, incurred by the manufacturer while the bond is in force. (72 Stat. 1421; 26 U.S.C. 5711)

§ 270.410 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 270.403 shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the regional director (compliance) until liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as is deemed necessary.

(61 Stat. 650, 72 Stat. 1421; 31 U.S.C. 9301, 9303; 26 U.S.C. 5711)

Operations By Manufacturers

Records

§ 270.421 General.

Every manufacturer of cigarette papers and tubes shall keep records of the daily operations and transactions, which shall reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes:

- (a) Manufactured;
- (b) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;
- (c) Removed subject to tax;
- (d) Removed, without payment of tax, for export purposes, use of the transfer in bond pursuant to § 270.451; or
- (e) Lost or destroyed.

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

(72 Stat. 1423; 26 U.S.C. 5741)

Reports

§ 270.422 General.

Every manufacturer of cigarette papers and tubes shall make a report, on ATF Form 2138 (5230.3), to the regional director (compliance), of the number of books or sets of cigarette papers of each

different numerical content and the number of cigarette tubes manufactured, received, removed, and lost or destroyed. The report shall be made at the times specified in this subpart and shall be made whether or not any operations or transactions occurred during the period covered by the report. A copy of each report shall be retained by the manufacturer in accordance with the provisions of this subpart.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.423 Opening.

An opening report, covering the period from the date of the opening inventory to the end of the month, shall be made on or before the 10th day following the end of the month in which the business was commenced.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.424 Monthly.

A report for each calendar month shall be made on or before the 20th day of the next succeeding month.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.425 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an ATF officer, shall be made with such inventory. Another report, covering the period from the date of the special inventory to the end of the month, shall be made on or before the 14th day following the end of the month in which the inventory was made.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.426 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, shall be made with such inventory.

(72 Stat. 1422; 26 U.S.C. 5722)

Inventories

§ 270.431 General.

Every manufacturer of cigarette papers and tubes shall provide a true and accurate inventory, on ATF Form 2132 (5230.2), to the regional director (compliance), of the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart. Such inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the manufacturer in accordance with this subpart.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.432 Opening.

An opening inventory shall be made by the manufacturer of cigarette papers and tubes at the time of first commencing business.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.433 Special.

A special inventory shall be made by the manufacturer of cigarette papers and tubes when required by any ATF officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.434 Closing.

A closing inventory shall be made by the manufacturer of cigarette papers and tubes when a change in proprietorship occurs, or when the manufacturer changes location of the factory to another region, or concludes business. Where a change in proprietorship occurs, the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

Document Retention

§ 270.435 General.

All records and reports required to be kept or maintained under this subpart, including copies of authorizations, inventories, reports, returns, and claims filed with verified supporting schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any ATF officer upon request.

(72 Stat. 1423; 26 U.S.C. 5741)

Packages

§ 270.441 General.

All cigarette papers and tubes shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the papers or tubes therein. No package of cigarette papers or tubes shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon:

- (a) Any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery,
- (b) Any indecent or immoral picture, print, or representation, or
- (c) Any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

*Miscellaneous Operations***§ 270.451 Transfer in bond.**

A manufacturer of cigarette papers and tubes may transfer such papers and tubes, under bond, without payment of tax, to the bonded premises of any manufacturer of cigarette papers and tubes, or to the bonded premises of a manufacturer of tobacco products solely for use in the manufacture of cigarettes. The transfer of cigarette papers and tubes, without payment of tax, to the bonded premises of an export warehouse proprietor shall be in accordance with the provisions of part 290 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

§ 270.452 Release from customs custody.

Cigarette papers and tubes which were made in the United States, exported, and subsequently returned to the United States, may be removed from customs custody for transfer to the premises of a manufacturer without payment of the internal revenue tax, upon compliance with part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.453 Use of the United States.

A manufacturer of cigarette papers and tubes may remove cigarette papers and tubes covered under bond, without payment of tax, for use of the United States. Such removal shall be in accordance with the provisions of part 295 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.454 Removal for export purposes.

The removal of cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

*Permanent Discontinuance of Business***§ 270.461 Discontinuance of operations.**

Every manufacturer of cigarette papers and tubes who desires to discontinue operations and close out a factory shall dispose of all cigarette papers and tubes on hand, in accordance with this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 270.434 and 270.426, respectively.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

*Claims By Manufacturers**General***§ 270.471 Abatement.**

A claim for abatement of the unpaid portion of the assessment of any tax on cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after the expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on ATF Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the tax or liability was assessed.

(68A Stat. 792, 6404)

§ 270.472 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market. Any claim for allowance under this section shall be filed on ATF Form 2635 (5620.8) with the regional director (compliance) for the region in which the articles were removed, shall be executed under penalties and perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in § 270.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in § 270.476 shall be filed with the regional director (compliance) for the region in which the articles are assembled. The manufacturer may not anticipate allowance of a claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such articles were so removed. Upon action on the claim by the regional

director (compliance) a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action. This copy of ATF Form 2635 (5620.8), with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers or tubes to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the cigarette papers or tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

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

§ 270.473 Credit or refund.

The taxes paid on cigarette papers and tubes may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the regional director (compliance) that the claimant manufacturer paid the tax on cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by the manufacturer from the market. Any claim for credit or refund under this section shall be prepared on ATF Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on cigarette papers and tubes by 26 U.S.C. 7652 or Chapter 52, was paid in respect to the cigarette papers or tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to articles lost or destroyed shall be supported as prescribed in § 270.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 270.476, and 270.477. The original and one copy of ATF Form 2635 (5620.8), shall be filed with the regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid. Upon action by the regional director (compliance) on a claim for credit, a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notification of

allowance or disallowance of the claim or any part thereof. This copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof, the manufacturer shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. The manufacturer may not anticipate allowance of a claim by taking credit on a tax return prior to consideration and action on such claim. The duplicate of a claim for refund or credit, with a copy of any verified supporting schedules, shall be retained by the manufacturer.

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

§ 270.474 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes in bond are lost (other than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the regional director (compliance) for the region in which the factory is located. If the manufacturer wishes to be relieved of the tax liability, a claim on ATF Form 2635 (5620.8), in duplicate, shall also be prepared, setting forth the nature, date, place, and extent of the loss or destruction. The original and one copy of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the factory is located. Upon action on the claim by the regional director (compliance), the copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5707)

Lost or Destroyed

§ 270.475 Action by claimant.

Where cigarette papers and tubes are lost (other than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file claim under the provisions of § 270.472 or § 270.473, the manufacturer shall indicate on the claim the nature, date, and extent of such loss or destruction. The claim shall be accompanied by such evidence as necessary to establish to the satisfaction

of the regional director (compliance) that the claim is valid.

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

Withdrawn From the Market.

§ 270.476 Action by Claimant.

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.472 or § 270.473, the manufacturer shall assemble the articles in or adjacent to a factory if they are to be retained in or received into such factory, or at any suitable place if they are to be destroyed. The manufacturer shall group the articles according to the rate of tax applicable thereto, and shall prepare and submit a schedule of the articles, on ATF Form 3069 (5200.7) in accordance with the instructions, on the form. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the articles are assembled.

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

§ 270.477 Action by regional director (compliance).

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

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

§ 270.478 Disposition of cigarette papers and tubes and schedule.

When so authorized, as evidenced by the regional director's (compliance) statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the articles are disposed of, the manufacturer shall execute a certificate on both copies of the schedule received from the regional director (compliance), to show the disposition and the date of disposition of the articles. In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim for credit or refund, ATF Form 2635 (5620.8), filed under § 270.473. When an ATF officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of the assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In

connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for the record, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim filed under § 270.473.

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

Sec. B. The regulations in 27 CFR part 275 are amended as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 275 continues to read as follows:

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

§ 275.63 [Amended]

Par. 2. Section 275.63(a) is amended by removing “parts 270 and 285” and adding “part 270”.

§ 275.85 [Amended]

Par. 3. Section 275.85 concluding text is amended by removing “part 270 and part 285” and adding “part 270”.

Par. 4. Section 275.85a(b) is amended by removing “part 270 or 285” and adding “part 270”.

§ 275.86 [Amended]

Par. 5. Section 275.86 is amended by removing “parts 270 and 285” and adding “part 270”.

§ 275.115 [Amended]

Par. 6. Section 275.115a (a)(1) and (b)(1) are amended by removing “parts 270 and 285” and adding “part 270”.

§ 275.137 [Amended]

Par. 7. Section 275.137 introductory text is amended by removing “parts 270 and 285” and adding “part 270”.

§ 275.140 [Amended]

Par. 8. Section 275.140 is amended by removing “part 285” and adding “part 270”.

Sec. C. The regulations in 27 CFR part 285 are amended as follows:

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

PART 285—[REMOVED AND RESERVED]

Paragraph 1. Part 285 is removed and reserved.

Sec. D. The regulations in 27 CFR part 295 are amended as follows:

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Paragraph 1. The authority citation for part 295 continues to read as follows:

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

Par. 2. Section 295.34 is amended by removing the phrase "or Part 285".

Signed: June 10, 1996.

John W. Magaw,
Director.

Approved: July 29, 1996.

Dennis M. O'Donnell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 96-26305 Filed 10-16-96; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Transfer Treaty Cases

AGENCY: United States Parole Commission, Dept. of Justice.

ACTION: Final rule; correction.

SUMMARY: The U.S. Parole Commission is correcting typographical errors in the final rule regarding the number of hearing examiners required to conduct a hearing for a prisoner transferred to the United States pursuant to treaty. The rule appeared in the Federal Register on July 25, 1996 (61 FR 144).

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD, 20815. Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: On July 25, 1996, the Parole Commission published a final rule regarding the procedures followed in cases involving prisoners who are transferred to the United States pursuant to treaty, to serve a sentence imposed in the transferring country. Prior to the rule change, the Commission's regulation required that special transferee hearings be conducted by panels of two hearing examiners. The rule was changed by

reducing the number from two hearing examiners to one hearing examiner. The following correction is made to the final rule published on July 25, 1996 (61 FR 144).

1. The first sentence of § 2.62(h)(6) in the second column on page 38570 which reads, "(6) The transferee shall be notified of the examiner's recommending findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion of the hearing. * * *" is corrected to read as follows:

"(6) The transferee shall be notified of the examiner's recommended findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion of the hearing. * * *"

* * * * *

Dated: October 7, 1996.

Edward F. Reilly, Jr.,
Chairman, U.S. Parole Commission.
[FR Doc. 96-26656 Filed 10-16-96; 8:45 am]
BILLING CODE 4410-10-P

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Transfer Treaty Prisoners

AGENCY: United States Parole Commission, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its regulations to extend the time within which the Commission normally conducts a hearing for a prisoner who is transferred to the United States to serve a foreign sentence. The extension is from four months to six months. This extension reflects the need for the preparation of postsentence reports supported by translations of foreign court documents, and for completion of other procedures (including a thorough prehearing assessment by Commission staff) prior to conducting a hearing to determine a release date and a period and conditions of supervised release. The Commission is also amending its regulations to permit the agency to render a determination without a hearing in the case of a transferee who is given a release date by the Bureau of Prisons that is less than six months from the date the transferee enters the United States. These are cases in which the time is too short for the Commission to prepare for, and conduct, an in-person hearing. The Commission must nonetheless discharge its statutory responsibility to place the transferee

under a period and conditions of supervised release before the transferee is released from prison.

DATES: November 18, 1996. Comments must be submitted by December 16, 1996.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: When the Commission originally established its procedures for conducting transfer treaty hearings under 18 U.S.C. 4106A, four months from the date of the prisoner's arrival in the United States appeared to be an adequate time to have a postsentence report prepared, the views of the prisoner's representative submitted, the case reviewed by Commission staff, and for the prisoner to be given an in-person hearing. A more realistic time frame would now appear to be six months. For those cases in which foreign court documents need to be translated (a procedure that will increasingly be requested by the Commission) an extended time frame is a practical necessity. This extension will not prejudice those transferees who believe that they are qualified to receive an early release date from the Commission, because the amended rule will set forth the Commission's current procedure permitting the transferee to waive a hearing in order to be released from prison within 60 days.

A special problem is raised by transferees who, through the application of jail credits and/or service credits from the Bureau of Prisons, are scheduled for release from prison shortly after their arrival in the United States. For example, some nations do not award credit for jail time, which is awarded by the Bureau of Prisons in accordance with U.S. law as soon as the transferee is received into United States custody. The Commission has experienced a number of cases wherein a release date is established by the Bureau of Prisons that does not permit the Commission time to conduct an in-person hearing. Yet, 18 U.S.C. 4106A requires the Commission to establish both a release date and a period and conditions of supervised release. Accordingly, the Commission is amending its regulation to permit it to render this determination without conducting a hearing when the release date established by the Bureau of Prisons falls too soon for a hearing to be conducted under normal procedures. Even in cases wherein the transferee's immediate release is required, the