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Amendments To Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes, and Facilitate Use of the International Trade Data System; Proposed Rule

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 1, 4, 5, 7, 26, 27, and 41**

[Docket No. TTB-2016-0004; Notice No. 159]

RIN 1513-AC15

Amendments To Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes, and Facilitate Use of the International Trade Data System**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations governing the importation of distilled spirits, wine, beer and malt beverages, tobacco products, processed tobacco, and cigarette papers and tubes. The proposed amendments are intended to clarify and streamline import procedures, and support the implementation of the International Trade Data System and the filing of import information electronically in conjunction with an electronic import filing with U.S. Customs and Border Protection (CBP). The proposed amendments include providing the option for importers to file import-related data electronically when filing entry or entry summary data electronically with CBP, as an alternative to the current TTB requirements that importers submit paper documents to CBP upon importation.

DATES: Comments must be received on or before August 22, 2016.

ADDRESSES: Please send your comments on this proposed rule to one of the following addresses. Comments submitted by other methods, including email, will not be accepted.

- *Internet:* <https://www.regulations.gov> (via the online comment form for this document as posted within Docket No. TTB-2016-0004 at “*Regulations.gov*,” the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, selected supporting materials, and any comments TTB receives about this proposal at <https://www.regulations.gov> within Docket No. TTB-2016-0004. A direct link to this docket is posted on the TTB Web site at https://www.ttb.gov/regulations_laws/all_rulemaking.shtml under Notice No. 159. You also may view copies of this document, all related supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen Welch, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453-1039, extension 046.

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I. Background*A. TTB Authority*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury regulates, among other things, the importation of distilled spirits, wine, and malt beverages¹ pursuant to the Federal Alcohol Administration Act (FAA Act). TTB also administers the provisions of the Internal Revenue Code of 1986, as amended (IRC), with respect to the taxation of distilled spirits, wine, beer,² tobacco products, processed tobacco, and cigarette papers and tubes. These statutory provisions are the basis of TTB

¹ The FAA Act defines “malt beverage” as “a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.” See 27 U.S.C. 211(a)(7). Throughout this document, the term “malt beverage” is used in reference to the FAA Act or regulations promulgated thereunder.

² The IRC defines “beer” as “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.” See 26 U.S.C. 5052(a). Throughout this document, the term “beer” is used in reference to the IRC or regulations promulgated thereunder.

regulations that require importers to submit certain information upon importation.

Section 103(a) of the FAA Act (27 U.S.C. 203(a)) requires that a person obtain a permit before engaging in certain activities related to distilled spirits, wine, and malt beverages, including importation. This section of the FAA Act states that it shall be unlawful, except pursuant to a “basic permit” issued by the Secretary of the Treasury (the Secretary), to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. Section 103(a) of the FAA Act also states that it is unlawful, except pursuant to a basic permit, for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. The terms “distilled spirits” and “wine,” when used in the context of the FAA Act, apply only to distilled spirits and wine for nonindustrial use.

Additionally, section 105(e) of the FAA Act (27 U.S.C. 205(e)) authorizes the Secretary to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of distilled spirits, wine, and malt beverages. With regard to imported commodities, the FAA Act provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained a certificate of label approval (COLA) and being in possession of that COLA.

Chapter 51 of the IRC pertains to the taxation and regulation of distilled spirits (including spirits used for both beverage and nonbeverage purposes), wine, and beer (see 26 U.S.C. chapter 51). The IRC imposes a Federal excise tax on all distilled spirits, wine, and beer manufactured in or imported into the United States. See, respectively, 26 U.S.C. 5001, 5041, and 5051. Section 7652 (26 U.S.C. 7652) imposes a tax on distilled spirits, wine, and beer brought into the United States from Puerto Rico and the U.S. Virgin Islands. The tax is equal to the internal revenue tax imposed on like commodities produced in the United States.

In general, the tax on distilled spirits, wine, and beer either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by CBP, along with any import duties. Puerto Rico is within the customs territory of the United States, and, as a result, shipments of such products from Puerto Rico do not

pass through customs custody when brought into the United States. Furthermore, Puerto Rico is part of the United States for purposes of the FAA Act. See 27 U.S.C. 211(a)(1). This proposed rule primarily addresses amendments to the TTB regulations to facilitate the electronic filing of information with CBP, and, as a result, distilled spirits, wine, and beer brought into the United States from Puerto Rico are not addressed in this document.

The IRC provides that, under limited circumstances, products may be withdrawn from customs custody without payment of tax for transfer to the bonded premises of an industry member regulated by TTB. Proprietors of distilled spirits plants must apply for and receive notice of a registration before commencing operations in the United States. See 26 U.S.C. 5171. Proprietors of bonded wine cellars must also apply for and receive permission to operate before commencing operations in the United States. See 26 U.S.C. 5351. Brewers must file a notice before commencing business as a brewer in the United States. See 26 U.S.C. 5401. TTB assigns a registry number, referred to in this document as the “IRC registry number,” to each such distilled spirits plant, bonded wine cellar, and brewery at which operations are to be conducted. The IRC registry number issued to distilled spirits plants has been historically referred to as the “distilled spirits plant number.”

Under sections 5232, 5364, and 5418 of the IRC (26 U.S.C. 5232, 5364, and 5418), distilled spirits may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a distilled spirits plant; natural wine (as defined in 26 U.S.C. 5381) may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a bonded wine cellar; and beer may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a brewery. Under these circumstances, the proprietor of the bonded premises becomes liable for the tax on the product upon its release from customs custody, and the applicable tax is collected by TTB when the product is removed from the distilled spirits plant, bonded wine cellar, or brewery, respectively.

The IRC also contains provisions under which imported distilled spirits may be entered free of tax by the United States or any governmental agency of the United States for nonbeverage purposes. See 26 U.S.C. 5313; 5314(b). Furthermore, industrial alcohol may under certain circumstances be brought

into the United States free of tax from the U.S. Virgin Islands by qualified industrial alcohol users. See 26 U.S.C. 5314(b).

Chapter 52 of the IRC contains excise tax and related provisions pertaining to tobacco products and cigarette papers and tubes. Section 5701 of the IRC (26 U.S.C. 5701) imposes Federal excise tax on such commodities manufactured in or imported into the United States. Section 7652 (26 U.S.C. 7652) imposes a tax on tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico and the U.S. Virgin Islands. The tax is equal to the internal revenue tax imposed on like commodities produced in the United States. Such commodities brought into the United States from Puerto Rico are not addressed in this document.

In general, the tax on tobacco products and cigarette papers and tubes either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by CBP, along with any import duties. Under 26 U.S.C. 5704, imported tobacco products and cigarette papers and tubes may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse³ or to a manufacturer of tobacco products or cigarette papers and tubes if such commodities are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(c). Imported tobacco products and cigarette papers and tubes previously exported and returned may be released from customs custody without payment of tax for delivery to the original manufacturer or to an export warehouse proprietor authorized by such manufacturer to receive the commodities, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(d).

Chapter 52 of the IRC also contains provisions pertaining to the manufacture and importation of processed tobacco, which is not subject to tax. Section 5712 of the IRC (26 U.S.C. 5712) requires that importers of tobacco products or processed tobacco, before engaging in such businesses, apply for and obtain a permit.

TTB administers the FAA Act and chapters 51 and 52 of the IRC pursuant

³ Under the IRC at 26 U.S.C. 5702(h), an export warehouse is a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the U.S. Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions. Responsibility for collecting the excise taxes incident to the importation of distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes is vested by statute with the Secretary of the Treasury. See 26 U.S.C. 7801. TTB regulations provide that such taxes are collected, accounted for, and deposited as internal revenue collections by customs in accordance with customs requirements. See 27 CFR 27.48 and 41.62. Under the authority of the Homeland Security Act of 2002, see 6 U.S.C. 212 and 215(1), the Secretary has delegated these customs revenue functions to the Secretary of Homeland Security. See Treasury Department Order 100–16, 68 FR 28322 (May 23, 2003).

TTB has authority under section 2(d) of the FAA Act, Pub. L. 74–401 (1935) “to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties” under the FAA Act. In addition, as previously mentioned, section 105(e) of the FAA Act (27 U.S.C. 205(e)), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. Section 7805(a) of the IRC (26 U.S.C. 7805(a)) provides the general authority to the Secretary to issue regulations to carry out the provisions of the IRC.

The TTB regulations that implement the basic permit requirements of the FAA Act are set forth in part 1 of title 27 of the Code of Federal Regulations (27 CFR part I).

The TTB regulations that implement the labeling provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in 27 CFR part 4, Labeling and Advertising of Wine (27 CFR part 4); 27 CFR part 5, Labeling and Advertising of Distilled Spirits (27 CFR part 5); and 27 CFR part 7, Labeling and Advertising of Malt Beverages (27 CFR part 7). For imported alcohol beverages specifically, these regulations include several requirements related to certification by a foreign government of the origin and, in some cases, age, vintage date, or method of production of the alcohol beverage.

Regulations implementing the importation-related provisions of

chapter 51 of the IRC are found in 27 CFR part 27. Specifically, this part contains procedural and substantive requirements that apply to the importation of distilled spirits, wine, and beer into the United States from foreign countries, including requirements related to recordkeeping and reporting. Regulations implementing the IRC as it applies to distilled spirits, wine, and beer brought into the United States from Puerto Rico or the U.S. Virgin Islands are found in 27 CFR part 26.⁴

Regulations implementing the importation-related provisions of chapter 52 of the IRC are found in 27 CFR part 41. Specifically, this part governs the importation of tobacco products, cigarette papers and tubes, and processed tobacco, including requirements related to permits, recordkeeping, and reporting. Part 41 includes provisions applicable to such commodities brought into the United States from Puerto Rico or the U.S. Virgin Islands.

B. The International Trade Data System

The International Trade Data System (ITDS) is an interagency program to establish an electronic “single window” through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347) mandates participation in ITDS by all agencies that require documentation for clearing or licensing the importation and exportation of cargo. The purpose of ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single window, operated by CBP, for the collection and distribution of standard electronic import and export data required by Federal agencies.

Currently, importers and exporters that are regulated by multiple agencies or that import or export commodities regulated by multiple agencies must submit data to those agencies through various channels, often in paper form. Through the implementation of ITDS, data will be entered into the Automated Commercial Environment (ACE) and then made available to each government agency. The “single window” is

⁴ 27 CFR part 26 also contains regulations applicable to articles, which are generally defined in § 26.11 as preparations unfit for beverage use. Such articles are not within the scope of this rulemaking.

intended to streamline and harmonize data requirements, thereby reducing compliance burdens on importers and exporters. Accordingly, TTB is providing electronic filing options for the importation of commodities regulated by TTB.

C. Executive Order—Streamlining the Export/Import Process for America’s Businesses

On February 19, 2014, the President issued Executive Order 13659, “Streamlining the Export/Import Process for America’s Businesses.”⁵ The Executive Order mandated that agencies be able to utilize ITDS by December 31, 2016. The Executive Order also directed Federal agencies that use ITDS to review their existing regulations for the import and export of goods to determine whether those regulations should be modified to implement ITDS and further improve and streamline existing processes for import and export, and if so, to initiate rulemaking to implement those modifications.

D. Electronic Submission of TTB-Required Information to CBP

The TTB provisions applicable to imports include requirements that importers submit information or documentation at importation to CBP. That information can be submitted electronically pursuant to 27 CFR 73.40. That section provides that a regulated entity may satisfy any requirement in the TTB regulations to submit a form to another agency by submitting the form to that other agency by electronic means, as long as that agency provides for, and authorizes, the electronic submission of the form and any registration and other requirements to use the electronic submission functionality are met. In part 73, the term “form” includes any documentation required to be submitted.

Section 73.40 was the result of amendments to the TTB regulations published in the **Federal Register** (79 FR 17029) on March 27, 2014, as a final rule, T.D. TTB–119, and it generally removes any regulatory barrier to the submission of documents to CBP electronically. TTB is issuing this document to propose changes to each of the TTB regulatory sections that address the submission of information or documentation at importation, in order to update TTB regulatory processes for imports and provide a specific electronic filing option for the

⁵ See <https://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>.

submission of certain TTB information at importation using the Partner Government Agency (PGA) Message Set. Technical instructions on the submission of data using TTB's PGA Message Set, including the formatting of TTB's PGA Message Set, are available in "ACE Filing Instructions for TTB-Regulated Commodities" at Docket No. TTB-2016-0004 on *Regulations.gov*. Importers may test the usability and functionality of the TTB PGA Message Set through participation in a pilot program announced by TTB in a **Federal Register** notice, "Importation of Distilled Spirits, Wine, Beer, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes; Availability of Pilot Program and Filing Instructions to Test the Collection of Import Data for Implementation of the International Trade Data System," (80 FR 47558, August 7, 2015).

TTB notes that under this proposed regulation, importers may elect not to file any TTB data electronically.

E. Relationship to Other Notices of Proposed Rulemaking

In this rulemaking, TTB is proposing amendments to certain regulations in 27 CFR parts 4, 5, and 7 to specifically accommodate electronic filing. Interested parties should note that, as announced in the Department of the Treasury's semiannual regulatory agenda (available online at *www.reginfo.gov*), TTB plans to publish a notice of proposed rulemaking titled "Modernization of the Alcohol Beverage Labeling and Advertising Regulations," in which TTB will propose broader amendments to the regulations in 27 CFR parts 4, 5, and 7. Interested parties should review and consider the proposals in each document and comment accordingly.

II. General Approach to Regulatory Amendments

In a number of instances, the current TTB regulations refer to the submission of paper documents (sometimes in triplicate) by importers to obtain release of TTB-regulated products from customs custody. These regulations were promulgated in the context of an environment in which paper copies were the primary means of communicating to customs officers that importers had met certain IRC or FAA Act requirements that apply at importation. The paper documents communicate to CBP, for example, that TTB had reviewed, and authorized the use of, a certain label on an alcohol beverage and, as a result, the products bearing the label were eligible for release from customs custody.

Implementation of ITDS provides another means for the communication of such information to take place—via the submission and sharing of data electronically. In general, the proposed regulations set forth new information submission requirements to better support administration and enforcement of the IRC and FAA Act with regard to imports, and require information to be submitted and/or made available through one of the following methods: (1) The electronic submission of TTB-required data along with the submission of the customs entry or entry summary, as appropriate; or (2) the retention and provision of information only upon specific request by TTB or CBP.

With regard to electronic submissions of information, there are generally two methods: Electronic submission of data directly and electronic submission of documents as electronic images. In many instances, TTB is proposing the former, that is, to provide importers with the option to submit required information electronically rather than to submit paper documents. The proposed regulations also allow for the submission of certain paper documents through electronic means. In circumstances in which the proposed regulations require that the importer make the document available to TTB or CBP upon request, such documents may be provided as an electronic image.

With regard to requests for documentation by TTB or CBP, the proposed regulations generally refer to requests being made "by the appropriate TTB officer or a customs officer." The regulations reference both TTB and CBP because, in general, CBP may request information or documentation as part of the entry process, while TTB may request information after release of the shipment from customs custody to verify compliance with import requirements or as part of the review of claims for refund or credit of tax. The term "appropriate TTB officer" here refers to TTB officers who have been delegated the TTB Administrator's authority through the issuance of a TTB Delegation Order. There is a delegation order applicable to each part of the TTB regulations that sets forth the "appropriate TTB officer" for each reference in that part. The delegation orders are available on the TTB Web site at <https://www.ttb.gov>. The term "customs officer" is currently defined in parts 26, 27, and 41 of the TTB regulations, at 27 CFR 26.11, 27.11, and 41.11. TTB is proposing to update those definitions. The proposed amendment would replace references in §§ 26.11 and 27.11 to "the Customs Service" with references to U.S. Customs and

Border Protection or CBP, where appropriate. The proposed amendment would also remove references to the Secretary of the Treasury as well as the reference in § 41.11 to the Secretary of Homeland Security. It would also remove the redundant references in §§ 26.11 and 27.11 to commissioned, warrant, and petty officers of the Coast Guard because those officers are authorized by law to perform the duties of a customs officer, and so are included in the definition without being specifically named there. See 14 U.S.C. 143. The proposed amendment would instead refer more broadly to "any agent or other person authorized by law to perform such duties." The proposed regulations also include the addition of a definition of "customs officer" in parts 4, 5, and 7 (at 27 CFR 4.10, 5.11, and 7.10).

Finally, a number of current TTB regulations refer to CBP actions and processes, such as CBP's release of a shipment upon receipt of proper documentation or CBP's inspection of shipments and its notation of information on TTB forms. In this document, TTB is proposing to remove most references to actions that CBP will take at entry and replace them with text that sets forth the requirements that apply to importers at entry.

III. Proposed Changes to the Regulations

A. Filing of the Basic Permit Number by Importers of Alcohol Beverages

As noted previously, the FAA Act requires that an importer obtain a basic permit to engage in the business of importing into the United States distilled spirits, wine, or malt beverages, or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. TTB issues these basic permits.

Provisions addressing the FAA Act basic permit are set forth in the TTB regulations in part 1. The permit requirement is restated in 27 CFR 1.20. Consistent with 27 U.S.C. 203, the regulations at 27 CFR 1.23 provide that the basic permit requirement does not apply to any agency of a State or political subdivision thereof, or to any officer or employee of any such agency. Section 1.58 (27 CFR 1.58) requires every person receiving a basic permit to file the permit at the place of business covered by the permit, so that it may be available to be examined by the appropriate TTB officer.

The basic permit requirement is also cross-referenced in 27 CFR part 27,

which generally sets forth the regulatory provisions that apply to the importation of distilled spirits, wine, and beer from foreign countries under the IRC. Section 27.55 of the TTB regulations (27 CFR 27.55) restates the FAA Act basic permit requirement. Neither the regulations in part 1 nor the regulations in part 27 currently state the conditions under which an importer obtaining release of distilled spirits, wine, or malt beverages subject to tax must provide the permit, or evidence of having obtained the permit, to CBP during importation.

Each FAA Act basic permit that TTB issues has a number associated with it. TTB is proposing to amend the regulations at § 1.58 to require that, if filing TTB data electronically, the importer file the number of the FAA Act basic permit with CBP. Requiring the submission of the permit number would allow the importer to demonstrate compliance with the statutory requirement that it has obtained the required permit. Amending the regulations to account for the submission of the permit number also would make clearer to the importer what is required upon importation of TTB-regulated alcohol beverages and make more transparent and consistent the application of the permit requirement. Finally, the filing of the permit number with the CBP entry would allow TTB to more easily link imported alcohol beverages to their importers and specific importations to the records importers keep and the reports they submit to TTB. Revised § 1.58 also provides that, regardless of the method of filing, every importer must make the permit available upon request by the appropriate TTB officer or a customs officer. With regard to these regulatory sections, TTB also proposes to amend § 27.55 to cross-reference § 1.58 and to cross-reference 27 CFR 1.10 for the definitions of the terms “distilled spirits,” “wine,” and “malt beverage” that are particular to the FAA Act. The proposed amendments also alert the reader to the FAA Act requirements to obtain a COLA and any required foreign certificates. TTB also proposes to clarify in § 27.55 that FAA Act requirements do not apply to tourists importing distilled spirits, wine, or malt beverages into the United States for personal or other noncommercial use.⁶ Finally, because

⁶ In this document, as in the longstanding regulations in part 26, the term “tourists” is used to refer to any individuals who are importing or bringing into the United States distilled spirits, wine, or malt beverages for personal or other noncommercial use and who are not subject to the FAA Act because they are not engaged in the business of importing distilled spirits, wine, or malt

there is currently no definition of “malt beverage” in part 1, TTB proposes to add the FAA Act definition to 27 CFR 1.10.

The FAA Act basic permit requirement is also reflected in 27 CFR part 26, which contains regulations applicable to distilled spirits, wine, and beer brought into the United States from Puerto Rico and the U.S. Virgin Islands. With respect to the U.S. Virgin Islands, § 26.202 of the TTB regulations (27 CFR 26.202), currently restates the FAA Act basic permit requirement and provides that those to whom the FAA Act basic permit requirement applies must “file with the district director of customs at the port of entry a certified or photostatic copy” of the permit.

TTB does not believe it is necessary to continue requiring the submission of the paper form or a copy of the paper form as set forth in § 26.202. TTB believes that requiring the TTB-issued permit number of the importer to be filed with CBP at the time of entry for electronic filers will be sufficient to enable CBP to make the initial determination that importers are compliant with the permit requirement and to enable TTB to link the imported consignment with a specific importer for purposes of verifying compliance. For importers that are not filing electronically, TTB believes that the FAA Act basic permit requirement can be enforced by requiring that a copy of the permit be made available upon request. As a result, TTB is proposing to amend the regulations at § 26.202 to state that the FAA Act basic permit number must be filed with the customs entry or made available upon request, as required under § 1.58. This change will reduce the burden on persons bringing alcohol beverages into the United States from the U.S. Virgin Islands who will no longer be required to submit a copy of the permit. TTB is also removing references to “the district director of customs” where they appear in the sections of part 26 pertaining to the U.S. Virgin Islands, replacing them with more general references to customs or CBP.

TTB is also proposing to amend § 26.202 to alert the reader to the definitions of the terms “distilled spirits,” “wine,” and “malt beverage” that are particular to the FAA Act as well as to the FAA Act requirements to obtain a COLA and any required foreign certificates. TTB is also proposing to revise § 26.202 to clarify that no FAA Act requirement applies to tourists

bringing distilled spirits, wine, or malt beverages into the United States for personal or other noncommercial use.

bringing distilled spirits, wine, or malt beverages into the United States for personal or other noncommercial use.

B. Filing of a COLA Identification Number or COLA Documents by Importers of Alcohol Beverages

As noted above, section 105(e) of the FAA Act (27 U.S.C. 205(e)) sets forth labeling requirements and, with respect to imports, provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained and being in possession of a COLA covering the distilled spirits, wine, or malt beverages and issued by the Secretary of the Treasury.

To implement this requirement, §§ 4.40, 5.51, and 7.31 of the TTB regulations (27 CFR 4.40, 5.51, and 7.31) currently state that no bottled wine, distilled spirits, or malt beverages, respectively, shall be released from customs custody for consumption unless an approved COLA covering the label of the product has been deposited with the appropriate customs officer at the port of entry. With an approved COLA, the brand or lot of wine, distilled spirits, or malt beverages bearing labels identical to those appearing on the COLA may be released from customs custody.

TTB believes it will not be necessary to require the importer to deposit a paper copy of the approved COLA upon importation when filing TTB data electronically. As is the case with the FAA Act basic permit, each approved COLA has a number associated with it. Images of approved COLAs can be accessed by entering the COLA identification number into TTB’s online database, the Public COLA Registry.⁷ Accordingly, TTB proposes to amend §§ 4.40, 5.51, and 7.31 to require that, upon importation, the importer either file with the customs entry the TTB-assigned identification number of the COLA, when filing electronically, or provide a copy of the COLA to CBP. The proposed regulations also provide that the bottles or containers must bear labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the COLA form.

In the proposed regulatory text, TTB has set forth the provisions described here in one paragraph, paragraph (a), which will replace the provisions currently set forth in paragraphs (a) and (b) of §§ 4.40, 5.51, and 7.31. Proposed §§ 4.40, 5.51, and 7.31 also state that

⁷ For the Public COLA Registry, see <https://www.ttonline.gov/colasonline/publicSearchColasBasic.do>.

importers must apply for and obtain a COLA before removing the bottled wine, distilled spirits, or malt beverages from customs custody, and cross-reference the limited exceptions to the COLA requirement that appear in part 27.

COLA requirements applicable to alcohol beverages brought into the United States from U.S. Virgin Islands are set forth in § 26.202, along with the FAA Act basic permit requirement discussed above. Specifically, § 26.202 states that every person and any agency of a State or political subdivision thereof or any officer or employee of such agency who brings liquors⁸ into the United States from the U.S. Virgin Islands for nonindustrial use must file the COLA with “the district director of customs” at the port of entry. TTB is proposing to modify this requirement by adding the option to provide the TTB-assigned identification number of the COLA with the electronic filing of the CBP entry. Further, with regard to the format of the regulatory text, § 26.202 is currently organized as a single paragraph, with the FAA Act basic permit and COLA requirements both described in one sentence. TTB proposes to set forth the FAA Act basic permit and COLA requirements in separate paragraphs, provide a paragraph alerting the reader to the scope of the FAA Act, provide a paragraph to address foreign certificates for certain wines and distilled spirits as described below, and update the text to improve readability.

Additional regulations in parts 26 and 27 currently address distinctive liquor bottles. Persons importing liquor bottles of distinctive shape or design into the United States or bringing such bottles into the United States from Puerto Rico or the U.S. Virgin Islands, must obtain approval of the distinctive liquor bottle from TTB by filing an application for label approval that includes a photograph of the distinctive liquor bottle, and furnishing a copy of the COLA along with the photograph of the distinctive liquor bottle “to Customs officials at each affected port of entry where the merchandise is examined.”⁹ See 27 CFR 26.314 and 27.204. TTB has determined that the electronic filing of

the TTB-assigned identification number for the approved COLA through ACE or, when filing on paper, the provision of a copy of the approved COLA to CBP at the time of entry without the photograph is sufficient to regulate the importation of distinctive liquor bottles. Accordingly, TTB proposes to amend §§ 26.314 and 27.204 to remove the requirement in these sections that the COLA and a photograph of the bottle be provided to CBP.

C. Removal of Requirement for Gin Statements of Process

In Part 5, Subpart F—Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits, paragraph (d) of § 5.51 currently requires that TTB Form 5100.31 covering labels for imported gin bearing the word “distilled” as a part of the designation be accompanied by a statement prepared by the manufacturer setting forth a step-by-step description of the manufacturing process.

This is the only regulation in part 5 that requires a formula for a specific type of imported distilled spirits product. However, under current TTB regulations at 27 CFR 5.33(g), a bottler or importer must, upon request, submit to TTB a complete and accurate statement of the contents of the bottles to which labels are to be or have been affixed. Under this authority, TTB may continue to require industry members to submit a formula, including a description of the manufacturing process, for any alcohol beverage to TTB for evaluation prior to the issuance of a COLA. TTB Industry Circular 2007–4, Pre-COLA Product Evaluation, currently outlines these formula requirements.

In the proposed regulations, the requirement that TTB Form 5100.31 be accompanied by a statement of process as set forth in paragraph (d) of § 5.51 is removed, and the section is reorganized accordingly. TTB will evaluate whether formulas for these products should continue to be submitted, prior to the issuance of a COLA, through its authority under § 5.33(g).

D. Possession and Retention of Certificates of Age, Origin, or Identity Issued by Foreign Governments for Importations of Certain Wine and Distilled Spirits

Along with the COLA requirements discussed earlier, parts 4 and 5 of the current TTB regulations also contain certain requirements under which importers must possess certifications by duly authorized officials of foreign governments that the wines or distilled spirits being imported have been produced using specific practices or in

conformity with certain laws of the country of origin in order for the labels of those beverages to bear certain designations. Specifically:

- Paragraph (a) of § 4.45 (27 CFR 4.45(a)) addresses certificates of origin and identity for wine and requires that the invoice for certain imported wine be accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying as to the identity of the wine and that the wine has been produced in compliance with the laws of the respective foreign government regulating the production of such wine for home consumption. Without a required certificate, the wine will not be released from customs custody.

- Paragraphs (a) through (e) of § 5.52 (27 CFR 5.52(a)–(e)) set forth similarly worded certificate of origin requirements for Scotch, Irish, and Canadian whiskies; brandy, Cognac, and rum; Tequila; other whiskies; and other distilled spirits, respectively. The required certificates must accompany the invoice or be filed with the application for release (in the case of Tequila), or the spirits shall not be released from customs custody. Generally, the certificates must indicate that the spirit has been produced in compliance with the laws of the country of origin regulating the manufacture of the specific distilled spirits for home consumption. In some cases, the certificates must also address production practices or age statements.

- Section 5.56 (27 CFR 5.56) provides that distilled spirits imported in bulk for bottling in the United States may not be removed from the plant where bottled unless the bottler possesses certificates of age and certificates of origin required under § 5.52 for the same spirits if imported in bottles.

The common element among these requirements is that the certificate must generally accompany the wines or distilled spirits (or accompany the invoice applicable to such wines or distilled spirits), except in the case of bulk importations, where the U.S. bottler must possess the certificate. TTB believes that, rather than require certificates of age, origin, or identity for wine or distilled spirits imported in bottles to be filed with CBP, the purposes of the requirement can be met by requiring the importer to have the certificate in its possession, to be made available upon request. The importer may be required to attest to the possession of the certificate at importation. TTB now has timely access to importation information through ACE and has the specific expertise to determine whether a certificate of age,

⁸ The term “liquors” is used throughout part 26, and is defined in § 26.11 as “industrial spirits, distilled spirits, liqueurs, cordials and similar compounds, wines, and beer or any alcoholic preparation fit for beverage use.”

⁹ The term “liquor bottle” is defined at 27 CFR 26.11 and 27.11 as 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.”

origin, or identity is required for a certain product and whether a certificate is valid. Under the proposal, TTB could, through post-release review of the importation information, determine whether the appropriate certificate of age, origin, or identity is in the possession of the importer. This approach supports compliance in a way that facilitates legitimate trade, expedites the release of compliant wines and distilled spirits from customs custody, and allows enforcement resources to be focused on identifying noncompliance.

Accordingly, TTB is proposing to amend §§ 4.45(a), and 5.52(a) through (e), to state that products for which a certification of age, origin, or identity is required are not eligible for release from customs custody and no person may remove such products from customs custody, unless the importer possesses the relevant certificate (and accompanying invoice, if required). The proposed amendments are for clarity only and do not change the intent of those regulations, that is, that products requiring a certificate of age, origin, or identity may not enter the United States for consumption unless covered by such a certificate.

The revisions to § 4.45(a) will also clarify that the certificate must only be in the possession of the importer at the time of removal from customs custody in the case of wine imported in containers.

TTB is proposing to add a new § 4.53 (new 27 CFR 4.53) to subpart F, Requirements for Approval of Labels of Wine Domestically Bottled or Packed, to provide that wine imported in bulk and bottled in the United States may not be removed from the premises where bottled unless the bottler possesses a certificate if a certificate is required under § 4.45 for like wine imported in containers. TTB is also proposing editorial changes to current § 5.56, pertaining to certificates of age and origin for distilled spirits imported in bulk for bottling in the United States.

In order to ensure that the required certificates are available for TTB inspection, TTB is proposing in this document to add provisions in the regulations at § 5.56, in a new paragraph (c) in § 4.45, in new § 4.53, and new paragraph (f) in § 5.52 to address the retention of the certificates addressed in those sections. Under new paragraphs (c) in § 4.45 and (f) in § 5.52, for the five years following importation, upon request by the appropriate TTB officer or a customs officer, the importer must provide a copy of any certificate of age, origin, or identity relied upon for removal of imported wine or distilled

spirits, as applicable, from customs custody. Similarly, under new § 4.53 and the revision to § 5.56, for the five years following the removal of bottled wine or distilled spirits from the bonded wine cellar or distilled spirits plant where bottled, upon request of the appropriate TTB officer, the U.S. bottler must provide a copy of any certificate of age, origin, or identity required under §§ 4.45 or 5.52 for like wine or distilled spirits imported in containers.

TTB believes that five years is a reasonable period of time for record retention because there is a five-year statute of limitations for criminal violations of the FAA Act. TTB notes that the proposed rule does not require industry members to retain paper copies of each certificate; they may retain electronic copies of certificates.

While the FAA Act does not contain any specific recordkeeping requirements in this regard, the labeling regulations have for decades required industry members to produce such certificates upon demand. Furthermore, such records are necessary to enforce the requirements of the FAA Act. See, e.g., *National Confectioners Ass'n v. Califano*, 569 F.2d 690, 693–94 (D.C. Cir. 1978), which upheld the U.S. Food and Drug Administration's authority to require records in the absence of a specific statutory requirement, where records were necessary to help in the efficient enforcement of the Federal Food, Drug and Cosmetic Act. Further, as noted above, TTB has authority under section 2(d) of the FAA Act, Pub. L. 74–401 (1935) “to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties” under the FAA Act.

TTB is also proposing certain clarifications to §§ 4.45 and 5.52. First, references to “a duly authorized official” of a foreign government would be changed to “an official duly authorized by” the appropriate foreign government. Many foreign governments authorize non-governmental or quasi-governmental bodies (like the Consejo Regulador del Tequila in Mexico or the Comité Interprofessionnel du Vin de Champagne in France) to issue such certificates for wines or distilled spirits, and TTB's practice has been to accept certificates issued by such organizations. Second, certain certification requirements in §§ 4.45(a) and 5.52(e) would be limited to instances when the country of origin of imported wine or distilled spirits requires the issuance of a certificate of age, origin, or identity, instead of when the country of origin “authorizes” the issuance of such certificates. This

change conforms the regulations to TTB's practice.

E. Certification of Imported Vintage Wine

Section 4.27 (27 CFR 4.27) requires that wine labeled with the year of harvest of the grapes, or vintage date, meet certain requirements. Paragraph (c) of § 4.27 currently states that imported wine may bear a vintage date if, among other conditions, the invoice for such wine is accompanied by a certificate issued by a duly authorized official of the country of origin certifying that the wine meets various criteria or, if imported in bulk for bottling in the United States, the American bottler possesses such a certificate.

TTB believes that it is no longer necessary to require this certificate. TTB's regulations do not impose a certification requirement on imported wine labeled with an appellation of origin, and TTB believes that a consistent approach is appropriate for vintage wine.

Accordingly, TTB is proposing to amend paragraph (c) of § 4.27 to remove the requirement that the importer or bottler of imported vintage wine possess a certificate of vintage wine from the appropriate foreign government. Instead, the proposed regulations require that, upon request by the appropriate TTB officer or a customs officer, the importer of the wine imported in bottles, or the domestic bottler of wine imported in bulk and bottled in the United States, must be able to demonstrate that the wine is entitled to be labeled with the vintage date. The remaining requirements would be that the wine be of the vintage shown, that the laws of the country regulate the appearance of vintage dates on the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the vintage date if it had been sold within the country of origin.

F. Possession of Certificates for Imported Natural Wine

TTB proposes to add a definition of natural wine to § 26.11 and § 27.11, applicable to all of parts 26 and 27. The proposed definition of natural wine at § 26.11 and § 27.11 provides that natural wine is made in accordance with a production practice or procedure authorized for natural wine by 27 CFR part 24, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement

or treaty. This is consistent with the requirements of 26 U.S.C. 5382(a)(3)(A).

TTB also proposes amending 27 CFR 27.140, which generally requires importers of natural wine to obtain a certification regarding the production of the wine from the country of origin. (This requirement does not apply to natural wine brought into the United States from the U.S. Virgin Islands.)

TTB proposes to amend § 27.140 to remove the definition of importer from paragraph (a) of that section. The existing regulatory definition applies only to importers that are required to have a basic permit under the FAA Act. Although the certificate is also required under § 4.45(b) for FAA Act purposes, the IRC requirement applies to all importers of natural wine, including wine not subject to the FAA Act. TTB proposes to amend paragraph (b)(1) of § 27.140 to state that the importer of bottled wine must be in possession of the certificate at the time of filing the entry with CBP, and the bottler of bulk wine must be in possession of the certificate at the time the wine is withdrawn from the premises where bottled. Under proposed 27.140(b)(1), natural wine certificates must be retained for three years following release from customs custody, and must be made available to the appropriate TTB officer or a customs officer upon request.

TTB also proposes a technical revision to the definition of proper cellar treatment at § 27.140(a), and proposes to remove the definition of natural wine in § 27.140 from that section. The proposed definition is intended to describe which wine is eligible to be imported or brought into the United States in bulk without payment of tax, as described in more detail below.

For natural wine that is subject to the FAA Act, current § 4.45(b) provides that the importer of bottled wine must be in possession of the certificate at the time of the release of wine from customs custody. Proposed § 4.45(c) provides that the importer must retain the certificate for five years following the date of removal from customs custody, and proposed § 4.53 provides that the bottler of bulk wine must be in possession of the certificate at the time the wine is removed from the premises where bottled and retain the certificate for five years following such removal.

G. Removal of Requirement To Present to CBP Certificates of Nonstandard Fill for Wine and Distilled Spirits

The TTB regulations in 27 CFR parts 4 and 5 currently prescribe certain standards of fill for wine and distilled

spirits, respectively. (See 27 CFR 4.70–4.72 and 5.45–5.47a.) Over the years, a number of changes were made to these standards, but the most significant change was the adoption of metric standards of fill for wine containers in 1974 (in T.D. ATF–12, 39 FR 45216) and for distilled spirits containers in 1980 (in T.D. ATF–25, 41 FR 10217 and 11022). A later amendment to the metric standards for distilled spirits containers included a phase-out of the 500-milliliter container size for distilled spirits (in T.D. ATF–228, 51 FR 16167).

Wine and distilled spirits that were bottled or packed before these standards became mandatory are “grandfathered” and may continue to be marketed in the United States. Imported wine and distilled spirits must either have (1) entered into customs custody before the most recent standards became mandatory (January 1, 1979, for wine and January 1, 1980, for distilled spirits or July 1, 1989, in the case of distilled spirits in 500-milliliter containers) and remained in their containers, or (2) been bottled or packed before the most recent standards became mandatory and a statement signed by a duly authorized official of the appropriate foreign country attests to that fact.

Within part 4, subpart E, Requirements for Withdrawal of Wine From Customs Custody, § 4.46 (27 CFR 4.46) requires that imported wine in containers not conforming to an authorized standard of fill (and not entered into customs custody before January 1, 1979) be accompanied by a certificate of nonstandard fill in order to be withdrawn from customs custody. Within part 5, subpart F, Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits, § 5.53 (27 CFR 5.53) similarly requires that imported distilled spirits in containers not conforming to an authorized standard of fill (and not entered into customs custody before January 1, 1980, or July 1, 1989, in the case of distilled spirits in 500-milliliter containers) be accompanied by the certificate of nonstandard fill as a requirement for withdrawal from customs custody.

While importations of wine and distilled spirits that were bottled or packed before the most recent standards became mandatory are rare, TTB does occasionally receive COLA applications stating nonstandard fill for wines and distilled spirits. Therefore, TTB believes that it is appropriate to retain the exceptions for these products in the regulations. However, because the certification of nonstandard fill is provided as part of the COLA application, TTB believes it is not

necessary to require the certificate upon importation. Accordingly, TTB proposes to remove §§ 4.46 and 5.53 from the regulations, and to insert the exceptions for the “grandfathered” wines and distilled spirits—along with the requirement for the certificate of nonstandard fill for wines not entered into customs custody before January 1, 1979 and distilled spirits not entered into customs custody before January 1, 1980 or July 1, 1989 in the case of distilled spirits in 500-milliliter containers—into the general standards of fill regulations in §§ 4.70 and 5.45. As proposed, the required foreign certificate is a document that must be made available to TTB upon request. TTB also proposes to remove the cross reference to § 5.53 currently contained in § 5.47a (27 CFR 5.47a).

Finally, TTB is clarifying that the certificates are to be issued by “an official duly authorized by” the appropriate foreign government, to provide for non-governmental or quasi-governmental bodies that may be authorized by a foreign government to issue such certificates.

These proposals concerning standards of fill are only intended to make changes to allow for the electronic filing of information. Substantive changes to standards of fill requirements are not addressed in this document.

H. Removal of Requirements Concerning Liquor Bottles and Filing Certain Applications in Triplicate

Regulations in part 26 subpart P and part 27 subpart N concern requirements for liquor bottles. Sections 26.316 and 27.206 (27 CFR 26.316 and 27.206) currently provide that a customs officer will deny entry to any liquor bottle containing distilled spirits upon advice of the appropriate TTB officer who deems the bottle to be deceptive. Sections 26.318 and 27.208 (27 CFR 26.318 and 27.208) state that filled liquor bottles not conforming to those regulations will be denied entry into the United States, but provide that TTB may authorize such liquor bottles to be brought into the United States upon a letterhead application filed with TTB in triplicate. Similarly, sections 26.319 and 27.209 provide that TTB may authorize an importer to receive used liquor bottles pursuant to regulations in 27 CFR part 31 upon a letterhead application filed with TTB in triplicate. TTB proposes to amend §§ 26.316 and 27.206 to replace the text that states that the customs officer will deny entry of disapproved liquor bottles with text stating that disapproved bottles may not be brought into the United States. These amendments reflect the current

environment where CBP may make decisions to inspect shipments on a case-by-case basis. Additionally, as amended, § 26.316 specifically states its provisions apply to bottles both from Puerto Rico, which is within the customs territory of the United States, and from the U.S. Virgin Islands, which is not. TTB also proposes to amend §§ 26.318, 26.319, 27.208, and 27.209 to remove the requirement that the applications be made in triplicate. TTB also proposes to update a cross-reference made in §§ 26.319 and 27.209 from § 31.263 (27 CFR 31.263) to § 31.203 (27 CFR 31.203), and to make §§ 26.318 and 27.208 more readable.

In addition, TTB is proposing to remove requirements set forth in 27 CFR 26.331 and 27.221 that applications to TTB for authorization to use alternate methods or procedures in lieu of methods or procedures prescribed by those parts be submitted in triplicate.

I. Filing of Data With Respect to Distilled Spirits, Wine, and Beer Imported or Brought Into the United States From the U.S. Virgin Islands Subject to Tax

As noted above, the Federal excise tax due on the importation of distilled spirits, wine, and beer is collected by CBP, along with any applicable duties. See 27 CFR 27.48. Similarly, liquors coming into the United States from the U.S. Virgin Islands are generally subject to a tax equal to the internal revenue tax imposed upon the production in the United States of like liquors. See 27 CFR 26.200. Such taxes are collected by CBP, along with any applicable duties.

To help ensure appropriate tax payment, TTB is proposing in this rulemaking to require that importers file and/or retain certain information regarding distilled spirits, wine, and beer imported into the United States or brought into the United States from the U.S. Virgin Islands subject to tax. Specifically, TTB is proposing to amend §§ 27.48 and 26.200 to require from electronic filers of TTB data information about the importer (name, FAA Act basic permit number, address, and employer identification number (EIN)) and the ultimate consignee (name and address) as well as information identifying the distilled spirits, wine, or beer for IRC or FAA Act purposes and the quantity of each product. Proposed amendments to §§ 27.48 and 26.200 also refer to the COLA requirement that may apply under § 4.40, 5.51, or 7.31. For importers filing TTB data electronically, this information would be required to be filed with CBP at the time of filing the customs entry or entry summary, as appropriate, along with any other

information that is required by CBP for purposes of determining and collecting the Federal excise tax and administering the provisions of the IRC and FAA Act. The proposed text also includes a clarification that, if any of the information required by TTB is also filed by the importer with CBP upon entry or entry summary, as appropriate, for purposes of meeting CBP requirements, the submission of information for CBP purposes will also meet the TTB requirements. That is, generally, the importer need not enter the same information twice. TTB understands that quantities of distilled spirits are currently submitted to CBP in proof liters and not in proof gallons, and so proposes in §§ 27.48, 26.200, and elsewhere to accept the filing of quantities of distilled spirits in proof liters, and to add a definition of “proof liter” to §§ 27.11 and 26.11.

Regardless of the method of filing, the importer must retain the information required, any information provided to CBP to meet CBP requirements, and any supporting documentation, and make such records available for inspection by the appropriate TTB officer or a customs officer.

TTB is also proposing a technical correction to the definition of “importer” at § 26.11. As revised, an importer is defined as any person who brings distilled spirits, wines, or beer into the United States from the Virgin Islands. Other proposed technical corrections update statutory references at §§ 26.263 and 26.264, pertaining to the determination of tax on beer and wine, respectively.

J. Entry of Distilled Spirits To Which an Effective Tax Rate or Standard Effective Tax Rate Applies

Section 5010 of the IRC (26 U.S.C. 5010) provides a credit against the tax imposed on distilled spirits for any eligible wine or eligible nonbeverage flavors used in the manufacture of the distilled spirits. This credit results in an effective tax rate, which is a reduced rate of tax. For imported distilled spirits, pursuant to section 5010(b)(2), the wine content and flavors content of the distilled spirits are established by chemical analysis, certification, or other methods set forth in regulations prescribed by the Secretary. Sections 27.76 and 27.77 of the TTB regulations (27 CFR 27.76 and 27.77) set forth the methods by which the effective tax rates are determined and applied to imported distilled spirits. Section 26.204a (27 CFR 26.204a) sets forth the method by which the effective tax rates are determined and applied to distilled

spirits brought into the United States from the U.S. Virgin Islands.

An importer of distilled spirits may obtain and apply an effective tax rate in one of two ways. Under one approach, provided in § 27.76, the importer obtains from TTB a “statement of eligibility” for each wine and flavor used in the product, and then prepares a “certificate of effective tax rate computation” for each shipment. The importer must file this certificate with CBP at the port of entry at the time it files the relevant entry summary. A similar approach is also available to persons bringing distilled spirits into the United States from the U.S. Virgin Islands, except that, instead of preparing a specific certificate of effective tax rate computation, the importer must submit the information upon which the effective tax rate is based, along with other information about the shipment, in a certificate specified in section 26.205 (27 CFR 26.205). Alternatively, the importer may have a “standard effective tax rate” established by TTB pursuant to § 27.77. A standard effective tax rate may be used continually for each importation of a product because it is based on the lowest quantities and lowest alcohol content of eligible wine and flavors used in making the particular product. Under current regulations, a copy of the standard effective tax rate approval must be filed with CBP at the port of entry at the time of entry summary.

TTB believes it is no longer necessary for the importer to submit the certificate of effective tax rate computation or the standard effective tax rate approval document to CBP during the entry process, provided that the importer possesses one of these documents and makes it available upon request. TTB believes that the data already provided by the importer to CBP during the entry process regarding the tax applicable to the imported distilled spirits is sufficient for enforcement of the effective tax rate provisions when combined with the importer’s FAA Act basic permit number and the COLA identification number upon importation (the filing of which are proposed in this document). Therefore, TTB proposes to amend §§ 27.76 and 27.77 to remove the requirement that the importer submit the certificate of effective tax rate or the standard effective tax rate approval at entry, although the importer must have the certificate in its possession at the time of filing the entry summary and a copy must be provided to an appropriate TTB officer or a customs officer upon request. TTB also proposes to specify, in a new paragraph (e) in both § 27.76 and § 27.77, that the

importer must retain a copy of the certificate or approval in accordance with the record retention requirements in 27 CFR part 27 and provide it upon request. For persons bringing distilled spirits into the United States from the U.S. Virgin Islands, the information will continue to be entered into the certificate specified in § 26.205. As with imported distilled spirits, TTB also proposes to specify, in a new paragraph (c) in § 26.205, that the person bringing the distilled spirits into the United States must retain a copy of the certificate and records to substantiate information on the certificate, such as information regarding an effective tax rate, in accordance with the record retention requirements in 27 CFR part 26 and provide them upon request.

When distilled spirits eligible for an effective tax rate are removed from customs custody in bulk without payment of tax for transfer to a domestic distilled spirits plant, current and proposed §§ 27.76 and 27.77 provide that the importer must furnish a copy of the certificate or approval to the proprietor of the distilled spirits plant to which the distilled spirits are transferred. Similarly, proposed § 26.205 requires that the certificate showing information regarding liquors brought into the United States from the U.S. Virgin Islands, which would include information related to the effective tax rate if applicable, be provided to the receiving distilled spirits plant.

K. Distilled Spirits, Wine, and Beer Imported or Brought Into the United States Without Payment of Tax in Bulk Containers

As noted above, under 26 U.S.C. 5232, distilled spirits imported or brought into the United States in bulk containers may, under regulations prescribed by the Secretary of the Treasury, be withdrawn from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of a distilled spirits plant without payment of the internal revenue tax. The person operating the bonded premises of the distilled spirits plant receiving the spirits becomes liable for the tax upon release of the spirits from customs custody. Section 27.11 (27 CFR 27.11) defines the term “bulk containers” as any container having a capacity of more than one gallon. Subpart L of part 27 and subpart Oa of part 26 currently contain the provisions related to the transfer of distilled spirits from customs custody to the bonded premises of a distilled spirits plant.

Prior to 1998, the IRC contained no provisions allowing the importation of

wine without payment of the excise tax imposed by section 5041 or the importation of beer without payment of the excise tax imposed by section 5051. Wine and beer could both be imported in bulk or in any type of container, but no provision existed in the IRC to defer payment of the excise tax on importation, or to permit the movement of imported wine or beer, without payment of tax, onto bonded wine cellar premises or brewery premises, as applicable, where it would be covered by the TTB bond.

Effective April 1, 1998, sections 1421 and 1422 of the Taxpayer Relief Act of 1997, Public Law 105–34, amended the IRC to authorize the transfer without payment of tax of imported wine in bulk containers from customs custody to a bonded wine cellar and the transfer of beer in bulk containers from customs custody to a brewery premises. See 26 U.S.C. 5364 and 5418, respectively. A subsequent provision enacted by section 6014 of the Internal Revenue Restructuring and Reform Act of 1998, Public Law 105–206, restricted bulk imported wine to “Natural wine (as defined in section 5381).”

Under 26 U.S.C. 5364 and 5418, as amended, the physical transfer of wine or beer is accompanied by a transfer of the excise tax liability existing for such wine from the customs bond of the importer to the wine or beer bond of the receiving bonded wine cellar or brewery, as the case may be. Excise tax payment on such imported wine or beer is deferred until the time when the wine or beer is removed from the bonded wine cellar or brewery, as applicable, for consumption or sale. At that time, the taxation provisions of section 5041 of the IRC apply to the wine and those of section 5051 of the IRC apply to beer. Accordingly, the proprietor of the bonded wine cellar pays the tax by return under the IRC and the TTB provisions applicable to domestic wine removed subject to tax, while the brewer pays the tax by return under the IRC and the TTB provisions applicable to domestic beer removed subject to tax.

In March 1998, ATF issued two ATF Procedures regarding the administration of sections 1421 and 1422 of Public Law 105–34. The procedures are ATF Procedure 98–2, concerning importation and transfer of beer in bulk containers to a brewery premises, and ATF Procedure 98–3, concerning importation and transfer of wine in bulk containers to a bonded wine cellar. These two procedures provide guidance and set forth requirements applicable to importers of wine and beer in bulk containers and proprietors of the domestic facilities receiving the bulk

wine and beer, which have not yet been incorporated into the TTB regulations. With respect to importers, both procedures require that, on release of the bulk product from customs custody, the importer prepare a transfer record documenting the transfer of the product. With respect to wine, ATF Procedure 98–3 provides that the transfer record will identify the importer and show the number of containers transferred and quantity of wine within each container, the origin of the wine, the customs entry number, the amount of duty paid, the kind of wine, and information identifying the foreign producer. With respect to beer, ATF Procedure 98–2 provides that the transfer record will identify the importer and will show the number of containers transferred and quantity of beer within each container, the foreign origin of the beer, the customs entry number, the amount of duty paid, the kind of beer, and information identifying the foreign brewer. Neither procedure requires the information to be submitted to CBP as part of the customs entry or entry summary.

ATF Procedures 98–2 and 98–3 also provide guidance to domestic manufacturers who receive shipments of bulk wine or beer. In this rulemaking, TTB is not addressing such guidance, because the primary intent of this rulemaking is to address and prepare for the submission by importers of electronic importation information, and procedural rules relating to the operations of domestic recipients of the shipments are beyond the scope of this rulemaking. With regard to importers, TTB is proposing to amend the provisions of 27 CFR part 27 to expand the scope of subpart L, and 27 CFR part 26 to expand the scope of subpart Oa, which currently only address transfers of bulk distilled spirits from customs custody to the bonded premises of distilled spirits plants. Specifically, § 27.171 of part 27 currently sets forth general provisions regarding the importation of bulk distilled spirits, and § 26.300 sets forth general provisions regarding bringing bulk distilled spirits into the United States from the U.S. Virgin Islands. Under the proposed regulations, the current texts of each section will be designated as (a) and new paragraphs (b) and (c) will set forth the general provisions related to the importation of bulk beer and wine without payment of tax.

In subpart L of part 27, 27 CFR 27.172 currently requires a person importing distilled spirits and transferring them from customs custody to the bonded premises of a distilled spirits plant without payment of tax to prepare a

transfer record for each conveyance and, if the spirits are in packages, a package gauge record that must be attached to the transfer record. The transfer record and the package gauge record must be prepared in triplicate, and, upon release of the spirits from customs custody, one copy must be given to CBP, one copy must be forwarded to the appropriate TTB officer, and the original must be forwarded to the consignee.

The specific requirements regarding the transfer record's contents are set forth in 27 CFR 27.138. Under § 27.138, the transfer record must be given a serial number by the preparer and must contain such information as the name and IRC registry number of the distilled spirits plant receiving the spirits from customs custody, the country of origin, the name of the foreign producer, the kind of spirits, the age and proof of the spirits, the proof gallons of the spirits, and the type and number of containers in the shipment. The specific requirements regarding the package gauge record's contents are set forth in 27 CFR 27.139. Under § 27.139, the package gauge record must contain information about each package, including the package identification or serial number; the kind of spirits; the gross weight, proof, and proof gallons of the spirits; the name of the warehouseman who received the spirits from customs custody; and the name of the importer. Similar provisions are set forth for persons bringing distilled spirits in bulk containers into the United States from the U.S. Virgin Islands for transfer to a distilled spirits plant at §§ 26.301, 26.273a, and 26.273b (27 CFR 26.301, 26.273a, and 26.273b).

TTB is proposing to amend §§ 27.172 and 26.301, which currently require the preparation of the transfer record and package gauge record for distilled spirits, to include the transfer record requirements for wine and beer. Both sections as amended would require that the transfer records be maintained by the person importing the products or bringing them in from the U.S. Virgin Islands; the transfer record documents would not be submitted to CBP. For importers filing TTB data electronically, certain information from each transfer record would be submitted to CBP with the filing of the entry or entry summary, as appropriate. Under the proposal, the information required would be the name and address of the ultimate consignee, the basic permit number and EIN (if applicable) of the importer, the IRC registry number of the ultimate consignee, information identifying each product for IRC and/or FAA Act purposes, and the quantity in the shipment.

TTB is not proposing to amend the regulations at 27 CFR 27.139 and 26.273b regarding the specific information that must be contained in the distilled spirits package gauge record. However, TTB is proposing to remove § 26.302 (27 CFR 26.302) and incorporate the package gauge requirements of that section into amended § 26.301. The requirements of § 26.302 that refer to preparing copies of documents in duplicate and filing such copies would be removed entirely.

TTB is proposing to amend §§ 27.138 and 26.273a, the transfer record, to add the specific information that is required to be captured in the transfer record regarding transfers of wine and beer in bulk from customs custody to the premises of the applicable TTB-bonded premises. The information specified includes the information now required by ATF Procedure 98–3, with respect to transfers of wine, and ATF Procedure 98–2, with respect to transfers of beer, and adds the following data elements applicable to both wine and beer: The date the records are prepared, the name and address of the bonded wine cellar or brewery receiving the wine from customs custody, and the IRC registry number of the bonded wine cellar or brewery receiving the wine or beer from customs custody. As noted above, under the proposed amendments to §§ 27.172 and 26.301, the transfer record would be maintained by the importer (or person bringing the spirits into the United States from the U.S. Virgin Islands), and from the transfer record only the name and address of the ultimate consignee, the IRC registry number, information identifying each product for IRC and/or FAA Act purposes, and the quantity in the shipment would be required to be submitted upon entry or entry summary, as appropriate. TTB is also proposing to add the customs entry number and amount of duty paid to the specific information that is required to be captured in the transfer record regarding transfers of distilled spirits in bulk from customs custody to the premises of the distilled spirits plant. TTB believes that this information is important to track shipments of distilled spirits transferred without payment of tax.

TTB is proposing to no longer require submission of the remaining data elements currently required as part of the transfer record or package gauge record, as TTB believes that they are either no longer necessary to be submitted or that they can be requested of an industry member as needed on a case-by-case basis, if not otherwise available through data the industry member submits to CBP for purposes of meeting CBP requirements.

The proposed amendments at §§ 27.172 and 26.301 clarify that if any of the information required by TTB is also filed by the importer with CBP upon entry or entry summary, as appropriate, for purposes of meeting CBP requirements, the submission of information for CBP purposes will also meet the TTB requirements. In other words, generally, when filing information electronically, the importer need not enter the same information twice. Regardless of the method of filing, the importer must retain records, including supporting records to substantiate the information it filed with CBP, in accordance with the record retention requirements of parts 27 and 26, and provide such records upon request. Proposed §§ 27.172 and 26.301 also provide that all importers, including importers that do not file TTB data electronically, must maintain the transfer record, specified information, and supporting documentation, and make those records available upon request of the appropriate TTB officer or a customs officer.

In addition, proposed §§ 27.172 and 26.301 state that the importer must also provide a copy of the transfer record to the recipient, if the recipient is not the importer. The proposed text would remove the current requirement in § 27.172 that the “original” transfer record be forwarded to the transferee, and help ensure that the domestic TTB-bonded premises receive the record, regardless of whether a shipment originates in a foreign country or the U.S. Virgin Islands. Current and proposed §§ 27.76 and 27.77 require that, when distilled spirits eligible for an effective tax rate are transferred without payment of tax, the importer must furnish a copy of the relevant approval or certificate to the domestic DSP proprietor. Proposed § 26.205 also requires that a certificate be forwarded to the domestic TTB-bonded premises in the case of distilled spirits, natural wine, and beer transferred without payment of tax.

TTB also proposes to amend the definition of “bulk container” in 27 CFR 27.11 and 26.11 to include references to bulk containers of wine (any container larger than 60 liters) and to bulk containers of beer (any container larger than 1 barrel of 31 gallons). The definition proposed for “bulk container” of wine mirrors the definition of that term in ATF Procedure 98–3 and in 27 CFR 24.11. (27 CFR part 24 contains the regulations applicable to operations of domestic wine premises.) The definition proposed for “bulk container” of beer mirrors the definition of that term set out in ATF Procedure

98–2. TTB is also proposing to add a definition of “natural wine” to §§ 27.11 and 26.11 to describe what wine may be imported or brought into the United States in bulk without payment of tax.

Finally, TTB proposes a number of clarifying changes to the regulations relating to imports in bulk. TTB proposes to add definitions of “Bonded wine cellar”, “Brewery”, and “IRC registry number” to §§ 26.11 and 27.11. In paragraph (c) of § 26.1, which sets out the scope of the part 26 regulations, TTB proposes to add a reference to bulk wine and bulk beer coming into the United States from the U.S. Virgin Islands. In § 26.273 (27 CFR 26.273), which refers to the reporting and recording requirements of proprietors of bonded premises, TTB proposes to add references to bonded wine cellars and breweries. In § 27.120 (27 CFR 27.120), TTB is updating the reference to “Regulation 3 (27 CFR part 3)” to “subpart E of part 1,” to reflect the regulatory changes made in T.D. ATF–373 (61 FR 26096). TTB also proposes to update the title of § 27.175 to clarify that it applies only to the receipt of distilled spirits by proprietors of distilled spirits plants.

This regulation, if finalized, would supersede parallel provisions of ATF Procedures 98–2 and 98–3.

L. Filing of Permit Number and Information for Industrial Alcohol Shipments to the United States From the U.S. Virgin Islands

Section 5314(b)(1) of the IRC (26 U.S.C. 5314(b)(1)) authorizes, in certain circumstances, distilled spirits produced or manufactured in the U.S. Virgin Islands to be brought into the United States from the U.S. Virgin Islands free of tax. Those circumstances include: (1) When the alcohol has been “denatured” by the addition of materials that make the spirits unfit for beverage consumption; (2) when the alcohol is withdrawn by, and for the use of, the United States or any agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes; and (3) when the alcohol is withdrawn by an eligible person for certain specified nonbeverage educational, medical, or research purposes.

Regulations pertaining to the use of denatured spirits are found in 27 CFR part 20 (Distribution and Use of Denatured Alcohol and Rum), and regulations pertaining to the use of undenatured tax-free spirits are in found in 27 CFR part 22 (Distribution and Use of Tax-Free Alcohol). Under regulations in parts 20 and 22, TTB authorizes the withdrawal and use of tax-free alcohol

by issuing permits to eligible persons on TTB Form 5150.9 and to government entities on TTB Form 5150.33 (or previous editions on Form 1444).

The distilled spirits described above may be shipped tax-free to the United States from the U.S. Virgin Islands under the provisions of 27 CFR part 26. Section 26.292 (27 CFR 26.292) requires that the consignor or consignee file with CBP the permit issued to the consignee under part 20 or 22 as evidence that the consignee is authorized to enter the spirits free of tax. Sections 26.294 and 26.296 (27 CFR 26.294 and 26.296) require that each shipment be accompanied by a record of shipment, consisting of an invoice, bill of lading, or similar document that shows certain specified information about the shipment, such as the consignee’s name and address and the total quantity of the shipment.

As with FAA Act basic permits, TTB assigns each of the permits referenced in § 26.292 a number so that TTB can track the permit and its use. TTB proposes to amend § 26.292 to require the consignor or consignee, if filing TTB data electronically, to provide the number associated with the consignee’s permit to CBP upon entry of the tax-free distilled spirits instead of a copy of its permit. The permit number would be entered into ACE. The TTB permit number would allow TTB to verify that the consignee is authorized to enter industrial spirits or specially denatured spirits free of tax.

Revised 27 CFR 26.292 also provides that, regardless of the method of filing, the consignor or the consignee must make the permit available upon request by the appropriate TTB officer or a customs officer.

TTB also proposes to amend §§ 26.294 and 26.296 to remove the statement that paper documents must “accompany” shipments into the United States. As amended, §§ 26.294 and 26.296 require the consignor, if filing TTB data with CBP electronically, to file certain information from the record of shipment with CBP, along with the filing of the customs entry or entry summary, as appropriate, and maintain the rest of the information required in the record of shipment as a record. Records substantiating the information filed with CBP also must be kept. As proposed, §§ 26.294 and 26.296 also include the clarification, that if any of the information required by TTB to be provided to CBP is also required by CBP as part of the entry or entry summary, the information provided to meet CBP requirements is sufficient to also meet TTB requirements, and it need not be entered twice.

M. Filing of Permit Number and Data by Government Agencies Importing Distilled Spirits Free of Tax

Under section 5313 of the IRC, the United States Government or any of its agencies may withdraw imported distilled spirits for nonbeverage purposes free of tax from customs custody. As was mentioned above, TTB issues permits to government entities that wish to use tax-free distilled spirits. Section 27.183 (27 CFR 27.183) currently requires a government agency withdrawing distilled spirits free of tax from customs custody to provide a photocopy of its permit to “the district director of customs.” For the same reasons as those discussed with regard to shipments of distilled spirits from the U.S. Virgin Islands, TTB proposes to amend § 27.183 to require a government agency, if filing TTB data with CBP electronically, to file the number associated with the TTB-issued permit with CBP when the entry is filed. The permit number would be entered into ACE. If the government agency is not filing TTB data electronically, it must make a copy of the permit available to the customs officer, upon request, at entry or any subsequent time. TTB is also removing numerous references to “the district director of customs” in part 27, replacing them with a more general reference to CBP or removing the reference entirely.

Section 27.184 (27 CFR 27.184) currently requires identifying numbers of containers and the quantity of tax-free spirits to be recorded on entry documents. TTB proposes to amend § 27.184 to remove references to entry documents and simply require that the total quantity be filed, along with the number of the TTB-issued permit. Finally, TTB also proposes to remove § 27.185 (27 CFR 27.185), Customs release, as it describes customs processes and inspection. As described earlier, TTB is generally proposing to remove most references to actions that CBP will take at entry, and replace them, where appropriate, with text that clarifies the requirements that apply to the importer at entry.

N. Certificate Covering Distilled Spirits, Wine, or Beer Brought Into the United States From the U.S. Virgin Islands

Section 26.205 (27 CFR 26.205) currently requires that every person bringing distilled spirits, wine, or beer under part 26 into the United States from the U.S. Virgin Islands, except tourists, obtain a certificate in the English language from the manufacturer. The required information in the certificate includes, among other things,

the name and address of the consignee, the kind and brand name, and the quantity. Under paragraph (b) of § 26.205, the person bringing the distilled spirits, wine, or beer into the United States must file the certificate and a record of gauge with CBP at the port of entry with the entry summary. Section 26.260 (27 CFR 26.260) also requires the certificate to be filed with CBP.

TTB proposes in this rulemaking to amend § 26.205(b) to require that any person bringing liquors into the United States file information that appears on the certificate as required by proposed § 26.200. TTB proposes to add a new paragraph (c) to § 26.205, under which information associated with the certificate required under that section must be maintained as a record and made available upon request of the appropriate TTB officer or a customs officer. TTB proposes to amend § 26.260 to cross-reference the requirements set forth in §§ 26.200, 26.204, and 26.205. Finally, TTB proposes to add a new paragraph (d) to § 26.205, to require that for distilled spirits, natural wine, or beer withdrawn from customs custody without payment of tax, the importer must furnish a copy of the certificate described in § 26.205 to the proprietor of the receiving distilled spirits plant, bonded wine cellar, or brewery.

O. Clarification of Record Retention Requirements

Sections 26.276 and 27.137 (27 CFR 26.276 and 27.137) currently set forth certain recordkeeping requirements for all documents or copies of documents that support records required by parts 26 and 27, respectively. TTB proposes to amend each of these sections to provide that the length of time during which the records must be kept is measured from the time of withdrawal from customs custody. TTB also proposes to provide that the records must be made available upon request of the appropriate TTB officer or a customs officer, rather than made available during business hours as the texts of these sections currently state. This amendment would provide for alternative means of providing such records, such as by mail or email. TTB also proposes to clarify that supporting documents include data filed with CBP pursuant to CBP requirements.

P. Removal of Requirements for CBP to Gauge or Inspect

Certain TTB regulations currently state that customs officers shall inspect or gauge shipments of alcohol before release. Section 26.261 (27 CFR 26.261) states that CBP will regauge or inspect

a consignment of liquors from the U.S. Virgin Islands to the United States to determine the tax due on the consignment. Section 26.297 (27 CFR 26.297) states that CBP shall inspect shipments of industrial spirits, specially denatured spirits, completely denatured alcohol, and products made with denatured spirits coming into the United States from the U.S. Virgin Islands. Section 26.303 (27 CFR 26.303) directs CBP to inspect shipments of bulk distilled spirits brought into the United States from the U.S. Virgin Islands and being transferred free of tax. Similarly, under § 27.173 (27 CFR 27.173) CBP shall inspect imports of bulk distilled spirits being transferred free of tax, and enter certain information on the transfer record. Finally, § 27.185 (27 CFR 27.185) requires CBP to inspect imported distilled spirits being released without payment of tax for use of the United States. These inspections are generally to detect losses in transit.

TTB proposes to remove these provisions. TTB believes that it is not now necessary to state that CBP will gauge or inspect all such consignments or shipments. TTB notes that persons receiving the alcohol are subject to regulation by TTB, and are required to take action to determine if losses have occurred. Accordingly, TTB proposes to remove §§ 26.261, 26.297, 26.303, 27.173, and 27.185.

Q. Filing of Data for Importation of Tobacco Products Subject to Tax and Processed Tobacco

The Federal excise tax due incident to the importation of tobacco products and cigarette papers and tubes is collected by CBP, along with any applicable duties. Tobacco products and cigarette papers and tubes coming into the United States from the U.S. Virgin Islands are generally subject to a tax equal to the internal revenue tax imposed upon the production in the United States of like products. Such taxes are collected by CBP, along with any applicable duties. Processed tobacco is not subject to tax but the importation of processed tobacco is subject to TTB regulation. Anyone engaged in the business of importing processed tobacco must obtain a permit, issued by TTB, prior to engaging in such business. See 26 U.S.C. 5712 and 5713.

Current 27 CFR 41.81 requires that, when tobacco products and cigarette papers and tubes are released from customs custody for consumption, importers must maintain certain information about those shipments and, if the customs form or the electronic transmission of information allows for the reporting of that information, file the

information with CBP. The information required to be submitted or maintained under current § 41.81 includes, for example, identification of the imported product as it is classified under the IRC, the quantity imported, and the tax due. Although a permit is required to import tobacco products subject to tax, the regulations do not currently state the conditions under which an importer obtaining release of tobacco products subject to tax must provide the permit or proof of having obtained the permit to CBP during importation. TTB is proposing to update the information required to be filed and recorded.

Under the proposed regulations, the importer of tobacco products that files TTB data electronically must still file certain information identifying the imported product as it is classified under the IRC and the quantity imported, as well as information identifying the importer (by TTB permit number and employer identification number, or EIN) and the ultimate consignee. With regard to the TTB permit number and EIN, each permit to import tobacco products issued by TTB has a number associated with it. Amending the regulations to provide for the electronic submission of the permit number by importers that file TTB data electronically would make clearer to the importer what is required upon importation of TTB-regulated tobacco products and make the permit requirement more transparent and consistent. It would also allow TTB to link more easily specific importations to the records importers keep and the reports they submit to TTB. For importers of cigarette papers and tubes, the regulations set forth similar filing requirements, but do not require submission of a permit number because importers of cigarette papers and tubes are not required to obtain a TTB permit.

Proposed § 41.81 provides that any information required by that section and also filed with CBP as part of the entry or entry summary for purposes of meeting CBP requirements will also satisfy the TTB requirement. That is, generally, when filing information electronically, the importer need not enter the same information twice.

Whether or not the importer files TTB data electronically, revised 27 CFR 41.81 provides that the importer must retain the information required by § 41.81, any information provided to CBP for purposes of meeting CBP requirements, and any supporting documentation and make such records available upon request by the appropriate TTB officer or a customs officer.

In this document, TTB is also proposing to add a new section 27 CFR 41.265 to outline the process for importing processed tobacco. The requirements, as proposed, are similar to those for importers of tobacco products and cigarette papers and tubes. That is, if filing TTB data electronically, the importer must file with CBP certain information identifying the importer (by TTB permit number and employer identification number, or EIN), the ultimate consignee, and the import as “processed tobacco” and quantity. The proposed regulation clarifies that any information required by that section, that is filed with CBP as part of the entry or entry summary for purposes of meeting CBP requirements, will also satisfy the TTB requirement. Whether or not the importer files TTB data electronically, revised 27 CFR 41.265 provides that the importer must retain the information required by this section, any information submitted to CBP to meet CBP requirements, and any supporting documentation and make such records available upon request by the appropriate TTB officer or a customs officer.

TTB is also proposing to amend 27 CFR 41.204, which concerns records and reports. Currently, that section states that every tobacco products importer must keep records and submit reports, when required, of the physical receipt and disposition of tobacco products. The proposed regulations remove the reference to “physical” receipt and disposition. As proposed, the importer would be responsible for accounting for all tobacco products released from customs custody under the importer’s TTB permit, including receipt and disposition. Proposed § 41.204 would also require recordkeeping by importers of cigarette papers and tubes.

R. Filing of Data for Importation of Tobacco Products Without Payment of Tax

As noted above, imported tobacco products and cigarette papers and tubes may be released from customs custody without payment of tax for delivery to a proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(c). Imported tobacco products and cigarette papers and tubes previously exported and returned may be released from customs custody without payment of tax for delivery to the original manufacturer or an export warehouse proprietor

authorized by such manufacturer to receive the products, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(d).

Section 41.86 (27 CFR 41.86) addresses releases of tobacco products and cigarette papers and tubes from customs custody without payment of tax. Section 41.86 requires that a manufacturer or export warehouse proprietor wanting to obtain release of tobacco products or cigarette papers or tubes, under the provisions of 26 U.S.C. 5704(c) and (d), for transfer under bond to the manufacturer’s or export warehouse proprietor’s premises must prepare a notice of release on TTB F 5200.11 and file the form with the appropriate TTB officer, who certifies that the manufacturer or export warehouse proprietor meets the statutory requirements to obtain release. The importer makes this document available for the CBP officer, who verifies that the TTB F 5200.11 has been certified and provides a copy of the form to the importer. After release, the importer is currently required to send a copy of the form to TTB. Section 41.86(b) recognizes the use of electronic filing with CBP but does not specify how the TTB F 5200.11 is to be used to obtain the release electronically.

TTB proposes amending § 41.86 to provide the option for the data required on the TTB F 5200.11 to be submitted to CBP electronically, rather than on a paper form. Those not filing TTB data electronically with CBP must continue to use the paper form, be in possession of the TTB-certified form at the time the products are released from customs custody, and make the form available to a customs officer upon request. TTB notes that the proposed regulations would require, when applicable, two data elements (the TTB Importer Permit number and the recipient’s EIN) that do not currently appear on the TTB F 5200.11. Amendments to the form would be made to mirror any final regulations. Section 41.86 would also be amended to specify the circumstances under which tobacco products and cigarette papers and tubes may be released from customs custody without payment of tax and to include a specific recordkeeping requirement, that regardless of the method of filing, the information required to be submitted to CBP must be retained along with any supporting documentation, and such records must be available for inspection upon request by the appropriate TTB officer or a customs officer.

S. Entry for Warehousing of Distilled Spirits, Wines, Beer, Tobacco Products, and Cigarette Papers and Tubes

Under the IRC at 26 U.S.C. 5061(d)(2), for distilled spirits, wine, and beer entered for warehousing (such as those commodities imported and transferred directly to a customs bonded warehouse or foreign trade zone and subsequently transferred between such warehouses), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the products are removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone. There is an exception to this rule for products that are shown to the satisfaction of the Secretary to be destined for export. The IRC at 26 U.S.C. 5703(b)(2) mirrors these provisions for tobacco products and cigarette papers and tubes. Neither of these statutory requirements has yet been incorporated into the TTB regulations in part 26, 27, or 41. TTB proposes in this document to add appropriate regulatory text in 27 CFR 26.200 (regarding distilled spirits, wine, and beer brought into the United States from the U.S. Virgin Islands), 27.45 (regarding the time of the determination of the tax on beer), 27.48 (regarding the importation of distilled spirits, wine, and beer), and new 41.84 (regarding the importation of tobacco products) to reflect these statutory provisions.

IV. Public Participation

A. Comments Invited

TTB invites comments from interested members of the public on this proposed rulemaking. Regarding the effective date for these regulations, TTB solicits views on the amount of time that importers believe would be needed to develop functionality to file TTB data electronically. In the Interim Final Rule, “Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry),” 80 FR 61278, 61281 (2015), CBP announced that it is considering a “proposal to eliminate hybrid filing.” That proposal would require importers to choose between submitting CBP entry and entry summary documentation (including all required TTB and other Partner Government Agency data) either entirely electronically or entirely on paper. CBP would no longer accept any hybrid filings, except in limited circumstances. This would mean that if an importer files one paper document not covered by the limited exceptions,

the entire filing, including the report to CBP, must be on paper. TTB is interested in comments from the public regarding how their implementation of the TTB electronic filing processes described in this document would be impacted by a CBP decision to eliminate hybrid filing.

TTB is currently allowing importers that are prepared to file electronically to do so through a pilot program announced by TTB in a **Federal Register** notice, "Importation of Distilled Spirits, Wine, Beer, Tobacco Products, Processed Tobacco, Cigarette Papers and Tubes; Availability of Pilot Program and Filing Instructions to Test the Collection of Import Data for Implementation of the International Trade Data System," (80 FR 47558, August 7, 2015). Importers participating in the pilot program are doing so under an alternate method published by TTB in Industry Circular 2015-1 on www.ttb.gov. TTB encourages importers to participate in the pilot program, test the usability and functionality of the TTB PGA Message Set, and provide comments.

B. Submitting Comments

Please submit your comments by the closing date shown above in this document. You may submit comments in one of the following three ways:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form associated with this document in Docket No. TTB-2016-0004 on "[Regulations.gov](http://www.regulations.gov)," the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 159 on the TTB Web site at https://www.ttb.gov/regulations_laws/all_rulemaking.shtml. Supplemental files may be attached to comments submitted via [Regulations.gov](http://www.regulations.gov). For information on how to use [Regulations.gov](http://www.regulations.gov), click on the site's Help tab.

- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005.

- **Hand Delivery/Courier:** You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Your comments must reference Notice No. 159 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not accept anonymous comments, does not

acknowledge receipt of comments, and considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via [Regulations.gov](http://www.regulations.gov), please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, [Regulations.gov](http://www.regulations.gov), TTB will post, and the public may view, copies of this document and any electronic or mailed comments we receive about it. A direct link to the [Regulations.gov](http://www.regulations.gov) docket containing this document and the posted comments received on it is available on the TTB Web site at https://www.ttb.gov/regulations_laws/all_rulemaking.shtml under Notice No. 159. You may also reach the docket containing this document and its related comments through the [Regulations.gov](http://www.regulations.gov) search page at <https://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of this notice of proposed rulemaking and any electronic or mailed comments TTB receives on it by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

V. Regulatory Analysis and Notices

A. Executive Order 12866

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

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following analysis provides the factual basis for TTB's certification under section 605.

Impact on Small Entities

While TTB believes the majority of businesses subject to this proposed rule are small businesses, the changes proposed in this document will not have a significant impact on those small entities. Electronic filing will not be required under the proposed changes. For entities filing on paper, the proposed changes will generally only require that certain additional information must be kept as a record. Furthermore, the majority of changes that TTB is proposing in this document would provide importers with more predictability regarding the data required at importation, and the proposed electronic filing option would allow importers to more easily provide information required to import alcohol and tobacco products. This would facilitate the movement of the commodities from the port of entry into U.S. commerce, and reduce the possibility of cargo being delayed at the port. As small entities typically have fewer resources than large entities to devote to regulatory compliance and logistics, these benefits could have a disproportionately positive effect for small entities.

In addition, these changes will allow importers the option to provide data required by the U.S. government in order to clear their imported goods through a single window, rather than the current practice of filling out separate forms for commodities subject to regulation by multiple Federal agencies.

The changes in the proposed rule can be divided into three classes with respect to their impact on entities: (1)

Providing an electronic filing alternative to requirements to submit paper documents to CBP as part of the customs entry or entry summary filing; (2) replacing reporting requirements with recordkeeping requirements, under which the importer must make documents available upon request; and (3) adding some filing requirements. An example of the electronic filing alternative is the proposal to address the COLA. Current regulations require that the COLA be “deposited with” CBP before the alcohol beverages covered by the COLA are released from customs custody. TTB is proposing instead to require that importers that file TTB data electronically input the number of the COLA with the filing of the customs entry. Electronic filing provides a non-paper alternative to submitting information. It is likely that such an alternative will be welcomed by importers that prefer to file electronically, as including paper documents in shipments is likely more burdensome than submitting data electronically. Paper COLAs will continue to be required from importers that do not file TTB data electronically.

An example of replacing reporting with recordkeeping is the proposal to address foreign certificates, which include certificates of age and origin for certain distilled spirits; certification of origin and identity for certain wine; and certification of proper cellar treatment of natural wine. In general, current regulations require that the foreign certificate “accompany” the importation. TTB is proposing instead that the importer obtain the certificate prior to importation and only make it available upon request. If filing TTB data electronically, at the filing of the entry or entry summary, the importer would certify that it has complied and will comply with these conditions. The burden of including paper documents in shipments is being removed for both electronic and paper filers in these instances.

An example of requiring new information is the proposal that importers that import alcohol or tobacco products subject to tax and file TTB data electronically provide at entry or entry summary: The importer’s TTB permit number; the importer’s EIN; the name and address of the ultimate consignee; the quantity of each product; and information identifying each product for IRC and/or FAA Act purposes. Importers that do not file electronically would be required to maintain records of the information to be made available upon request. TTB believes that the impact of this change would be minimal because much of this information is

already submitted to CBP for CBP purposes.

In conclusion, while the entities affected by the proposed rule include a substantial number of small entities, the effects of the changes in this proposed rule in general, and in particular the provision of electronic filing alternatives and the replacement of reporting requirements with recordkeeping requirements, are expected to be positive for the affected entities. The proposals generally provide additional options for complying with import requirements and allow importers that prefer filing electronically to meet TTB requirements through electronic means.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

C. Paperwork Reduction Act

Regulations addressed in this document contain current collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) and assigned control numbers 1513–0020, 1513–0025, 1513–0056, 1513–0059, 1513–0062, 1513–0064, 1513–0088, 1513–0106, and 1513–0119. The specific regulatory sections in this proposed rule that contain collections of information, either current or proposed, are §§ 1.58, 4.27, 4.40, 4.45, 4.53, 4.70, 5.45, 5.51, 5.52, 5.56, 7.31, 26.200, 26.205, 26.273a, 26.276, 26.292, 26.294, 26.296, 26.301, 26.302, 26.314, 26.318, 26.319, 26.331, 27.48, 27.76, 27.77, 27.137, 27.138, 27.140, 27.172, 27.204, 27.208, 27.209, 27.221, 41.81, 41.86, 41.204, and 41.265. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Several amendments proposed in this document would allow importers to file information required at importation electronically, rather than on paper. In many cases, the proposed regulations require information that the importer would already file as part of its customs entry or entry summary in order to meet CBP requirements and, in such cases, the information submitted to CBP to meet CBP requirements would also satisfy the TTB requirements. In some cases, new information is required to be submitted at importation. Whether the information is information currently required to be submitted at importation or whether it is a new requirement, the importer has the option of filing the TTB data electronically with CBP. Regardless of the method of filing, the importer must retain and provide the information upon request. TTB has submitted a revision to OMB control number 1513–0064, Importers’ Records and Reports, to include the information that TTB is proposing to require importers that file TTB data electronically to submit electronically at entry or entry summary, as well as the information that must be made available by all importers upon request. Upon revision of OMB control number 1513–0064, that collection will include information related to importers’ compliance with the Federal Alcohol Administration Act (FAA Act) and with the Internal Revenue Code of 1986 (IRC), as described below.

Under the proposed regulations, persons who import, or bring into the United States from the U.S. Virgin Islands, distilled spirits, wine, or malt beverages under an FAA Act basic permit and who file TTB data electronically would be required to submit certain information to show compliance with FAA Act provisions. Under proposed § 1.58, every person required to obtain a basic permit as an importer must, when importing distilled spirits, wine, or malt beverages under that permit and filing TTB data electronically, file the number of the permit with CBP along with the filing of the customs entry, and, regardless of the method of filing, must make the permit available upon request.

Further, current §§ 4.27, 4.45, and 5.52, require foreign certificates, which include certification of vintage wine, certification of origin and identity for certain wine, certification of proper cellar treatment of natural wine (as required under 27 CFR 27.140), and certification of age and origin for certain distilled spirits. Under current regulations, the importer must obtain such certificates prior to importation; importations of products subject to such

requirements generally must be accompanied by the certificates. Under the proposed regulations at §§ 4.45 and 5.52, the importer must make the applicable certificate available upon request. If filing TTB data electronically, as part of the customs filing, the importer may be asked to make an attestation that it has obtained a certificate and will make it available upon request. In addition, TTB proposes to add § 4.53 to clarify that bottlers of bulk imported wine must also possess a certificate of origin or a certification of proper cellar treatment of natural wine (as required under 27 CFR 27.140), when applicable, that provides the same information as a certificate required for importers of wine in bottles. Proposed §§ 4.53 and 5.56 also specify the applicable record retention requirements for the certificates. TTB proposes to remove the certification of vintage wine requirement from § 4.27 and to require industry members to demonstrate upon request that the wine is entitled to be labeled with the vintage date. (The natural wine certificate required by §§ 4.45 and 27.140 is currently included in the collection of information assigned OMB control number 1513-0119, Certification of Proper Cellar Treatment for Imported Natural Wine. TTB has submitted to OMB a revision of that information collection to make reference to § 4.45.)

The amendments proposed to §§ 4.70 and 5.45 would incorporate the exceptions to the standards of fill for imported wine and imported distilled spirits (respectively), currently found in §§ 4.46 and 5.53, stating that the standards of fill do not apply to such wine or distilled spirits bottled or packed before January 1, 1979 (or before July 1, 1989 in the case of distilled spirits in 500 mL containers). Under the proposed amendment, the currently-required foreign certificate must be made available to TTB upon request, instead of accompanying the shipment.

For bottled distilled spirits, wine, or malt beverages, the proposed regulations also require from those filing TTB data electronically the submission of the TTB-assigned number of the product's valid certificate of label approval (COLA). TTB proposes to amend regulatory sections that currently require the depositing of the COLA, TTB Form 5100.31, with CBP at the port of entry of a shipment, in order for the bottled distilled spirits, wine, or malt beverage to be released from customs custody. As proposed, if the importer is filing the TTB data electronically, the importer would not deposit the COLA with CBP but, rather, would file along with the customs entry the TTB-

assigned number of the approved COLA that corresponds to the label on the bottle of distilled spirits, wine, or malt beverage. If the importer is not filing TTB data electronically, a paper COLA will continue to be required at entry. Currently, the requirement that importers deposit the applicable COLA with CBP is set forth in §§ 4.40, 5.51, and 7.31 and is covered by OMB control number 1513-0020, Application for and Certification/Exemption of Label/Bottle Approval (TTB F 5100.31), which also covers the information collected on the form used to apply for the COLA. As part of this rulemaking, TTB will include the electronic submission of the TTB-assigned COLA number in OMB control number 1513-0064.

In addition to the FAA Act provisions described above, under the proposed amendments, persons who import, or bring into the United States from the U.S. Virgin Islands, distilled spirits, wine, beer, tobacco products, processed tobacco, or cigarette papers or tubes that are either released from customs custody subject to tax or without payment of tax in bulk under certain exemptions would be required to submit and/or make available upon request certain information to show compliance with IRC provisions. The proposed amendments that affect the collection of information are described below.

Proposed amendments to §§ 26.200, 26.301, 27.48, 27.172, 41.81, 41.86, and new 41.265 set forth new data elements (in addition to the FAA Act basic permit number, where applicable, as described above) that must be filed with CBP when filing TTB data electronically and, regardless of the method of filing, be kept as a record and made available upon request. As noted above, in some cases this information will already be filed by the importer pursuant to CBP guidelines (either mandated or provided at the discretion of the importer) and, if the importer files the information for CBP purposes, the importer will satisfy the TTB requirement without additional action. In other cases, the information is specific to the IRC or FAA Act and will not already be filed by the importer with CBP for CBP purposes. When using the option to file TTB data electronically, the data elements required by the proposed amendments to §§ 26.200, 27.48, and 41.81 are as follows, with some variation depending on the products and circumstances covered under the specific section: The number of the importer's FAA Act basic permit; the importer's name, address, and employer identification number (EIN) associated with that permit; the name and address of the ultimate consignee; the quantity of each product; and

information identifying each product for IRC and/or FAA Act purposes. The proposed amendments also require similar information for releases of certain products from customs custody without payment of tax under proposed §§ 26.301, 27.172, and 41.86 and, for releases of processed tobacco, which is not subject to tax, under new § 41.265.

Sections 26.273a, 26.301, and 27.138 set forth the transfer records applicable to distilled spirits, wine, and beer withdrawn from customs custody without payment of tax for delivery to specified TTB-bonded facilities. Distilled spirits transfer records are currently covered by OMB control number 1513-0056. The existing regulations only cover distilled spirits transfer records; the proposed regulations add wine and beer transfer records. For those who will file TTB data electronically, the proposed regulations also require the reporting of information from the transfer records with the CBP entry. The information required to be recorded and reported, as applicable, under the proposed regulations includes the following, with some variation depending on the product: The date the record is prepared; the name and address of the bonded premises receiving the distilled spirits, wine, or beer from customs custody; the TTB-issued registry number of the bonded premises receiving the distilled spirits, wine, or beer from customs custody; the number of containers transferred and the quantity in each container; the country of origin; the customs entry number and amount of duty paid; and the foreign producer.

Current § 26.205 requires that persons, other than tourists, bringing liquors or articles under part 26 into the United States from the Virgin Islands obtain a certificate from the manufacturer showing certain information. TTB proposes to amend that section to specify that a copy of the certificate must be retained along with other records needed to substantiate the information in the certificate, and those records must be made available upon request. Proposed § 26.205 also requires that the importers that file TTB data electronically must file the information included on the certificate in accordance with the provisions of § 26.200.

This document also includes proposals to amend the regulations in part 26 and 27 relating to records of shipments of industrial spirits, specially denatured spirits, and completely denatured spirits. Section 26.292 requires that a copy of the consignee's permit for shipments of industrial

spirits or specially denatured spirits brought into the United States from the U.S. Virgin Islands be filed with CBP. The proposed amendment to that section provides that the permit number be submitted electronically, if the importer is filing TTB data electronically, and must be made available upon request. As discussed below, amendments to §§ 26.294 and 26.296 require the reporting with the CBP entry of the names and addresses of the consignor and the consignee and consignor as well as the total quantity shipped.

Sections 26.318 and 27.208 address requirements related to liquor bottles being imported or brought into the United States, and provide a letterhead application process for importers that wish to bring into the United States filled liquor bottles that do not conform to the regulatory requirements in part 26. The proposed amendments specify that the proof of authorization must be retained for a three-year period and made available upon request.

TTB is also proposing to remove references to submissions of information in triplicate. See §§ 26.331, 27.209, and 27.221.

TTB is proposing to amend §§ 27.76 and 27.77 regarding the approval and certification of wine and flavors content and the approval of a standard effective tax rate for importers. In both cases, the amendments will remove the requirement that a TTB approval letter or certificate be filed with CBP. Under the proposed regulations, the approval letter or certificate would be made available upon request. Proposed §§ 27.76 and 27.77 also include record retention requirements.

Finally, TTB is proposing to amend §§ 26.276, 27.137, and 41.204, which currently set forth certain recordkeeping requirements for all documents or copies of documents that support records required by parts 26, 27, and 41, respectively. TTB proposes to amend sections §§ 26.276 and 27.137 to clarify that: (1) The length of time for which the records must be kept is measured from the time of withdrawal from customs custody; (2) the records must be made available upon request of a customs officer or the appropriate TTB officer, rather than made available during business hours as the texts of these sections currently states; and (3) supporting documents that must be kept include data filed with CBP pursuant to CBP requirements. TTB proposes to amend § 41.204 to provide that importers of tobacco products and cigarette papers or tubes must keep records of such products received and disposed of, but also of any of these

products released from customs custody under the importer's TTB permit. (Current requirements of § 41.204 are covered by OMB control number 1513-0106. The proposed requirements are being submitted to OMB control number 1513-0064.)

TTB believes that these proposed requirements are necessary to ensure that:

- Persons engaged in business as importers are operating under the permit required by Federal law to engage in such operations;
- Applicable taxes are paid;
- Commodities released from customs custody without payment of tax for transfer in bond are eligible for such release, are sent to eligible bonded facilities, and are not diverted; and
- Labels applied to containers of imported alcohol beverages comply with FAA Act requirements.

TTB estimates that, as a result of the amendments, the new annual burden hours associated with OMB control number 1513-0064 will change. The new estimates are:

- *Estimated number of respondents:* 10,521.
- *Estimated average annual burden hours:* 21,042.

The revision of 1513-0064 generally consolidates the information required of importers to be filed as part of the customs entry or entry summary, or kept as a record relating to the entry or entry summary. Such consolidation entails removing requirements that currently appear in other information collections. TTB has submitted to OMB a revision of OMB control number 1513-0056, TTB REC 5110/05, Distilled Spirits Plants—Transaction and Supporting Records, to remove references to §§ 26.273a, 26.301, 27.138, and 27.172 that would now be captured under OMB control number 1513-0064, as described above. The estimated number of respondents (620) and estimated average annual burden hours (13,516) for 1513-0056 remain unchanged.

In addition, TTB has submitted to OMB revisions of OMB control numbers 1513-0059, TTB REC 5150/3, Usual and Customary Business Records Relating to Tax-Free Alcohol, and 1513-0062, TTB REC 5150/1, Usual and Customary Business Records Relating to Denatured Spirits. Proposed amendments to the regulations at §§ 26.294 and 26.296 allow certain information relating to shipments from the U.S. Virgin Islands of industrial spirits, specially denatured spirits or completely denatured spirits to be filed electronically at the time of filing the entry or entry summary, as appropriate. Regardless of the method of filing, the record of shipment must be

retained and be made available upon request. These electronic submissions will be placed under OMB control number 1513-0064. The estimated number of respondents for OMB control number 1513-0059 (5,268) and for OMB control number 1513-0062 (3,430) and the estimated average annual burden hours for each (one, for usual and customary business records) remain unchanged. TTB has also submitted to OMB a revision of OMB control number 1513-0088, TTB REC 5000/24, Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims, to remove the information collections in §§ 27.48, 27.137, and 41.81, which will now be included in revised OMB control number 1513-0064. OMB control number 1513-0088 is also revised to state that the information that must be maintained as a record includes all supporting documents, including information submitted to CBP to meet CBP requirements. Such information must be retained for three years. The estimated number of respondents for OMB control number 1513-0088 (503,921) and the estimated average annual burden hours for each (one, for usual and customary business records) remain unchanged.

As noted above, TTB has submitted the revised information collection requirements to the OMB for review. Comments on these new recordkeeping and reporting requirements should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to OIRA_submissions@omb.eop.gov. A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than August 22, 2016. Comments are specifically requested concerning:

- Whether the collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the collections of information submitted to OMB;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revisions of the collections of information, including the application of automated collection techniques or other forms of information technology; and

• Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Lists of Subjects

27 CFR Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Imports, Liquors, Packaging and containers, Warehouses, Wine.

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Imports, International agreements, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 26

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

27 CFR Part 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 41

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

Amendments to the Regulations

For the reasons discussed above in the preamble, TTB proposes to amend 27

CFR parts 1, 4, 5, 7, 26, 27, and 41 as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, BULK SALES AND BOTTLING OF DISTILLED SPIRITS

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

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

■ 2. Section 1.10 is amended by adding a definition of “Malt beverage” in alphabetical order to read as follows:

§ 1.10 Meaning of terms.

* * * * *

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to the use of processing methods and flavors in malt beverage production appear in § 7.11 of this chapter.

* * * * *

■ 3. Section 1.58 is revised to read as follows:

§ 1.58 Filing of permits.

Every person receiving a basic permit under the provisions of this part must maintain the permit at the place of business covered by the permit and make it available upon the request of the appropriate TTB officer. Every person required to obtain a basic permit as an importer under § 1.20 must, when importing distilled spirits, wine, or malt beverages under that permit and filing TTB data electronically, file the number of the permit with U.S. Customs and Border Protection (CBP) along with the filing of the customs entry. Regardless of the method of filing, every importer must make the permit available upon request by the appropriate TTB officer or a customs officer.

PART 4—LABELING AND ADVERTISING OF WINE

■ 4. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 5. Section 4.10 is amended by adding a definition of “Customs officer” in alphabetical order to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 6. Section 4.27 is amended by revising paragraph (c)(3) to read as follows:

§ 4.27 Vintage wine.

* * * * *

(c) * * *
(3) The wine is of the vintage shown, the laws of the country of origin regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, the wine has been produced in conformity with those laws, and the wine would be entitled to bear the vintage date if it had been sold within the country of origin. The importer of the wine imported in bottles or the domestic bottler of wine imported in bulk and bottled in the United States must be able to demonstrate, upon request by the appropriate TTB officer or a customs officer, that the wine is entitled to be labeled with the vintage date.

■ 7. Section 4.40 is amended by:

- a. Revising paragraph (a);
- b. Removing and reserving paragraph (b); and
- c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 4.40 Label approval and release.

(a) *Certificate of label approval.* Wine, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless the person removing the wine has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing wine in containers from customs custody for consumption must first apply for and obtain a COLA covering the wine from the appropriate TTB officer, and, if filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned number of the valid

COLA that corresponds to the label on the brand or lot of wine to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to wine that is removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of wine.

* * * * *

Approved by the Office of Management and Budget under control numbers 1513-0020 and 1513-0064)

■ 8. Section 4.45 is amended by revising paragraph (a) and by adding paragraph (c) and an Office of Management and Budget control number reference at the end of the section to read as follows:

§ 4.45 Certificates of origin, identity, and proper cellar treatment.

(a) *Certificate of origin and identity.* Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless that person has obtained, and is in possession of an invoice accompanied by a certificate of origin issued by the appropriate foreign government if that country requires the issuance of such a certificate for wine exported from that country. The certificate must have been issued by an official duly authorized by the foreign government, and it must certify as to the identity of the wine and that the wine has been produced in compliance with the laws of the foreign country regulating the production of the wine for home consumption.

(b) * * *

(c) *Retention of certificates.* The importer of wine imported in containers must retain for five years following the date of the removal of the bottled wine from customs custody copies of the certificates (and accompanying invoices, if required) required by paragraphs (a) and (b) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control numbers 1513-0064 and 1513-0119)

§ 4.46 [Removed]

■ 9. Section 4.46 is removed.

■ 10. Section 4.53 is added to subpart F to read as follows:

§ 4.53 Retention of certificates.

Wine that would be required under § 4.45 to be covered by a certificate of origin and identity and/or a certification of proper cellar treatment and that is imported in bulk for bottling in the United States may be removed for consumption from the premises where bottled only if the bottler possesses a certificate of origin and identity and/or a certification of proper cellar treatment of natural wine applicable to the wine that provides the same information as a certificate required under § 4.45(a) and (b) would provide for like wine imported in bottles. The bottler of wine imported in bulk must retain for five years following the removal of such wine from the bonded wine cellar where bottled copies of the certificates required by § 4.45(a) and (b), and must provide them upon request of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

■ 11. Section 4.70 is amended by:

- a. In paragraph (b)(3), removing the word “or” following the semi-colon;
- b. Redesignating paragraph (b)(4) as paragraph (b)(5);
- c. Adding new paragraph (b)(4), and
- d. Adding an Office of Management and Budget control number reference at the end of the section.

The additions read as follows:

§ 4.70 Application.

* * * * *

(b) * * *

(4) Imported wine bottled or packed before January 1, 1979, and certified as to such in a statement, available to the appropriate TTB officer upon request, signed by an official duly authorized by the appropriate foreign government; or

* * * * *

(Approved by the Office of Management and Budget under control number 1513-0064)

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 12. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 13. Section 5.11 is amended by adding a definition of “Customs officer” in alphabetical order to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 14. Section 5.45 is revised to read as follows:

§ 5.45 Application.

(a) Except as provided in paragraph (b) of this section, no person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(b) Section 5.47a does not apply to:

(1) Imported distilled spirits in the original containers in which entered into Customs custody on or before December 31, 1979 (or on or before June 30, 1989 in the case of distilled spirits imported in 500 mL containers); or

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 5.47a [Amended]

■ 15. Section 5.47a is amended in paragraph (d) by removing the parenthetical sentence at the end of the paragraph.

■ 16. Section 5.51 is amended by:

- a. Revising paragraph (a);
- b. Removing and reserving paragraphs (b) and (d); and
- c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 5.51 Label approval and release.

(a) *Certificate of label approval.* Distilled spirits, imported in bottles, are not eligible for release from customs custody for consumption, and no person may remove such distilled spirits from customs custody for consumption, unless the person removing the distilled spirits has obtained and is in possession of a certificate of label approval (COLA) and the bottles bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing distilled spirits in bottles from customs custody for consumption must first apply for and obtain a COLA

covering the distilled spirits from the appropriate TTB officer, and, if filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of imported distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513-0020 and 1513-0064)

- 17. Section 5.52 is amended by:
 - a. Revising paragraphs (a), (b), (c), the introductory text of paragraph (d), and paragraph (e);
 - b. Adding paragraph (f); and
 - c. Adding an Office of Management and Budget control number reference at the end of the section.

The revisions and additions read as follows:

§ 5.52 Certificates of age and origin.

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in bottles, are not eligible for release from customs custody, and no person may remove such whiskies from customs custody, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the British, Irish, or Canadian Government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be;

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption; and

(iii) That the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the bottle. The age certified shall be the

period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy, Cognac, and rum.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the bottle is not less than two years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. Rum imported in bottles that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(c) *Tequila.* (1) Tequila imported in bottles is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a certificate issued by an official duly authorized by the Mexican Government stating that the

product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

(2) If the label of any Tequila imported in bottles contains any statement of age, the Tequila is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing the Tequila possesses a certificate issued by an official duly authorized by the Mexican Government as to the age of the youngest Tequila in the bottle. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(d) *Other whiskies.* Whisky, as defined in § 5.22(b)(1), (4), (5), and (6), imported in bottles, is not eligible for release from customs custody, and no person shall remove such whiskies from customs custody unless that person has obtained and is in possession of a certificate issued by an official duly authorized by the appropriate foreign government certifying:

(1) * * *

(2) * * *

(e) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) imported in bottles are not eligible for release from customs custody, and no person shall remove such spirits from customs custody unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits is required by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

(f) *Retention of certificates.* The importer of distilled spirits imported in bottles must retain for five years following the removal of such spirits from customs custody copies of the certificates required by paragraphs (a) through (e) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 5.53 [Removed]

■ 18. Section 5.53 is removed.

■ 19. Section 5.56 is revised to read as follows:

§ 5.56 Certificates of age and origin.

Distilled spirits that would be required under § 5.52 to be covered by a certificate of age and/or a certificate of origin and that are imported in bulk for bottling in the United States may be removed from the plant where bottled only if the bottler possesses a certificate of age and/or a certificate of origin applicable to the spirits that provides the same information as a certificate required under § 5.52 would provide for like spirits imported in bottles. The bottler of distilled spirits imported in bulk must retain for five years following the removal of such spirits from the domestic plant where bottled copies of the certificates required by § 5.52(a) through (e), and must provide them upon request of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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

Authority: 27 U.S.C. 205.

■ 21. Section 7.10 is amended by adding a definition of “Customs officer” in alphabetical order to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 22. Section 7.31 is amended by:

- a. Revising paragraph (a);
- b. Removing and reserving paragraph (b); and
- c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 7.31 Label approval and release.

(a) *Certificate of label approval.* Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing malt beverages in containers from customs

custody for consumption must first apply for and obtain a COLA covering the malt beverages from the appropriate TTB officer, and, if filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the brand or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported malt beverages.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513-0020 and 1513-0064)

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

■ 23. 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, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.1 [Amended]

■ 24. In § 26.1, paragraph (c) is amended by adding the words “, of Virgin Islands wine in bulk containers from customs custody to a bonded wine cellar qualified under part 24 of this chapter, and of Virgin Islands beer in bulk containers from customs custody to a brewery qualified under part 25 of this chapter” before the semicolon at the end of the paragraph.

■ 25. Section 26.11 is amended by:

- a. Adding in alphabetical order definitions of “Bonded wine cellar” and “Brewery”;
- b. Revising the definitions of “Bulk container”, “Customs officer”, and “Importer”; and
- c. Adding in alphabetical order definitions of “IRC registry number”, “Natural wine”, and “Proof liter”.

The revisions and additions read as follows:

§ 26.11 Meaning of terms.

* * * * *

Bonded wine cellar. Premises established under part 24 of this chapter.

* * * * *

Brewery. The land and buildings described in the brewer’s notice, TTB Form 5130.10, where beer is to be produced and packaged.

Bulk container. When used in the context of distilled spirits, the term “bulk container” means any container having a capacity larger than one wine gallon. When used in the context of wine, the term “bulk container” means any container having a capacity larger than 60 liters. When used in the context of beer, the term “bulk container” means any container having a capacity larger than one barrel of 31 gallons.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

Importer. Any person who brings distilled spirits, wines, or beer into the United States from the Virgin Islands.

* * * * *

IRC registry number. The number assigned by TTB to each distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, bonded wine warehouse, or brewery upon approval of an application made pursuant to Internal Revenue Code of 1986 requirements (26 U.S.C. 5171, 5351-5353, or 5401).

* * * * *

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any proper cellar treatment and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids. For purposes of this definition, proper cellar treatment means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

* * * * *

Proof liter. A liter of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

* * * * *

■ 26. Section 26.200 is amended by adding paragraphs (d), (e), (f), and (g), by revising the authority citation, and

by adding an Office of Management and Budget control number reference at the end of the section, to read as follows:

§ 26.200 Taxable status.

* * * * *

(d) Internal revenue taxes payable on liquors brought into the United States from the Virgin Islands are collected by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the liquors are duty- and tax-paid to CBP will be treated as a return for purposes of this part. The person bringing such liquors into the United States, if filing electronically, must file the information specified in this section with the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. The following information is required as described under this section:

(1) The permit number of the valid importer permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20 and 1.58, and the importer's name, address, and employer identification number (EIN) associated with that permit;

(2) The TTB-assigned number of the valid certificate of label approval (COLA), if applicable, as required by 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, and 27 CFR 7.31 in the case of malt beverages;

(3) The name and address of the ultimate consignee;

(4) The quantity of each product (for distilled spirits, in proof liters or proof gallons; for wine and beer, in liters or gallons); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(e) Distilled spirits, natural wines, and beer in bulk containers may be released from customs custody without payment of tax under the provisions of subpart Oa of this part and thereafter removed subject to tax from internal revenue bonded premises. The tax will be collected and paid under the provisions

of parts 19, 24, and 25 of this chapter, respectively.

(f) *Entry for warehousing.*—(1) *General.* Except as provided in paragraph (f)(2) of this section, in the case of an entry for warehousing (that is, products transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the products have been removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(2) *Entry for warehousing of products intended for export.* Paragraph (f)(1) of this section does not apply to any distilled spirits, wines, or beer entered for warehousing and then removed for transfer to another customs bonded warehouse or foreign trade zone that is shown to the satisfaction of the Secretary to be destined for export.

(g) *Records.* Regardless of the method of filing, the person bringing the liquors into the United States must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation. These records must be retained in accordance with the record retention requirements of § 26.276, and the records must be made available upon request of the appropriate TTB officer or a customs officer.

(26 U.S.C. 5001, 5054, 5061, 5232, 5364, 5418, 7652)

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 27. Section 26.201c is revised to read as follows:

§ 26.201c Shipments of distilled spirits, natural wine, and beer to the United States without payment of tax.

Distilled spirits, natural wine, and beer may be brought into the United States from the Virgin Islands in bulk containers without payment of tax for transfer in bond from customs custody to the bonded premises of a distilled spirits plant in the case of distilled spirits, a bonded wine cellar in the case of natural wine, or a brewery in the case of beer. Such shipments are subject to the provisions of subpart Oa of this part.

■ 28. Section 26.202 is revised to read as follows:

§ 26.202 Requirements of the Federal Alcohol Administration Act.

(a) *General.* The Federal Alcohol Administration Act (FAA Act) and the regulations issued under the FAA Act

(parts 1, 4, 5, and 7 of this chapter) provide that any person, except an agency of a State or political subdivision thereof or any officer or employee of any such agency, who brings into the United States from the Virgin Islands distilled spirits, wines, or malt beverages for nonindustrial use must comply with the permit and labeling requirements described in this section. See 27 CFR 1.10 for the definitions of distilled spirits, wine, and malt beverages under the FAA Act. Tourists bringing distilled spirits, wines, or malt beverages into the United States for personal or other noncommercial use are not subject to the provisions of the FAA Act or regulations issued pursuant to the FAA Act (parts 1, 4, 5, and 7 of this chapter).

(b) *FAA Act basic permit.* Any person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, who intends to engage in the business of bringing distilled spirits, wines, or malt beverages into the United States from the Virgin Islands must, prior to bringing such products into the United States, obtain an importer's basic permit, in accordance with the requirements of the FAA Act and regulations issued pursuant to the FAA Act, and must file with U.S. Customs and Border Protection (CBP) the number associated with this permit when filing electronically as required under 27 CFR 1.58. Also, as required under § 1.58 of this chapter, if the importer is not filing electronically, the importer must have a copy of the FAA Act basic permit and make it available upon request of the appropriate TTB officer or a customs officer.

(c) *Certificate of label approval.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, removing for commercial purposes containers of distilled spirits, wines, or malt beverages from the Virgin Islands from customs custody for consumption, when filing electronically, must provide the TTB-assigned identification number of the valid certificate of label approval (COLA) for the distilled spirits, wines, or malt beverages with the filing of the customs entry, in accordance with the requirements of 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31 in the case of malt beverages. Also, as required under 27 CFR 4.40, 5.51, and 7.31, if the importer is not filing electronically, the importer must provide a copy of the valid COLA to CBP at the time of entry.

(d) *Foreign certificates.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, bringing into

the United States from the Virgin Islands for commercial purposes and for consumption containers of distilled spirits or wines that require a certificate under 27 CFR 4.45(a) in the case of wine or 27 CFR 5.52 in the case of distilled spirits must be in possession of the certificate (and accompanying invoice, if applicable) at the time of release from customs custody.

(Secs. 3, 5, 49 Stat. 978, as amended, 981, as amended; 27 U.S.C. 203, 205)

- 29. Section 26.205 is amended by:
 - a. Revising paragraph (b),
 - b. Adding paragraphs (c) and (d), and
 - c. Revising the Office of Management and Budget control number reference at the end of the section.

The revisions and additions read as follows:

§ 26.205 Certificate.

* * * * *

(b) The person bringing the liquors into the United States must file the information required under § 26.200, in accordance with that section.

(c) The person bringing liquors into the United States from the Virgin Islands must maintain a copy of the certificate described in paragraph (a) of this section along with records to substantiate the information on the certificate, including information required under § 26.204, in accordance with the record retention requirements of § 26.276 and must make them available upon request of the appropriate TTB officer or a customs officer.

(d) For distilled spirits, natural wine, or beer withdrawn from customs custody under the provisions of subpart Oa of this part, the importer must furnish a copy of the certificate to the proprietor of the receiving distilled spirits plant, bonded wine cellar, or brewery.

(Approved by the Office of Management and Budget under control number 1513-0064)

* * * * *

- 30. Section 26.260 is revised to read as follows:

§ 26.260 Required information.

Persons (except tourists) bringing liquors from the Virgin Islands into the United States must file with U.S. Customs and Border Protection, at the time of filing the entry or entry summary, as appropriate, the information required under § 26.200, in accordance with that section, and provide any information collected by any gauge under § 26.204 and any information contained in the certificate described in § 26.205, upon request, in accordance with the provisions of §§ 26.204 and 26.205(c).

§ 26.261 [Removed and reserved]

- 31. Section 26.261 is removed and reserved.
- 32. Section 26.263 is revised to read as follows:

§ 26.263 Determination of tax on beer.

If the certificate prescribed in § 26.205 covers beer, the beer tax will be collected at the rates imposed by 26 U.S.C. 5051.

(68A Stat. 611, as amended; 26 U.S.C. 5051, 7652)

- 33. The authority citation at the end of § 26.264 is revised to read as follows:

§ 26.264 Determination of tax on wine.

* * * * *

(68A Stat. 609, as amended; 26 U.S.C. 5041, 7652)

§ 26.273 [Amended]

- 34. Section 26.273 is amended, after the word “plants”, by adding “, bonded wine cellars, and breweries”.

- 35. Section 26.273a is revised to read as follows:

§ 26.273a Transfer record.

(a) *Distilled spirits.* The transfer record for Virgin Islands spirits prescribed in § 26.301 shall show the:

- (1) Date prepared;
- (2) Serial number of the transfer record, beginning with “1” each January 1;
- (3) Name of the proprietor and TTB-issued IRC registry number of the plant to which consigned;
- (4) Name and address of the consignor;
- (5) Kind of spirits;
- (6) Name of the producer;
- (7) Age (in years, months and days) of the spirits;
- (8) Proof of the spirits;
- (9) Type and serial number of containers;
- (10) Proof gallons of spirits in the shipment; and
- (11) The customs entry number and amount of duty paid.

(b) *Natural wine.* The transfer record prescribed in § 26.301 must identify the importer and show the following:

- (1) The date prepared;
- (2) The name and address of the bonded wine cellar receiving the wine from customs custody;
- (3) The TTB-issued IRC registry number of the bonded wine cellar receiving the wine from customs custody;
- (4) The number of containers transferred and quantity of wine in each container;
- (5) The country of origin of the wine;
- (6) The customs entry number and amount of duty paid;

- (7) The kind of wine; and
 - (8) The producer.
- (c) *Beer.* The transfer record prescribed in § 26.301 must identify the importer and show the following:
- (1) The date prepared;
 - (2) The name and address of the brewery receiving the beer from customs custody;
 - (3) The TTB-issued IRC registry number of the brewery receiving the beer from customs custody;
 - (4) The number of containers transferred and quantity of beer in each container;
 - (5) The country of origin of the beer;
 - (6) The customs entry number and amount of duty paid;
 - (7) The kind of beer; and
 - (8) The brewer.

(Approved by the Office of Management and Budget under control number 1513-0064)

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

- 36. Section 26.276 is amended by revising the first sentence and by adding an OMB control number reference to the end of the section, to read as follows:

§ 26.276 Retention.

All records required by this part, documents or copies of documents supporting these records (including data filed with U.S. Customs and Border Protection (CBP) pursuant to CBP requirements), and file copies of reports required by this part, must be retained for not less than three years from the date the shipment is released from customs custody into the United States, and during this period must be made available upon request of the appropriate TTB officer or a customs officer. * * *

(Approved by the Office of Management and Budget under control numbers 1513-0064 and 1513-0088)

- 37. Section 26.292 is revised to read as follows:

§ 26.292 Consignee permit number.

If filing electronically, the consignor or consignee must file with U.S. Customs and Border Protection the number associated with the consignee's permit issued under part 20 of this chapter (for shipments of specially denatured spirits) or part 22 of this chapter (for shipments of industrial spirits), along with the customs entry. If not filing electronically, the consignor or consignee must make the permit available to the appropriate TTB officer or a customs officer upon request.

(Approved by the Office of Management and Budget under control number 1513-0064)

- 38. Section 26.294 is revised to read as follows:

§ 26.294 Record of shipment.

(a) *Filing information with U.S. Customs and Border Protection.* Each person bringing industrial spirits or specially denatured spirits into the United States from the Virgin Islands, who files electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this paragraph, with the entry or entry summary, as appropriate. Any information required by this paragraph that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this paragraph. In addition to the consignee's permit number or a copy of the consignee's permit as required by § 26.292, the following information is required:

(1) The name and address of the consignee;

(2) The name and address of the consignor; and

(3) The total quantity shipped.

(b) *Maintaining the record of shipment.* For each shipment of industrial spirits or specially denatured spirits from the Virgin Islands to the United States, the importer shall possess and maintain a record of shipment. The record of shipment shall consist of an invoice, bill of lading, or similar document that shows the information required in paragraph (a) of this section, as well as the following:

(1) For each formula of specially denatured spirits, the formula number prescribed by part 21 of this chapter;

(2) For each formula of specially denatured spirits, the total quantity in liters or gallons and the serial numbers or package identification numbers of containers; and

(3) For industrial spirits, the total quantity in proof liters or proof gallons and the package identification numbers of containers.

(c) *Retaining records and making them available upon request.* The person bringing industrial spirits or specially denatured spirits into the United States from the Virgin Islands must maintain records to substantiate the information required under paragraph (a) of this section, and any information provided to CBP to meet CBP requirements, in accordance with the record retention requirements of § 26.276. Such records also must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

■ 39. Section 26.296 is revised to read as follows:

§ 26.296 Record of shipment.

(a) *Filing information with U.S. Customs and Border Protection.* Each person bringing completely denatured alcohol or products made with denatured spirits into the United States from the Virgin Islands, who files electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this paragraph with the entry or entry summary, as appropriate. Any information required by this paragraph that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this paragraph. The following information is required:

(1) The consignor's name and address;

(2) The consignee's name and address; and

(3) The total quantity shipped.

(b) *Maintaining additional information as a record.* For each shipment of completely denatured alcohol or products made with denatured spirits from the Virgin Islands to the United States, the importer shall possess and maintain a record of shipment. The record of shipment shall consist of an invoice, bill of lading, or similar document that shows the information required under paragraph (a) of this section, as well as the following:

(1) The capacity and number of containers;

(2) For each formulation of completely denatured alcohol, the words "Virgin Islands Completely Denatured Alcohol" and the formula number prescribed by part 21 of this chapter; and

(3) For product made with denatured spirits, the name, trade name, or brand name of the product.

(c) *Retaining records and making them available upon request.* The person bringing completely denatured alcohol or products made with denatured spirits into the United States from the Virgin Islands must maintain records to substantiate the information required under paragraph (a) of this section and records as required under paragraph (b) of this section, and any information submitted to CBP to meet CBP requirements, in accordance with the record retention requirements of § 26.276. Such records also must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 26.297 [Removed]

■ 40. Section § 26.297 and the undesignated center heading immediately before it are removed.

Subpart Oa—Transfer of Virgin Islands Distilled Spirits, Natural Wines, and Beer Without Payment of Tax, From Customs Custody to Internal Revenue Bond

■ 41. The heading of subpart Oa is revised as set forth above.

■ 42. Section 26.300 is amended by:

■ a. Revising the section heading;

■ b. Removing "(a)" and "(b)" from the second sentence;

■ c. Designating the existing text as paragraph (a);

■ d. Adding a heading to newly designated paragraph (a); and

■ e. Adding paragraphs (b) and (c).

The revision and additions read as follows:

§ 26.300 General provisions.

(a) *Transfer of bulk distilled spirits from customs custody to bonded premises of a distilled spirits plant.*

* * *

(b) *Transfer of bulk natural wine from customs custody to a bonded wine cellar.* Bulk natural wine, as defined in § 26.11, brought into the United States from the Virgin Islands may, under the provisions of this subpart, be withdrawn by the proprietor of a bonded wine cellar from customs custody and transferred in bond in bulk containers to the bonded wine cellar, without payment of the internal revenue tax imposed on such wine by 26 U.S.C. 7652. Wine so withdrawn and transferred to a bonded wine cellar may be withdrawn from a bonded wine cellar's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic wine. The proprietor of the bonded wine cellar to which the wine is transferred becomes liable for the tax on wine withdrawn from customs custody under 26 U.S.C. 5364. Upon release of the wine from customs custody, the person bringing in the wine is relieved of the liability for the tax.

(c) *Transfer of beer from customs custody to brewery premises.* Bulk beer brought into the United States from the Virgin Islands may, under the provisions of this subpart, be withdrawn by the proprietor of a bonded brewery from customs custody and transferred in bulk containers to the bonded brewery premises, without payment of the internal revenue tax imposed on such beer by 26 U.S.C. 7652. Beer so withdrawn and transferred to bonded brewery premises may be withdrawn

from a brewery's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic beer. The proprietor of the bonded brewery to which the beer is transferred becomes liable for the tax on beer withdrawn from customs custody under 26 U.S.C. 5418. Upon release of the beer from customs custody, the person bringing in the beer from the Virgin Islands is relieved of the liability for the tax.

■ 43. Section 26.301 is revised to read as follows:

§ 26.301 Record of shipment.

(a) *Preparation of records.* (1) The importer bringing distilled spirits, natural wines, or beer into the United States from the Virgin Islands under this subpart must prepare a transfer record according to § 26.273a. A separate transfer record must be prepared for each conveyance. The importer bringing in the distilled spirits, natural wines, or beer must maintain these records and any additional records necessary to substantiate the information provided under paragraph (b) of this section, in accordance with the record retention requirements of § 26.276, and must make them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

(2) For distilled spirits, if the spirits are in packages, the person bringing the spirits into the United States must be in possession of a package gauge record for each bulk container, as provided in § 26.273b, at the time the distilled spirits are withdrawn from customs custody. The package gauge record may be prepared by the insular gauger at the time of their withdrawal from an insular bonded warehouse, as provided in § 26.204, or, if not prepared by the insular gauger, the package gauge record must be prepared by the insular consignor.

(b) *Reporting information for release from customs custody.* A person bringing distilled spirits, natural wines, or beer into the United States from the Virgin Islands under this subpart, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and

filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements of this section. Regardless of the method of filing, the importer must retain all of the information required by this section and any supporting documentation and make it available for inspection by the appropriate TTB officer or a customs officer. The following information is required:

(1) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20, and the importer's employer identification number (EIN) associated with that permit;

(2) The name and address of the ultimate consignee;

(3) The TTB-issued IRC registry number of the ultimate consignee;

(4) The quantity of each distilled spirit, natural wine, or beer in the shipment (in proof liters or proof gallons, for distilled spirits); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(c) The importer bringing the distilled spirits, wines, or beer into the United States must maintain records to substantiate the information required under paragraph (b) of this section in accordance with the record retention requirements of § 26.276 and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 26.302 [Removed and Reserved]

■ 44. Section 26.302 is removed and reserved.

§ 26.303 [Removed and Reserved]

■ 45. Section 26.303 is removed and reserved.

§ 26.314 [Amended]

■ 46. In § 26.314:

■ a. Redesignate paragraphs (b)(1) through (5) as (b)(1)(i) through (v);

■ b. Designate the text after the paragraph (b) heading as new paragraph (b)(1);

■ c. Designate the undesignated concluding paragraph as paragraph (b)(2) and remove the last sentence; and

■ d. Remove the Office of Management and Budget control number reference from the end of the section and add in its place the Office of Management and Budget control number reference “(Approved by the Office of

Management and Budget under control number 1513-0020)”.

■ 47. Section 26.316 is revised to read as follows:

§ 26.316 Bottles not constituting approved containers.

The appropriate TTB officer is authorized to disapprove any bottle, including a bottle of less than 200 mL capacity, for use as a liquor bottle which he determines to be deceptive. Disapproved bottles may not be brought into the United States from the U.S. Virgin Islands or from Puerto Rico.

■ 48. Section 26.318 is revised to read as follows:

§ 26.318 Liquor bottles not eligible to be brought into the United States.

(a) *General.* Except as provided in paragraph (b) of this section, filled liquor bottles that do not conform to the provisions of this subpart may not be brought into the United States from Puerto Rico or the Virgin Islands.

(b) *Exception.* Upon receipt of a letterhead application, the appropriate TTB officer may, in nonrecurring cases, authorize a person to bring into the United States liquor bottles that do not conform to the provisions of this part if that TTB officer determines that the nonconformance is due to an unintentional error; the nonconforming liquor bottle is determined not to be deceptive, as provided in § 26.316; and the entry of the nonconforming liquor bottle will not jeopardize the revenue. The person bringing such liquor bottles into the United States under such TTB authorization must maintain for not less than three years from the date that the liquor bottles were released from customs custody proof of that authorization and make it available upon request by the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 26.319 [Amended]

■ 49. Section 26.319 is amended by:

■ a. Removing the words “filed in triplicate”; and

■ b. Removing “§ 31.263” and adding in its place “§ 31.203”.

§ 26.331 [Amended]

■ 50. Section 26.331 is amended by removing the words “, in triplicate,” and by revising the Office of Management and Budget control number reference at the end of the section to read, “(Approved by the Office of Management and Budget under control number 1513-0064)”.

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

■ 51. 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, 5382, 5555, 6109, 6302, 7805.

■ 52. Section 27.11 is amended by:

■ a. Adding in alphabetical order definitions of “Bonded wine cellar” and “Brewery”;

■ b. Revising the definitions of “Bulk container” and “Customs officer”;

■ c. Removing the definition of “District director of customs”; and

■ d. Adding in alphabetical order definitions of “IRC registry number”, “Natural wine”, and “Proof liter”.

The revisions and additions read as follows:

§ 27.11 Meaning of terms.

* * * * *

Bonded wine cellar. Premises established under part 24 of this chapter.

Brewery. The land and buildings described in the brewer’s notice, TTB Form 5130.10, where beer is to be produced and packaged.

Bulk container. When used in the context of distilled spirits, the term “bulk container” means any container having a capacity larger than one wine gallon. When used in the context of wine, the term “bulk container” means any container having a capacity larger than 60 liters. When used in the context of beer, the term “bulk container” means any container having a capacity larger than one barrel of 31 gallons.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

IRC registry number. The number assigned by TTB to each distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, bonded wine warehouse, or brewery upon approval of an application made pursuant to Internal Revenue Code of 1986 requirements (26 U.S.C. 5171, 5351–5353, or 5401).

* * * * *

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any proper cellar treatment and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids. For

purposes of this definition, proper cellar treatment means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

* * * * *

Proof liter. A liter of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

* * * * *

■ 53. Section 27.48 is revised to read as follows:

§ 27.48 Imported distilled spirits, wines, and beer.

(a) *Distilled spirits, wines, and beer imported subject to tax—(1) General.* Internal revenue taxes payable on imported distilled spirits, wines, and beer are collected, accounted for, and deposited as internal revenue collections by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the distilled spirits, wines, or beer are duty- and tax-paid to CBP will be treated as a return for purposes of this part.

(2) *Required information.* In the case of distilled spirits, wines, and beer imported into the United States subject to tax, the importer, if filing electronically, must file the information specified in this section with the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. For all distilled spirits, wines, and beer imported under this paragraph, the following information is required:

(i) The number of the importer’s basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20 and 1.58, and the importer’s name, address, and employer identification number (EIN) associated with that permit;

(ii) The TTB-assigned number of the valid certificate of label approval (COLA), if applicable, as required by 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, and 27 CFR 7.31 in the case of malt beverages;

(iii) The name and address of the ultimate consignee;

(iv) The quantity of each product (for distilled spirits, in proof liters or proof gallons; for beer and wine, in gallons or liters); and

(v) Information identifying each product for Internal Revenue Code and/or FAA Act purposes, as applicable.

(b) *Distilled spirits, natural wines, and beer transferred without payment of tax to internal revenue bond.* Distilled spirits, natural wine (as defined in § 27.11) and beer in bulk containers may be released from customs custody without payment of tax under the provisions of subpart L of this part and thereafter removed subject to tax from distilled spirits plants, bonded wine cellars, and breweries, respectively. The tax will be collected and paid under the provisions of part 19, 24 or 25 of this chapter, respectively.

(c) *Entry for warehousing—(1) General.* Except as provided in paragraph (c)(2) of this section, in the case of an entry for warehousing (that is, products transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the products are removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(2) *Entry for warehousing of products destined for export.* Paragraph (c)(1) of this section does not apply to any distilled spirits, wines, or beer entered for warehousing and then removed for transfer to another custom bonded warehouse or foreign trade zone that is shown to the satisfaction of the Secretary to be destined for export.

(d) *Records.* Regardless of the method of filing, the importer must maintain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation. These records must be maintained in accordance with the record retention requirements of § 27.137, and the records must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

(26 U.S.C. 5001, 5054, 5061, 5232, 5364, 5418)

■ 54. Section 27.55 and the undesignated center heading preceding it are revised to read as follows:

Federal Alcohol Administration Act Requirements for Importation of Distilled Spirits, Wines, and Malt Beverages

§ 27.55 Requirements of the Federal Alcohol Administration Act.

(a) *General.* The Federal Alcohol Administration Act (FAA Act) and the regulations issued under the FAA Act (parts 1, 4, 5, and 7 of this chapter) provide that any person, except an agency of a State or political subdivision thereof or any officer or employee of any such agency, who imports distilled spirits, wines, or malt beverages for nonindustrial use must comply with certain permit and labeling requirements as described in this section. See 27 CFR 1.10 for the definitions of distilled spirits, wine, and malt beverages under the FAA Act. Tourists importing distilled spirits, wines, or malt beverages into the United States for personal or other noncommercial use are not subject to the provisions of the FAA Act or regulations issued pursuant to the FAA Act (parts 1, 4, 5, and 7 of this chapter).

(b) *FAA Act basic permit.* Any person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, who intends to engage in the business of importing distilled spirits, wines, or malt beverages into the United States must, prior to importing such products into the United States, obtain an importer's basic permit, in accordance with the requirements of the FAA Act and regulations issued pursuant to the FAA Act, and must file with U.S. Customs and Border Protection (CBP) the number associated with this permit with the filing of the customs entry when filing electronically as required under 27 CFR 1.58. Also, as required under § 1.58 of this chapter, if the importer is not filing electronically, the importer must have a copy of the FAA Act basic permit and make it available upon request of the appropriate TTB officer or a customs officer.

(c) *Certificate of label approval.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, removing for commercial purposes containers of distilled spirits, wines, or malt beverages from customs custody for consumption, when filing electronically, must provide the TTB-assigned identification number of the

valid certificate of label approval (COLA) for the distilled spirits, wines, or malt beverages with the filing of the customs entry in accordance with the requirements of 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31 in the case of malt beverages. Also, as required under 27 CFR 4.40, 5.51, and 7.31, if the importer is not filing electronically, the importer must provide a copy of the valid COLA to CBP at time of entry.

(d) *Foreign certificates.* Every person and any agency of a State or political subdivision thereof or any officer or employee of such agency, importing for commercial purposes into the United States for consumption containers of distilled spirits or wines that require a certificate under 27 CFR 4.45 in the case of wine or 27 CFR 5.52 in the case of distilled spirits must be in possession of the certificate (and accompanying invoice, if applicable) at the time of release from customs custody.

(Sec. 3, 49 Stat. 978, as amended; 27 U.S.C. 203)

■ 55. Section 27.76 is amended by:

■ a. In paragraph (a), by removing "TTB Form 5530.5 (1678)" and adding in its place "TTB Form 5154.1 (formerly TTB Form 5530.5 and ATF Form 1678)";

■ b. Revising paragraph (d);

■ c. Adding paragraph (e); and

■ d. Revising the OMB control number reference at the end of the section.

The revision and additions read as follows:

§ 27.76 Approval and certification of wine and flavors content.

* * * * *

(d) At the time of filing the entry summary, the importer must have the certificate in its possession and make it available upon request of the appropriate TTB officer or a customs officer. For distilled spirits withdrawn from customs custody under the provisions of subpart L of this part, the importer must furnish a copy of the certificate to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(e) The importer must maintain a copy of the certificate in accordance with the record retention requirements of § 27.137 and must make it available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

* * * * *

■ 56. Section 27.77 is amended by:

■ a. Revising the second sentence of paragraph (d);

■ b. Adding paragraphs (e) and (f); and

■ c. Revising the OMB control number reference at the end of the section.

The revisions and additions read as follows:

§ 27.77 Standard effective tax rate.

* * * * *

(d) * * * At the time of filing the entry summary, the importer must have the approval in its possession and make it available upon request of the appropriate TTB officer or a customs officer. * * *

(e) The importer must maintain a copy of the approval in accordance with the record retention requirements of § 27.137 and must make it available upon request of the appropriate TTB officer.

(f) For distilled spirits withdrawn from customs custody under the provisions of subpart L of this part, the importer must furnish a copy of the approval to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 27.120 [AMENDED]

■ 57. In § 27.120, remove "Regulation 3 (27 CFR part 3)" and add "subpart E of part 1 of this chapter" in its place.

■ 58. In § 27.137, the first sentence is revised and an Office of Management and Budget control number reference is added at the end of the section to read as follows:

§ 27.137 Retention.

All records required by this part, documents or copies of documents supporting these records (including data filed with U.S. Customs and Border Protection (CBP) pursuant to CBP requirements), and file copies of reports required by this part, must be retained for not less than three years following each withdrawal from customs custody, and during this period must be made available upon request of the appropriate TTB officer or a customs officer.

* * * * *

(Approved by the Office of Management and Budget under control number 1513-0064 and 1513-0088)

■ 59. Section 27.138 is revised to read as follows:

§ 27.138 Transfer record.

(a) *Distilled spirits.* The transfer record prescribed in § 27.172 must identify the importer and show the following:

- (1) The date prepared;
- (2) Serial number of the transfer record, beginning with "1" each January 1;

(3) The name, address, and TTB-issued IRC registry number (distilled spirits plant number) of the proprietor receiving the spirits from customs custody;

(4) The country of origin of the distilled spirits;

(5) The name of the foreign producer;

(6) The kind of spirits;

(7) The age, in years, months and days of the spirits;

(8) The proof of the spirits;

(9) The type and number of containers;

(10) The proof gallons of spirits in the shipment; and

(11) The customs entry number and the amount of duty paid.

(b) *Wine*. The transfer record prescribed in § 27.172 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the bonded wine cellar receiving the wine from customs custody;

(3) The TTB-issued IRC registry number of the bonded wine cellar receiving the wine from customs custody;

(4) The number of containers transferred and quantity of wine in each container;

(5) The country of origin of the wine;

(6) The customs entry number and amount of duty paid;

(7) The kind of wine; and

(8) The foreign producer.

(c) *Beer*. The transfer record prescribed in § 27.172 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the brewery receiving the beer from customs custody;

(3) The TTB-issued IRC registry number of the brewery receiving the beer from customs custody;

(4) The number of containers transferred and quantity of beer in each container;

(5) The country of origin of the beer;

(6) The customs entry number and the amount of duty paid;

(7) The kind of beer; and

(8) The foreign brewer.

(Approved by the Office of Management and Budget under control number 1513-0064)

■ 60. Section 27.140 is amended by:

■ a. Removing from paragraph (a) the definitions of “Importer” and “Natural wine”;

■ b. Revising in paragraph (a) the definition of “Proper cellar treatment”;

■ c. Revising the introductory text of paragraph (b)(1), and

■ d. Adding an Office of Management and Budget control number reference at the end of the section.

The revisions and addition read as follows:

§ 27.140 Certification requirements for wine.

(a) * * *

Proper cellar treatment means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

(b) * * * (1) *General*. Except as otherwise provided in paragraph (b)(2) of this section, an importer of natural wine must have an original or copy of a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment. The importer of bottled wine must be in possession of the certificate at the time of filing the entry with CBP, and the bottler of bulk wine must be in possession of the certificate at the time the wine is withdrawn from the premises where bottled. The importer or bottler, as appropriate, must provide the certificate upon request by the appropriate TTB officer or a customs officer. This requirement may be satisfied by providing the original certification, or a photocopy or electronic copy of the certification. The appropriate TTB officer or a customs officer may request, and the importer or bottler must provide, such information for a period of three years from the date that the product covered by the certificate was released from customs custody or removed from the bottler’s premises, as applicable. The certification:

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513-0064 and 1513-0119)

■ 61. The heading of subpart L is revised to read as follows:

Subpart L—Transfer of Distilled Spirits, Natural Wines, and Beer Without Payment of Tax, From Customs Custody to Internal Revenue Bond

■ 62. Section 27.171 is amended by:

■ a. Removing “(a)” and “(b)” from the second sentence;

■ b. Designating the existing text as paragraph (a);

■ c. Adding a heading to paragraph (a);

■ d. Adding paragraphs (b) and (c); and

■ e. Revising the authority citation at the end of the section.

The additions and revision read as follows:

§ 27.171 General provisions.

(a) *Transfer of bulk distilled spirits from customs custody to bonded premises of a distilled spirits plant.*
* * *

(b) *Transfer of bulk natural wine from customs custody to a bonded wine cellar.* Imported “natural wine,” as defined in § 27.11, may, under the provisions of this subpart, be withdrawn in bulk by the proprietor of a bonded wine cellar from customs custody and transferred in bulk containers to the bonded wine cellar without payment of the internal revenue tax imposed on wine by 26 U.S.C. 5041. Imported wine so withdrawn and transferred may be withdrawn from a bonded wine cellar’s internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic wine. The proprietor of the bonded wine premises to which imported wine is transferred becomes liable for the tax on wine withdrawn from customs custody under 26 U.S.C. 5364. Upon release of the wine from customs custody, the importer is relieved of the liability for the tax.

(c) *Transfer of beer from customs custody to a brewery.* Imported bulk beer may, under the provisions of this subpart, be withdrawn by the proprietor of bonded brewery from customs custody and transferred in bulk containers to bonded brewery premises, without payment of the internal revenue tax imposed on beer by 26 U.S.C. 5051. Imported beer so withdrawn and transferred to bonded brewery premises may be withdrawn from a brewery’s internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic beer. The proprietor operating the bonded brewery premises to which imported beer is transferred becomes liable for the tax on beer withdrawn from customs custody under 26 U.S.C. 5418. Upon release of the beer from customs custody, the importer is relieved of the liability for the tax.

(26 U.S.C. 5232, 5364, and 5418)

■ 63. Section 27.172 is revised to read as follows:

§ 27.172 Preparation of records and reporting of information for release of distilled spirits, natural wines, and beer without payment of tax.

(a) *Preparation of records.* (1) The person importing distilled spirits, natural wines, or beer under this subpart must prepare a transfer record according to § 27.138. A separate transfer record must be prepared for

each conveyance. The importer must maintain these records and any records to substantiate the information required under paragraph (b) of this section, in accordance with the record retention requirements of § 27.137, and must make them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

(2) For distilled spirits, if the spirits are in packages, the importer must prepare a package gauge record according to § 27.139 and maintain it with the transfer record.

(b) *Reporting information for release from customs custody.* In the case of distilled spirits, natural wines, and beer imported into the United States without payment of tax under this subpart, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation and make such records available for inspection by the appropriate TTB officer or a customs officer. The following information is required:

(1) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20, and the importer's employer identification number (EIN) associated with that permit;

(2) The name and address of the ultimate consignee;

(3) The TTB-issued IRC registry number of the ultimate consignee;

(4) The quantity of each distilled spirit, wine, or beer in the shipment (in proof liters or proof gallons, for distilled spirits); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 27.173 [Removed and Reserved]

■ 64. Section 27.173 is removed and reserved.

■ 65. In § 27.175, the section heading is revised to read as follows:

§ 27.175 Receipt of distilled spirits by consignee.

* * * * *

■ 66. Section 27.183 is revised to read as follows:

§ 27.183 Use of Government agency permit, Form 5150.33.

Each Government agency must retain the original of its permit, Form 5150.33, on file. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit must list all locations authorized to withdraw spirits free of tax from customs custody. When withdrawing spirits free of tax from a port of entry, the agency, if filing electronically, must file its TTB-issued permit number along with the filing of any other information required by U.S. Customs and Border Protection to be filed with the customs entry. If the agency is not filing electronically, rather than file the TTB-issued permit number, the agency must make a copy of the permit available to the customs officer upon request.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

■ 67. Section 27.184 is revised to read as follows:

§ 27.184 Information required for entry.

Government agencies importing tax-free spirits under this subpart must file, along with filing the customs entry or entry summary, the total quantity of the spirits to be entered and, if filing electronically, the permit number as required under § 27.183.

§ 27.185 [Removed]

■ 68. Section 27.185 is removed.

§ 27.204 [Amended]

■ 69. Section 27.204 is amended by:

■ a. Redesignating paragraphs (b)(1) through (5) as (b)(1)(i) through (v);

■ b. Designate the text after the paragraph (b) heading as new paragraph (b)(1);

■ c. Designating the undesignated concluding paragraph as paragraph (b)(2) and removing the last sentence; and

■ d. Adding an Office of Management and Budget control number reference to read "(Approved by the Office of Management and Budget under control number 1513-0020)" at the end of the section.

■ 70. Section 27.206 is amended by revising the last sentence to read as follows:

§ 27.206 Bottles not constituting approved containers.

* * * Disapproved bottles may not be imported into the United States.

■ 71. Section 27.208 is revised to read as follows:

§ 27.208 Liquor bottles not eligible for release from customs custody.

Upon receipt of a letterhead application, the appropriate TTB officer may, in nonrecurring cases, authorize a person to bring into the United States liquor bottles that do not conform to the provisions of this part if that TTB officer determines that the nonconformance is due to an unintentional error; the nonconforming liquor bottle is determined not to be deceptive, as provided in § 27.206; and the entry of the nonconforming liquor bottle will not jeopardize the revenue. The person bringing such liquor bottles into the United States under TTB authorization must maintain proof of such authorization for not less than three years from the date that the liquor bottles were released from customs custody and make it available upon request by the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513-0064)

§ 27.209 [Amended]

■ 72. Section 27.209 is amended by removing the words "filed in triplicate"; by removing "§ 31.263" and adding in its place "§ 31.203" and by removing the Office of Management and Budget control number reference at the end of the section and adding in its place the Office of Management and Budget control number reference "(Approved by the Office of Management and Budget under control number 1513-0064)".

§ 27.221 [Amended]

■ 73. Section 27.221 is amended in the introductory text of paragraph (a) by removing the words ", in triplicate," and by removing the Office of Management and Budget control number reference at the end of the section and adding in its place the Office of Management and Budget control number reference "(Approved by the Office of Management and Budget under control number 1513-0064)".

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

■ 74. The authority citation for part 41 is revised to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6109, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 75. Section 41.11 is amended by revising the definition of “Customs officer” to read as follows:

§ 41.11 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 76. Section 41.81 is amended by revising paragraphs (b) and (c) and adding an Office of Management and Budget control number reference at the end of the section to read as follows:

§ 41.81 Taxpayment.

* * * * *

(b) *Method of payment.* Except for articles imported or brought into the United States as provided in §§ 41.85 and 41.85a, the internal revenue tax must be determined before the tobacco products, cigarette papers, or cigarette tubes are released from customs custody. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the tobacco products, cigarette papers, or cigarette tubes are duty- and tax-paid to CBP will be treated as a return for purposes of this part.

(c) *Required information.* In the case of tobacco products and cigarette papers and tubes imported into the United States for consumption, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in paragraphs (c)(1) through (7) of this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code. Any information required under paragraphs (c)(1) through (7) of this section that is required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will also satisfy the requirements of this section. Regardless

of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation and make such records available upon request by the appropriate TTB officer or a customs officer.

(1) *All tobacco products.* For all tobacco products, the following information is required:

(i) The number of the tobacco product importer permit that is issued under subpart K of this part;

(ii) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided by the importer on its permit application to TTB made on TTB Form 5230.4;

(iii) The name and address of the ultimate consignee;

(iv) The information specific to each tobacco product set forth in paragraphs (c)(2) through (6) of this section.

(2) *Cigarettes.* For cigarettes, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, including “cigarettes” and either “small” (or “class A”) or “large” (or “class B”) and must also provide the number of cigarettes.

(3) *Cigars.* For cigars, in addition to the information required in paragraph (c)(1) of this section, the importer must provide:

(i) The number of cigars imported under each Harmonized Tariff Schedule of the United States (HTSUS) code number;

(ii) The description of the cigars for Internal Revenue Code purposes, including “cigars” and either “large” or “small”;

(iii) For large cigars with a sale price of \$763.222 or less per 1,000, the number and sale price (the price for which sold by the importer) per 1,000 of such cigars; and

(iv) For large cigars with a sale price of more than \$763.222 per 1,000, the number of such cigars.

(4) *Smokeless tobacco.* For smokeless tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, as either “chewing tobacco” or “snuff” and will state the number of pounds and ounces or kilograms and grams of the product.

(5) *Pipe tobacco.* For pipe tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product under the Internal Revenue

Code, as “pipe tobacco,” and will also state the number of pounds and ounces or kilograms and grams of the product.

(6) *Roll-your-own tobacco.* For roll-your-own tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, as “roll-your-own tobacco,” “cigarette tobacco,” “cigarette wrapper,” “cigar tobacco,” or “cigar wrapper.” The importer must also state the number of pounds and ounces or kilograms and grams of the product.

(7) *Cigarette papers and cigarette tubes.* For cigarette papers and cigarette tubes, the importer must provide:

(i) The classification of the product for Internal Revenue Code purposes, including either “cigarette papers” or “cigarette tubes” and an indication of whether the length of the papers or tubes is over 6½ inches;

(ii) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service;

(iii) The name and address of the ultimate consignee; and

(iv) The total taxable quantity of each.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0064)

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■ 77. Section 41.84 is added to read as follows:

§ 41.84 Entry for warehousing.

(a) *General.* Except as provided in paragraph (b) of this section, in the case of an entry for warehousing (that is, tobacco products, cigarette papers, or cigarette tubes transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the tobacco products, cigarette papers, or cigarette tubes are removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(b) *Entry for warehousing of products destined for export.* Paragraph (a) of this section does not apply to tobacco products, cigarette papers, or cigarette tubes entered for warehousing and then removed for transfer to another custom bonded warehouse or foreign trade zone that are shown to the satisfaction of the Secretary to be destined for export.

(26 U.S.C. 5703(b)(2)(B)(ii), (iii), and (iv))

■ 78. Section 41.86 is revised to read as follows:

§ 41.86 Entry process for releases without payment of tax.

(a)(1) *General.* Except as provided in paragraph (c) of this section, in order for tobacco products or cigarette papers or tubes to be released from customs custody without payment of tax under internal revenue bond, as provided in 26 U.S.C. 5704(c) or (d), the information required by this paragraph must be filed electronically with U.S. Customs and Border Protection (CBP). The information must be filed with CBP at the time of filing the entry or entry summary, as appropriate, and it must be filed along with any other information that is required by CBP for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code. Any information required under paragraph (a)(2) of this section that is submitted to CBP as part of the entry or entry summary for purposes of meeting CBP requirements will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP for CBP purposes, and any supporting documentation and such records must be available for inspection upon request by the appropriate TTB officer or a customs officer.

(2) *Information required.* The manufacturer of tobacco products or cigarette papers or tubes or export warehouse proprietor who wishes to obtain the release of tobacco products or cigarette papers or tubes as described in paragraph (a)(1) of this section must provide the following information, as applicable:

(i) The number of the permit issued under 27 CFR part 40 to the manufacturer of tobacco products or export warehouse proprietor, or the TTB-assigned number of the manufacturer of cigarette papers or tubes, to whom the products are shipped or consigned;

(ii) The employer identification number (EIN), assigned by the Internal Revenue Service, of the manufacturer of tobacco products, the manufacturer of cigarette papers or tubes, or the export warehouse proprietor to whom the products are shipped or consigned;

(iii) The name and address of the ultimate consignee, consistent with the name and address on the permit issued under part 40 of this chapter;

(iv) For tobacco products, the number of the permit, issued under subpart K of this part, of the importer;

(v) For tobacco products, the employer identification number (EIN) assigned to the importer by the Internal

Revenue Service and provided to TTB by the importer on its permit application to TTB on TTB Form 5230.4;

(vi) A description of the product consistent with the tax classification of the product under the Internal Revenue Code as described in § 41.81 (for example, “large cigars”); and

(vii) The quantity of the product for Federal excise tax purposes, by sticks or by pounds and ounces (or kilograms and grams), as applicable.

(b) *Releases without payment of tax—*
(1) *Tobacco products or cigarette papers or tubes put up in packages.* Tobacco products or cigarette papers or tubes put up in packages, as defined at § 41.11, may be released without payment of tax only for delivery to the proprietor of an export warehouse (as provided in 26 U.S.C. 5704(c)) or, if classified under chapter 98, subchapter I of the Harmonized Tariff Schedule of the United States (relating to duty on certain articles exported and returned), for delivery to the original manufacturer of such tobacco products or cigarette papers or tubes or to the proprietor of an export warehouse authorized by such manufacturer to receive them (as provided in 26 U.S.C. 5704(d)). If the information required in paragraph (a)(2)(i) through (iii) of this section is not filed with the entry or entry summary, as appropriate, or, if the information required in paragraph (c) of this section is not made available to CBP upon request, the tobacco products, cigarette papers, or cigarette tubes are not eligible for release from customs custody for consumption, and no person may remove such products from customs custody without payment of tax and without meeting requirements related to the release of tobacco products, cigarette papers, or cigarette tubes from customs custody subject to tax.

(2) *Tobacco products or cigarette papers or tubes not put up in packages.* Tobacco products or cigarette papers or tubes not put up in packages, as defined at § 41.11, may not be released from customs custody subject to tax, and no person may obtain release of such products from customs custody. Tobacco products or cigarette papers or tubes not put up in packages may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers or tubes, as provided in 26 U.S.C. 5704(c). As a result, if the information required in paragraphs (a)(2)(i) through (iii) of this section is not filed with the entry or entry summary, as appropriate, or, if the

information required in paragraph (c) of this section is not made available to CBP upon request, tobacco products or cigarette papers or tubes not put up in packages are not eligible for release from customs custody for consumption, and no person may remove such product from customs custody.

(c) *Filing on paper.* A manufacturer or export warehouse proprietor who wishes to obtain the release of tobacco products or cigarette papers and tubes from customs custody without payment of tax under its internal revenue bond, and who does not file electronically, must prepare a notice of release on TTB F 5200.11 and submit the form to the appropriate TTB officer in accordance with the instructions on the form. The appropriate TTB officer will certify on the TTB F 5200.11 that the manufacturer or export warehouse proprietor has TTB authorization to receive the products. No one filing on paper may obtain release of the products under this section until they have received the TTB F 5200.11 certified by the appropriate TTB officer. The manufacturer or export warehouse must have possession of the TTB F 5200.11, bearing TTB certification, at the time the products are released from customs custody and must make the form available to a customs officer upon request at such time. After release of the products, the TTB F 5200.11 must be retained by the manufacturer or export warehouse proprietor and made available to the appropriate TTB officer or a customs officer upon request.

(Approved by the Office of Management and Budget under control numbers 1513–0025 and 1513–0064)

■ 79. Section 41.204 is revised to read as follows:

§ 41.204 Records and reports in general.

Every importer of tobacco products or cigarette papers or tubes must keep records and, when required by this part, submit reports of all tobacco products released from customs custody under the importer’s TTB permit, including information on the release from customs custody, the receipt, and the disposition.

(Approved by the Office of Management and Budget under control numbers 1513–0064 and 1513–0106)

■ 80. Section 41.265 is added under the undesignated center heading Operations of Importers of Processed Tobacco to read as follows:

§ 41.265 Processed tobacco importation process.

(a) *General.* In the case of processed tobacco imported into the United States,

the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in paragraph (b) of this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed as part of the entry or entry summary for CBP purposes. If the information required by this section is required by, and filed with, CBP for purposes of meeting CBP requirements, such filing will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information required as part of the entry

or entry summary by CBP for CBP purposes, and any supporting documentation, and must make such records available upon request by the appropriate TTB officer or a customs officer.

(b) *Information required.* The following information is required, as described in paragraph (a) of this section:

(1) The number of the importer's permit issued under subpart K or M of this part;

(2) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided to TTB by the importer on its permit application to TTB on TTB Form 5230.4;

(3) The name and address of the ultimate consignee;

(4) A description of the product as "processed tobacco" for Internal Revenue Code purposes; and

(5) The quantity of processed tobacco.

(Approved by the Office of Management and Budget under control number 1513-0064)

Signed: January 12, 2016.

John J. Manfreda,
Administrator.

Approved: March 30, 2016.

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

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