INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226
Number: 96-4 Date: November 8, 1996

RECODIFICATION OF NONBEVERAGE DRAWBACK REGULATIONS

TO: Manufacturers of Nonbeverage Products and Others Concerned:

PURPOSE: This Industry Circular announces the publication of Treasury Decision (T.D.) ATF-379, "Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use." This Treasury decision, which was published on June 20, 1996, and took effect on August 19, 1996, rewrote the regulations on nonbeverage drawback. A copy of T.D. ATF-379 is attached to this Circular. It includes the text of the new regulations and an explanation of the major changes.

In conjunction with the new regulations, three ATF forms relating to nonbeverage drawback have been issued. The formula form, formerly numbered as ATF F 1678 (5530.5), has been revised and renumbered as ATF F 5154.1. The supporting data form, which was an optional form published originally with Revenue Procedure 64-32, has been issued as an official ATF form, ATF F 5154.2. The bond form for monthly claimants, formerly numbered as ATF F 1730 (5530.3), has been renumbered as ATF F 5154.3. Copies of each of these new forms are attached.

DISCUSSION:

A. REGULATIONS: The new regulations are thoroughly discussed in the preamble to T.D. ATF-379 (attached). The changes are extensive and substantive, but they do not alter the basic structure of the nonbeverage drawback program. Claimants should familiarize themselves with the regulations, because a penalty of up to $1,000 per violation may be imposed under 26 U.S.C. 5134.

B. FORMS: (1) FORMULA FORM. The new formula form (ATF F 5154.1) supersedes ATF F 1678. Drawback claimants should begin immediately to use the new form. However, in order to provide a reasonable transition, the ATF Laboratory will continue to accept formulas submitted on Form 1678 through the end of January 1997. All approvals on Form 1678 will remain in effect.

The introduction of the new Form 5154.1 will have no adverse effect on the "Partnership Formula Approval Process" (PFAP) program for alcoholic beverages. Users of PFAP will extract the same data for their "Flavor Ingredient Data Sheet" (FIDS) from Form 5154.1 as they do from Form 1678. References in PFAP instructions and data fields to "Form 1678" will now be understood as referring to "Form 1678 or 5154.1."

(2) SUPPORTING DATA. The new supporting data form (ATF F 5154.2) is much simpler than the old form. Nevertheless, as discussed in T.D. ATF-379 (page 31401), claimants may continue to use the old supporting data form if they wish. However, in that case, certain information required by the new form must be added, as follows: (a) Claimants must indicate in the supporting data whether the quarterly physical inventory required by 27 CFR 17.167 has been taken. (Monthly claimants using the old form would need to make this certification only once per quarter.) (b) The Distilled Spirits Account ("Part IV" of the old form) must show separate data for spirits of different effective tax rates, for spirits from Puerto Rico and the U.S. Virgin Islands, and for other imported rum. Likewise in Part III (titled "Distilled Spirits Used" in the old supporting data form), these categories must be employed, if applicable, to allocate the proof gallons of spirits used in each nonbeverage product. (c) Gains deducted from the amount claimed (see 27 CFR 17.162 and 17.167), and total usage of Puerto Rican spirits and Virgin Islands spirits (see 27 CFR 17.147), must be shown. (d) Any other information required by applicable regulations to appear in the supporting data must also be shown.

(3) BOND FORM. Because of legal requirements of the Paperwork Reduction Act, it will not be possible to provide a transition period for the new bond form. Now that the new ATF F 5154.3 has become available, bonds may no longer be submitted on the old ATF F 1730 (5530.3). However, bonds previously submitted and approved on the old form, ATF F 1730 (5530.3), will remain in effect.

(4) OTHER FORMS. Other forms used by nonbeverage drawback claimants, e.g. the special tax return (ATF F 5630.5) and the claim form (ATF F 2635 (5620.8)), have not been changed.

INQUIRIES: Inquiries concerning this circular should refer to its number and be addressed to the Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firerarms, 650 Massachusetts Avenue NW, Washington, DC 20226.

Associate Director
(Enforcement)

Attachments

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, and 250

[T.D. ATF–379; Re Notice Nos. 634, 649, 748, and 758]

RIN 1512–AA20

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use (73R–24P)

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends and recodifies the regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations formerly in 27 CFR part 197 (Drawback Distilled Spirits Used in Manufacturing Nonbeverage Products) are recodified as a new part, designated 27 CFR part 17. In conjunction with the recodification, a number of changes to the drawback regulations have been made. Further, the regulations formerly in 27 CFR part 170, subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) have been distributed between 27 CFR part 19 and the new part 17; and conforming amendments have been made in 27 CFR parts 70, 194, and 250. Significant changes from prior regulations are discussed below under **SUPPLEMENTARY INFORMATION.**

EFFECTIVE DATE: This Treasury decision is effective on August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Notices of Proposed Rulemaking

On July 29, 1987, ATF published Notice No. 634 in the **Federal Register** (52 FR 28286). That notice proposed the recodification of regulations concerning nonbeverage drawback, including changes from the former regulations (27 CFR part 197). Public comment was requested concerning the proposed changes. A 90-day comment period was provided, which ended on October 27, 1987. In response to Notice No. 634, ATF received four written public comments. In addition, some review comments were received from ATF personnel after the publication of Notice No. 634.

On December 8, 1987, ATF solicited additional public comments regarding the nonbeverage drawback regulations. On that date, ATF published Notice No. 649 (52 FR 46628), which requested comments specifically relating to drawback on nonbeverage products brought into the U.S. from Puerto Rico or the Virgin Islands. In conjunction, the comment period for Notice No. 634 was extended until January 8, 1988. No additional comments concerning Notice No. 634 were received pursuant to that extension.

On August 31, 1992, ATF decided to republish the proposed recodification and amendment of 27 CFR part 197. Notice No. 748 was published in the **Federal Register** (57 FR 39536). Because more than 4 years had elapsed since the end of the previous comment periods, the proposed regulations were republished in their entirety, with some additional changes, so that anyone else who wished to comment on them would have an opportunity to do so.

Notice No. 748 prescribed a 30-day comment period, which was scheduled to end on September 30, 1992. On September 14, 1992, ATF was asked to extend this comment period for an additional 90 days. ATF partially granted this request. On October 1, 1992, Notice No. 758 (57 FR 45357) extended the comment period for Notice No. 748 by an additional 30 days, until October 30, 1992. The full 90-day extension (as requested) was not granted, because most of the same regulatory issues had been previously aired for public comment during a sufficient length of time. Subsequent to the official ending of the comment period, comments that were received while it was still practicable to consider them were given consideration.

In response to Notices No. 748 and 758, comments were received by letter, telephone, and personal visit from a total of twelve persons representing eleven entities (nine industry members and two industry groups). These comments are discussed carefully below, following the discussion of comments submitted previously under Notice No. 634.

Public Comments on Notice No. 634

Comments relating to Notice No. 634 were received from four correspondents:

1. One commenter proposed that § 17.183 be liberalized to allow manufacturers to sell or transport byproducts from which alcohol may be recovered, without removing the alcohol or adding an appropriate substance to prevent the recovery of residual alcohol. The commenter was concerned particularly about economic loss from an inability to process "spent" vanilla beans for food use applications.

ATF did not adopt this comment, because potable alcohol recovered from a nonbeverage manufacturer's byproduct would have been previously subject to drawback; thus less than 10% of the tax would remain paid. The possible recovery of such potable alcohol by unknown persons would present an unacceptable jeopardy to the revenue. Subject to formula approval and/or approval of an alternative procedure under § 17.3, ATF could allow byproducts containing recoverable alcohol to be subjected to additional processing, on the manufacturer's premises, for food use applications.

The basis for § 17.183 in this final rule is ATF Ruling 81–8, 1981–4 QB 24. That ruling provided a liberalized procedure for the disposition of spent vanilla beans, whereby they could be treated with any substance that the manufacturer deemed adequate to make

recovery of potable alcohol impractical. This procedure has been broadened in § 17.183 to apply to the disposition of any byproduct from which alcohol can be recovered. However, under the broadened rule, prior approval from ATF must he obtained for treatment with substances not previously authorized.

In § 17.183(c), certain substances are authorized for treatment of spent vanilla beans. No further authorization is needed for the use of these substances, when disposing of spent vanilla beans. Approval is required if other substances will be added to such beans, or if other byproducts from which alcohol can be recovered will be disposed of. Manufacturers who have already received approval for other methods of disposal, not mentioned in § 17.183, may continue to operate under such approval.

2. Another commenter expressed support for some of the proposals of Notice No. 634, but he had reservations about several others. He requested that ATF review the nonbeverage industry's "historical compliance track record" before imposing new recordkeeping requirements concerning usage of finished products (§ 17.166); he questioned the revised definition of "distilled spirits" in § 17.11 as being different from the definition of the same term in 27 CFR part 5; and he sought a "transition period" for the implementation of new language in § 17.161 (dealing with general requirements for records).

ATF reviewed the compliance record of the nonbeverage manufacturing industry and determined that the new records in § 17.166(b), concerning usage of nonbeverage products, are needed to verify that such products were manufactured in the amount claimed. The new records close a gap in the recordkeeping system of the former part 197. (However, see the further discussion of this issue below, in conjunction with a comment submitted pursuant to Notice No. 748.)

The revised definition of "distilled spirits" was also kept unchanged, because the revised definition is consistent with the definition of "distilled spirits" in the Internal Revenue Code (26 U.S.C. 5002(a)(8)). The nonbeverage drawback regulations are issued under the Internal Revenue Code, while 27 CFR part 5 is a regulation under the Federal Alcohol Administration Act. The revised definition in part 17 differs from the former definition in part 197 only by the deletion of the words "fully taxpaid or tax determined at the distilled spirits rate." This change brings the definition closer both to 26 U.S.C. 5002(a)(8) and to the ordinary meaning of "distilled spirits." Whenever taxpaid distilled spirits are specifically intended in part 17, the word "taxpaid" is stated. A new definition of "taxpaid" is provided in § 17.11.

Finally, ATF determined that there is no need for a transition period for implementation of new language in § 17.161, because the only substantive change brought about by that new language is liberalizing. That change makes it clear that normal business records, including invoices and cost accounting records, are adequate for regulatory purposes if they contain the required information. (ATF anticipates that ordinarily no records besides these normal business records need be maintained for purposes of compliance with the regulations.) Other new language in § 17.161 does not impose a substantive requirement, but simply spells out the purposes of records.

3. A third commenter pointed out what appeared to him to be contradictions in the proposed regulations. However, the apparent contradictions were actually the result of misunderstanding. In one instance, the commenter confused the terms "eligible for drawback" and "subject to drawback." In order to prevent further confusion of this sort, definitions of both of these terms were included in Notice No. 748 and remain in this final rule (see § 17.11).

Another point of confusion concerned the difference between spirits *contained* in an intermediate product and spirits *consumed* in the manufacture of such a product. Spirits contained in an intermediate product are eligible for drawback, and become subject to drawback when the intermediate product is used in the manufacture of a nonbeverage product. However, spirits consumed in the manufacture of an intermediate product (which are not contained in that product when completed) never become subject to drawback. Drawback cannot be claimed on such spirits (see §§ 17.154 and 17.155). Nevertheless, under §§ 17.127 and 17.185, a manufacturer may treat the intermediate product as an unfinished nonbeverage product; then the consumed spirits may be included in a drawback claim.

4. A fourth commenter took issue with the standard used by ATF to determine whether to grant drawback of tax on spirits used in nonbeverage products. He questioned the requirement that products produced with spirits must be "unfit for beverage use." The commenter asked that this be changed to "sale and use for (non) beverage purposes."

This commenter's requested change was not adopted, because the standard that must be met in order to receive drawback is expressly stated in the law (26 U.S.C. 5131(a)). Drawback may be granted only for "distilled spirits on which the tax has been determined, (used) in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are *unfit for beverage purposes*" (emphasis added).

Public Comments on Notice No. 748

The following paragraphs discuss the suggested changes that were submitted in response to Notice No. 748 (as amended by Notice No. 758). The comments are grouped topically, since in some cases several commenters proposed the same or similar recommendations.

1. Section 17.136 states that "A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products." This reflects a longstanding ATF policy. See Rev. Rul. 58–350, 1958–2 CB 974; see also various regional industry memoranda in 1991 regarding FD&C Red No. 3, and the following Industry Circulars: 61–2, 62–33, 65–4, 70–12, 72–8, 72–28, 72–29, 73–6, and 76–17.

However, a group of commenters pointed out that the wording of § 17.136 could be interpreted to prevent manufacturers from receiving drawback on products intended for export to countries with different food and drug requirements. Further, certain products for domestic use, such as tobacco flavors and animal feed flavors, are not subject to the same requirements as products intended for internal human consumption. Products may legally be made for such uses even though banned for human consumption.

ATF appreciates this comment. Since the limitation of § 17.136 only applies to products that *violate* FDA bans or restrictions, it is not intended to prevent drawback in the situations mentioned by the commenters. In general, there would be no FDA violations in those situations. Therefore, language has been added to § 17.136 in this final rule to clarify this point.

2. Another suggestion pertained to § 17.166(b). This new regulation requires records of "other disposition" of nonbeverage products—that is, disposition other than by sale. Former regulations in 27 CFR 197.130 only

required disposition records for products disposed of by sale; § 17.166(b) fills this gap in the recordkeeping system.

However, a change in § 17.166(b)(1) introduced by Notice No. 748, adding some language which had not been present in Notice No. 634, was a cause of concern for several commenters. This change added a proposed requirement that would have applied whenever a nonbeverage product is disposed of by being used as an ingredient in other products. The new language would have required disposition records, in such instances, to show the formula number of every other product in which the first product was used as an ingredient. The commenters stated that a requirement to show such formula numbers would be onerous for many flavor companies who frequently use their flavors as ingredients in many other flavors.

The purpose of the proposed requirement added by Notice No. 748 was to enable an ATF inspector to follow the "audit trail" to the next product and compare its batch records, showing usage of the first product, with the first product's records of disposition. This inspection technique had been facilitated under the former regulations in part 197 by a requirement that supporting data (submitted with each claim) show, for each product manufactured, the formula number of each nonbeverage or intermediate product used as an ingredient. That requirement was eliminated from the simplified supporting data proposed by Notice No. 748 (and adopted by this final rule), but its absence would have been more than made up for by the proposed additional language in § 17.166(b)(1).

After carefully considering this public comment, ATF has decided that the benefits of the proposed additional requirement in § 17.166(b)(1) may not be commensurate with the added burden to industry. Therefore, in this final rule, § 17.166(b)(1) reads as it did in Notice No. 634, without the formula-number requirement added by Notice No. 748. However, ATF reserves the right to examine this issue further and possibly to propose another rulemaking, if experience shows that the formula-number requirement, or something similar, is needed for adequate administration of the law.

3. Two commenters requested permission to continue using the old supporting data, as prescribed under Rev. Proc. 64–32, 1964–2 CB 951, and former regulations (27 CFR 197.110–197.119). Even though the new supporting data prescribed by this final rule is much simpler, some companies have computerized their system, and it would actually be a hardship for them to have to change.

Section 17.147 allows modifications of the supporting data to be used without prior permission, if the modified form contains all of the required information. For the most part, the old supporting data contains all of the information required under this final rule. There are only a few new elements, which include: A certification that required physical inventories have been taken, separate data for different effective tax rates and for Puerto Rican and U.S. Virgin Islands spirits and imported rum, and certain explanatory information sometimes required in Part IV of the new form. Therefore, drawback claimants may continue to use the old supporting data as long as the new elements are included.

4. Another comment stated an objection to the requirement for physical inventories (§ 17.167). The commenter claimed that physical inventories were not required under part 197. However, that is not so. Physical inventories were mentioned in §§ 197.116–197.119, with the intent that they should be taken every claim period. Such inventories are necessary from time to time to ensure the accuracy of the book account. In line with the principles of the Administration's "Reinventing Government" regulatory initiative, ATF has determined that claimants with bond coverage need not be required to take a physical inventory every month (as proposed in Notices No. 634 and 748). Therefore, this final rule provides for quarterly physical inventories.

5. Some other suggested improvements were related to the proposed revision of the formula form (previously numbered ATF F 1678, now ATF F 5154.1). A draft version of this form was published in the same issue of the **Federal Register** as Notice No. 748 (see 57 FR 39564). First, the commenter requested additional space for addresses when a single form is filed for multiple plants; but this is not necessary, since adequate space is provided on the reverse of the form. (The reverse was not printed in the **Federal Register**, since it is virtually a blank page.) If the reverse is still not sufficient, a continuation on plain paper is acceptable.

Also, the commenter suggested that ATF F 5154.1 be redesigned for computer-generated insertion of data. However, he did not propose any specific changes. If a claimant has a specific proposal for a computer-generated form, it could be approved as an alternate procedure under § 17.3. In a separate project, ATF has developed a computer program to facilitate the preparation of nonbeverage product formulas, which is available for use by industry members. For more information on this project, please contact the ATF Laboratory or the person listed above under **FOR FURTHER INFORMATION CONTACT**.

6. Another suggestion proposed a simplified procedure for alternation of premises between a distilled spirits plant and a nonbeverage product manufacturing plant. This suggestion cannot be considered at this time, since it relates to other regulations that are not the subject of this rulemaking. This comment will be treated as a suggestion for future amendment of 27 CFR part 19.

7. Another comment pointed out that the last sentence of § 17.137 (requiring qualification as a distilled spirits plant) should be limited to products that are disapproved as "fit for beverage use." This comment is well taken. Under § 19.58, as amended by this final rule, exemption from qualification requirements is provided to manufacturers of various products that are *unfit* for beverage use, which nevertheless would not be approved for drawback because they are not medicines, medicinal preparations, flavors, flavoring extracts, food products, or perfume. Therefore, the suggested change has been made.

8. Several comments addressed the procedure for determining whether products are fit or unfit for beverage use (§ 17.134). It was stated that the use of an organoleptic examination (taste test) performed by ATF is not sufficiently objective and "can result in a very arbitrary tasting method with unpredictable results."

As an alternative to the method currently used, one commenter suggested the use of an independent testing panel funded by industry. The commenter opined that such a panel might be more "objective" and might alleviate the problem of delays in formula approvals caused by a backlog of submissions at the ATF Laboratory.

Interestingly, this particular idea (absent the funding proposal) had been previously considered by ATF pursuant to a suggestion submitted by two ATF employees. At that time, ATF determined that the panel would have to be restricted to analysis of samples, since most industry members would be opposed to allowing an independent laboratory to see their formulas. Additionally, it was determined that training and certification by ATF would be necessary, thus minimizing any time and cost savings to the Government. These findings are still considered to be valid.

Furthermore, ATF disagrees that a panel funded by industry would be any more objective than the taxpayer-funded ATF Laboratory. On the contrary, industry funding would seem to introduce a possibility for bias not currently present. ATF has no interest to be served by approving or disapproving any particular formula. Our only interest is to administer the law on an impartial basis. An element of subjectivity (but not bias) is unavoidably present due to the legal requirement that products be "unfit for beverage use." This cannot be eliminated merely by shifting the responsibility for decision-making to another entity. Therefore, ATF has decided not to adopt this suggestion.

Another commenter proposed a different alternative. This one suggested that ATF incorporate a "standard reference method" for organoleptic examination based on a method prescribed by the American Society for Testing and Materials (ASTM). The method recommended by the commenter is as follows:

Samples: (1) Non-Beverage Test (NBT) sample(s)—Formulate six or fewer samples over a range of dilution levels of the NBT component in 15% ethanol. (2) Non-Beverage Reference (NBR) and Beverage Reference (BR) samples—From the list of ingredients and amounts in Table 1 (i.e. a table listing ingredients and their quantities recognized by ATF as usually sufficient to make products unfit for beverage use), select and formulate one sample for a NBR at 15% ethanol. Reduce the amount of the respective ingredient in the NBR sample to formulate a BR sample that would be deemed potable.

Procedure: (1) Recruit a panel of at least 15 members previously screened as outlined below.

(2) Each panelist is presented the NBR and BR samples as examples of a nonpotable and potable beverage, respectively.

(3) Each panelist is then presented in random order each NBT sample for comparison in acceptablility to the NBR and BR sample.

(4) Each panelist responds to the question, "Is this sample more like the NBR or BR sample in acceptability?"

(5) Count the number of panelists scoring each NBT sample as more like the BR sample in acceptability.

(6) Use the statistical tables for the duo-trio difference test (from ASTM "Manual on Sensory Testing Methods, STP 434") to conclude which NBT samples are potable. Determine significance at the 95% confidence level.

(7) Report the highest concentration of the nonbeverage component that is significant as an upper bound in concentration of the NBT component for potability.

Panelist Screening: (1) Present both the NBR and BR samples to a prospective panelist.

(2) Ask the question, "Which sample is more acceptable to you?"

(3) Screen out any panelists which select the NBR sample.

ATF has reviewed this proposed method and finds it unacceptable for several reasons. First, the method does not test for the specific information needed for drawback determinations under 26 U.S.C. 5131. The proposal is, in effect, a test for determining what concentration of a single "component" is needed to render an ethanol solution nonpotable. However, in making drawback determinations, ATF is not just interested in the contribution to potability by a specific component; rather, ATF is interested in the resulting potability of a product, which may contain many components. Further, ATF is not interested in quantitating the level of concentration at which a solution becomes nonpotable; rather, ATF is just interested in determining, yes or no, whether a particular final product is fit for beverage use. In other words, the proposed method provides extraneous, unnecessary information while simultaneously failing to provide the particular information that ATF needs.

Secondly, the proposed method does not even provide a definitive determination whether a particular sample is beverage or nonbeverage. It only provides a determination whether the sample is "more like" the "beverage reference" or the "nonbeverage reference." If one of the two reference samples is closer than the other to the border separating beverage from nonbeverage, the test sample may in fact be "more like" one of them even though it is on the opposite side of that border. For example, imagine that on a scale of 1–100, the separation between beverage and nonbeverage occurs at 50. If the beverage reference is at 40 and the nonbeverage reference is at 75, a test sample at 55 will taste "more like" the beverage reference even though the sample is in fact nonbeverage.

Thirdly, the composition of the proposed panel would not be appropriate. As the example just given shows, it is important for the panel to understand the real difference between beverage and nonbeverage, not merely whether a sample is "more like" one or the other. This implies a panel with expertise, not just a panel of random individuals. Though not explicitly stated, it is implied that the proposed method would utilize randomly selected individuals. By contrast, the panelists used by ATF are all university-trained chemists, who receive a minimum of 1 year of special training at the ATF Laboratory before their vote is given full weight in drawback approval determinations. This ensures maximum consistency and continuity over time in application of the "unfit for beverage use" standard.

Because ATF uses expert panelists, it is not necessary to empanel a minimum of 15. In most cases, a panel of two is sufficient for a definitive determination. If a sample is at all borderline, additional panelists are recruited up to a maximum of 12. At least ⅔ of them must agree that the sample is unfit for beverage use. By this method, the eight chemists of the ATF Laboratory's Nonbeverage Section (aided when necessary by the eight chemists of the Beverage Alcohol Section) are able to examine about 2,400 samples per year. This is in addition to their other work which includes chemical analyses and examination of thousands of formulas submitted without samples.

Therefore, although ATF appreciates the effort put into devising the proposed new method, we have concluded that it is in no way superior to the method currently being used.

Accordingly, § 17.134 is adopted by this final rule without change from Notice No. 748. ATF hopes that the information in this section will be used by manufacturers to identify and "weed out" products that are clearly fit for beverage use.

9. Finally, a commenter requested that ATF publish, in § 17.137, a list of ingredients and their quantities that are recognized by the ATF Laboratory as usually sufficient to make products unfit for beverage use. The commenter was referring to the following *Guidelines*, which were distributed to attendees at an ATF-sponsored industry seminar:

Ingredient	Amount
Citric Acid	If ethanol less than 30%, acid = 0.1 × ethanol content (% v/v) + 0.5. If ethanol greater than 30%, acid = 0.1 × ethanol content (% v/v).
Salt	3.2 grams salt per 100 ml at 45% ethanol (more for greater ethanol).
Vanillin	1 oz. per gallon at 30% ethanol.
Ethyl Vanillin	0.4 oz. per gallon at 30% ethanol.

Ingredient	Amount
Propylene Glycol	Equal amounts by volume of propylene glycol and ethanol.
Ethyl Acetate	2.0% by volume at 90% ethanol.
Maltol	5% at 90% ethanol.
Essential Oils	Most are unfit at a level of 3% in 90% ethanol. An exception is anise oil which needs 4.2%. Many 1% solutions of essential oils are unfit.
Benzaldehyde	1.2 oz. benzaldehyde or bitter almond oil per gallon at 90% ethanol.

ATF agrees that this information should be widely distributed among nonbeverage industry members; however, the problem with publishing it in the regulations is that it can only be a guide, not applicable to all products. If it were contained in regulations, industry members would tend to assume that if their products met the guidelines, they would automatically be approved for drawback. No such guarantee can be provided. (For example, products meeting the citric acid guidelines may nonetheless be fit for beverage use if they contain sufficient sugar.) Therefore, ATF has decided to publish this information as a future Industry Circular, rather than as an amendment to the regulations.

Other Changes From Former Regulations

Other changes, proposed in Notice No. 748, were not the subject of public comment. Except as noted, they have been adopted substantially as proposed.

1. *Adoption of Rulings.* The holdings of certain Revenue Rulings and ATF Rulings are reflected in the final regulations, as follows: Rev. Rul. 55–689, 1955–2 CB 729 (§ 17.187); Rev. Rul. 56–239, 1956–1 CB 715 (§ 17.135); Rev. Rul. 56–314, 1956–2 CB 1023 (§ 17.137); Rev. Rul. 56–335, 1956–2 CB 1024 (§ 17.181); Rev Rul. 56–336, 1956–2 CB 1023 (§ 17.182); Rev. Rul. 56–367, 1956–2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56–394, 1956–2 CB 1021 (§ 17.152(c)); Rev. Rul. 56–395, 1956–2 CB 1025 (§ 17.186); Rev. Rul. 58–350, 1958–2 CB 974 (§ 17.136); Rev. Rul. 63–87, 1963–1 CB 384 (§§ 17.11: new definition of "food products," and 17.133(d)); Rev. Rul. 69–138, 1969–1 CB 327 (§§ 17.126(b) and 17.152(a), (c), and (d)); ATF Rul. 73–1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74–2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76–17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76–19, 1976 ATF CB 86 (§§ 17.169 and 17.185(b)); ATF Rul. 77–27, 1977 ATF CB 165 (§ 17.122); and ATF Rul. 82–7, 1982–2 QB 46 (§ 17.11: new definition of "medicines").

Rev. Rul. 57–369, 1957–2 CB 948, has been adopted in the instructions to the revised ATF Form 5154.1 (formerly Form 1678). Rev. Rul. 58–317, 1958–1 CB 586, is not reflected in the regulations; it is obsolete since iso-alcoholic elixir has been removed from the National Formulary. Rev. Rul. 58–428, 1958–2 CB 975, is also not reflected in the regulations, because the repeal of 26 U.S.C. 5082 has removed its authority. The holding of ATF Rul. 81–8, 1981–4 QB 24, has been modified in § 17.183 (see discussion above, under "Public Comments on Notice No. 634"). Revenue Procedure 64–32, 1964–2 CB 951, has been replaced by the new supporting data form (ATF Form 5154.2), per § 17.147.

2. *Form number changes.* The prescribed form entitled "Formula and Process for Nonbeverage Products" has been revised and renumbered from 1678 to 5154.1. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the "Bond for Drawback Under 26 U.S.C. 5131" is being changed from 1730 to 5154.3, but this will not require resubmission of any bonds previously approved.

3. *Alternate methods or procedures.* A new section (§ 17.3) has been added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of the conditions stated in the regulation.

4. *Incorporation by reference.* Former § 197.3 is not included in this final rule, because consultation with the Office of the Federal Register indicated that the use of the National Formulary, United States Pharmacopeia, and Homeopathic Pharmacopoeia of the United States does not amount to an incorporation by reference. Although § 17.132 makes a "reference" to these books, there is no "incorporation" of them into the regulations. There is merely an authorization, for manufacturers who so choose, to utilize formulas from them as approved formulas without the necessity of submitting ATF Form 5154.1.

Incorporation by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a)(1) is intended to be a substitute for the reprinting of material required to be published in the **Federal Register** under § 552(a)(1)(A)–(E). However, the authorization for manufacturers to make use of the N.F., U.S.P., and H.P.U.S. on a voluntary basis does not entail a requirement for ATF to publish the contents of those books in the **Federal Register**. It is true that a manufacturer who has chosen to adopt a formula from the N.F., U.S.P., or H.P.U.S. may be subject to a $1,000 fine if he subsequently fails to follow it (§ 17.148). However, the enforcement of this requirement does not require publication of that formula, any more than similar enforcement of the manufacturer's own proprietary formulas requires their publication. The enforcement in each instance pertains to the manufacturer's choice of a formula, rather than to the contents of the N.F., U.S.P., and H.P.U.S. *per se.*

5. *Signature authority.* Section 17.6, generalized from certain provisions in former §§ 197.30 and 197.67(a), states the rule as to when evidence of signature authority is required.

6. *Delegations of authority.* Authorities vested in the Director by part 17 may be delegated, through delegation orders, to subordinate officials. This possibility is reflected in the definition of "Director" in § 17.11 by addition of the words "or his or her delegate." ATF's Alcohol and Tobacco Laboratory is specified in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136 as the recipient of certain documents, such as formulas. Accordingly, a new definition of "Alcohol and Tobacco Laboratory," giving its address, is provided in § 17.11.

7. *New and modified definitions.* For clarity, some new definitions are added in § 17.11. Besides those mentioned elsewhere in this preamble, there are new definitions of "approved," "CFR," "month," "person," "proof gallon," "quarter," "recovered spirits," and "this chapter." With respect to the definitions of "month" and "quarter," claimants desiring to use slightly different time periods may apply under § 17.3. (Existing approvals remain in effect.) The definitions of "director of the service center," "district director" (an I.R.S. official), "total annual withdrawals," and "year" in former § 197.5 have been deleted as unnecessary. The definitions of "used" and "time distilled spirits are used" are in regulations §§ 17.151 and 17.152. The

definition of "nonbeverage products" in § 17.11 has been modified to reflect the addition of perfume to the list of products that may be approved for drawback. (Pub. L. 103–465, Sec. 136(a).) Elsewhere in this final rule, wherever the types of nonbeverage products are listed, this addition of perfume is reflected as well. ATF is in the process of delegating authority under its new organizational structure; however, this process is not yet complete; therefore, the definition of "regional director (compliance)" and the use of that term throughout this final rule are retained.

8. *Time for payment of special tax.* A sentence has been added in § 17.24 to clarify when a payment of special tax is considered late. Under 26 U.S.C. 5131, special tax is a prerequisite for drawback eligibility. Therefore, no penalty under 26 U.S.C. 5134(c) will be imposed as long as special tax is paid before completion of final action on the claim.

9. *Retention of special tax stamps.* Former regulations did not specify a retention period for special tax stamps. These final regulations (§ 17.55) make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which was 2 years under former § 197.28, has also been made the same as for other documents (§ 17.31).

10. *Reincorporation.* A new § 17.77 has been added, stating that when an existing corporation or corporations are reorganized into a new corporation, a new special tax must be paid. This new section is similar to regulations for liquor dealers in § 194.163. Although § 17.77 states the general rule, there may be exceptions. For instance, ATF has ruled that a reorganization under 26 U.S.C. 368(a)(1)(F), consisting of a mere change in identity, form, or place of organization of one corporation, however effected, does not require a new special tax. If there is a question as to whether a new special tax is required, the ATF Tax Processing Center, (513) 684–6580, should be consulted.

11. *Amount of bond for monthly claims.* The wording of former § 197.107 allowed for the possibility that the amount (or "penal sum") of a bond might be reduced due to frequent on-site inspections. This concept has become obsolete, since today no claimant is regularly inspected as frequently as quarterly. Therefore, under these final regulations (§ 17.102), bonds for monthly claims must cover the total drawback claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

12. *Time for filing formulas.* Language in former § 197.95, respecting time for filing formulas, has been revised in § 17.121(b) to express more clearly the statutory requirement of 26 U.S.C. 5131–5134. Both formula and claim must be filed within "6 months next succeeding the quarter in which the distilled spirits covered by the claim were used" (26 U.S.C. 5134(b)). However, if there is any doubt about a product's eligibility for drawback, it is *preferable* that the formula be filed and approved before commencement of manufacture.

13. *Formulas for use at multiple plants.* The revised formula form (ATF F 5154.1) permits a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula will be used are listed on the form. This change is reflected in § 17.121(c).

14. *Adoption of predecessor's formulas.* Former § 197.99 allowed the adoption of a predecessor's formulas (for continued use at the same plant, when its ownership changes) by filing a notice listing the formulas' serial numbers, names, and dates of approval. This final rule (§ 17.125(a)) only requires the notice of adoption to list the names and serial numbers. The notice must be filed with the regional director (compliance). Further, since copies of the articles of incorporation or other documents are necessary to prove the change of ownership, a sentence has been added to include this general requirement.

15. *Adoption of manufacturer's own formulas from another plant.* Adoption of a company's own formulas for use at another of its plants, including adoption by a parent company of formulas of its wholly owned subsidiary, and vice versa, is a new option provided by this final rule. (See § 17.125(b).) Previous regulations did not provide for this. The procedure for this type of adoption is to submit a letterhead notice to the ATF Laboratory, accompanied by two photocopies of the formula to be adopted and some evidence of the relationship between the plants. After verifying the formulas, the ATF Laboratory will forward the notice to the regional director (compliance). The adopting plant is also required to reference the notice in its first claim relating to the adopted formula(s).

16. *Formulas for intermediate products.* ATF needs to know all ingredients that will enter into the finished nonbeverage product. Therefore, these final regulations (§ 17.126) require the submission of formulas on ATF Form 5154.1 (formerly 1678) for intermediate products, *unless* the formula for an intermediate product is written as part of the approved formula for the nonbeverage product(s) in which the intermediate product will be used. (If the formula for the intermediate product is written as part of the nonbeverage product's formula, the intermediate product is treated as an unfinished nonbeverage product; see discussion below.)

17. *Self-manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products.* Spirits consumed in the manufacture of intermediate products are not subject to drawback, both under former regulations (§ 197.119) and this final rule (§ 17.155). If spirits are recovered in the manufacture of intermediate products, drawback may be claimed, but only if and when the spirits are subsequently reused in the manufacture of a nonbeverage product (§ 197.118 in former regulations and § 17.153(a) in this final rule). These restrictions are necessary for protection of the revenue, because when spirits are consumed or recovered in the manufacture of an intermediate product, it could be difficult or impossible to correlate the quantity of such spirits with the production of a batch of finished nonbeverage product in which the intermediate was used.

However, in some instances, the manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product. The inability to claim drawback on such spirits would be a hardship. Therefore, manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former intermediate product is regarded instead as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture are regarded as consumed (or recovered) in the manufacture of a nonbeverage product and are subject to drawback. This procedure protects the Federal revenue, because each batch of unfinished nonbeverage product is restricted to use in a specific batch of a predetermined finished product and must be so used within the time period specified in the approved nonbeverage product's formula.

Although this procedure was available under former regulations, many manufacturers were not aware of it, because it was not described in the

regulations. In order to inform manufacturers of this procedure, it is described in §§ 17.127 and 17.185 of these final regulations. Manufacturers are given the option to designate their self-manufactured alcoholic ingredients as either intermediate products or unfinished nonbeverage products. There are advantages and disadvantages that go with each choice.

The advantage of designating an ingredient as an unfinished nonbeverage product is that spirits recovered or consumed in the manufacture of the ingredient are subject to drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation are: (1) Each batch of the ingredient must be used within a limited time in a single batch of a predetermined nonbeverage product. (2) The ingredient cannot be transferred to another plant under § 17.185(b). (This restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an intermediate product are: (1) Several batches may be accumulated, stored indefinitely, and used in the manufacture of *any* nonbeverage product whose formula calls for their use. Less (or more) than a full batch of such a product may be used to produce a batch of a finished nonbeverage product. (2) Ingredients designated as intermediate products may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185. (3) For manufacturers who already have intermediate product formulas on file, another advantage of the "intermediate product" designation is that no new formula or procedural changes would be required. But the disadvantage of that designation is that spirits consumed or recovered in production of the intermediate product may not be claimed for drawback.

18. *Subpart U of 27 CFR part 170.* Subpart U of 27 CFR part 170, which provided exemptions from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use, is being revoked, but the material from that subpart has not been entirely eliminated. Material related exclusively to drawback manufacturers has been incorporated in the new part 17. Some material has been eliminated, either as unnecessary or as covered by other regulations. The remaining material has been relocated into subpart D of part 19 as the new § 19.58; this section is grouped under a new centerheading, "Activities Not Subject to this Part," along with former § 19.69, which is redesignated as § 19.57). Conforming amendments have also been made in 27 CFR parts 70 and 194. Former § 170.613(a)(6) ("Salted wines") was previously incorporated into 27 CFR 24.215 by T.D. ATF–299 (55 FR 24974). Sections in part 17 containing language from former subpart U of part 170 are: §§ 17.132, 17.133, and 17.168.

19. *Submission of quantitative formulas.* This change strengthens requirements respecting submission of formulas for nonbeverage drawback products. Regulations allow formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), and the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) to be used without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. At present, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas are not adequate for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, § 17.132 in this final rule is worded so that ATF may require submission of quantitative formulas on ATF Form 5154.1 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. It is expected that the list of preparations for which approval of quantitative formulas will be required under this regulation will be published as an ATF ruling in the ATF Bulletin.

20. *Drawback status of U.S.P., N.F., and H.P.U.S. preparations.* Preparations listed in the U.S.P., N.F., and H.P.U.S. are generally exempt from the requirement to file quantitative formulas (former § 197.96; § 17.132 in this final rule), but this exemption does not necessarily entail approval for drawback. The statutory standard of "unfit for beverage purposes" remains and must be enforced (26 U.S.C. 5131(a)).

Former regulations in part 197 were silent concerning the drawback status of U.S.P., N.F., and H.P.U.S. products. However, this issue should be addressed, so that manufacturers may properly plan. Therefore, § 17.132 in this final rule states that formulas listed in the U.S.P., N.F. and H.P.U.S. are approved for drawback *except* as otherwise provided by regulation or ATF ruling. Alcohol, U.S.P. (including dehydrated alcohol and dehydrated alcohol injection), alcohol and dextrose injection, U.S.P., and tincture of ginger, H.P.U.S., are specifically declared in this regulation to be fit for beverage use.

Similarly, H.P.U.S. preparations made at dilutions higher than "4X" (i.e. one part in 10,000) are presumed to be fit for beverage use. Manufacturers of such products may contest this presumption by submitting appropriate evidence that a specific product is unfit for beverage use. The reason for the initial presumption is that the ATF Laboratory has determined that even for H.P.U.S. products containing certain poisonous materials, dilutions of greater than "4X" are fit for beverage use. ATF neither confirms nor disputes the medicinal value of such products, but the dilution one part of active ingredients in 10,000 parts or more of alcohol and water has been found to result in a product that would be suitable for consumption as a beverage. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than "4X." These final regulations reflect this position in § 17.132(b).

21. *Liquor-filled candies.* Paragraph (c) of § 17.133 states ATF's longstanding policy that candies with alcoholic fillings may be regarded as nonbeverage products only if the fillings meet the requirements for alcoholic sauces, as stated in § 17.133(a). Since some States may prohibit or restrict the manufacture or sale of liquor-filled candies, a sentence in the introductory text of § 17.133 cautions applicants that formula approval does not authorize violation of State law.

22. *Use or sale of products for beverage purposes.* The last sentence of § 17.134 (adapted from former §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

23. *Manufacturers who are also users of denatured alcohol.* Since no tax is paid on denatured spirits, it would be conducive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol

on which drawback may be claimed. Section 17.135(a) prohibits this practice.

24. *Claims for credit by manufacturers of nonbeverage products.* Drawback manufacturers who also operate a distilled spirits plant may find it more convenient to claim nonbeverage drawback in the form of a credit to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, § 17.142(b) permits such a procedure.

25. *Changes in supporting data requirements.* Under the regulations published in this document, the supporting data required to accompany claims has been simplified. The new supporting data is described by ATF Form 5154.2, which is authorized by these regulations. Use of this Government form is not mandatory; § 17.147 permits the use of any alternative format that clearly shows all the required information.

The new supporting data has eliminated material that is not necessary to the processing of drawback claims. Former Part II ("Distilled Spirits Received") is gone. So is former Part V ("Intermediate Products Account") except for the totals in column (i), which are incorporated into the Distilled Spirits Account. Part III has been shortened from 16 columns to 8, and is redesignated as "Production of Nonbeverage Products." Most of the simplification in Part III results from elimination of detailed information on use of specific finished products. Use of eligible spirits will be reported in three columns ("Kind," "Drawback Rate," and "Amount"), and use of ineligible spirits will not be reported, except for recovered spirits.

Information no longer reported in the supporting data must still be recorded in the manufacturer's records, as prescribed in subpart H of part 17. The regional director (compliance) is authorized, under §§ 17.147(a) and 17.123, to require additional supporting data if necessary in a particular case.

Some new information has been added to the supporting data. Information about the place of origin of Puerto Rican and Virgin Islands spirits and other imported rum is required, because ATF needs this information in order to implement the Caribbean Basin Economic Recovery Act (Pub. L. 98–67, Title II). Separate reporting is required for spirits taxpaid at different effective tax rates through application of the wine and flavor tax credit of 26 U.S.C. 5010, because such spirits are subject to drawback at different rates. (The drawback rate is $1.00 less than the rate at which distilled spirits tax was paid, as provided in 26 U.S.C. 5134.)

26. *Public Law 98–369.* This document reflects certain changes made by Public Law 98–369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d), relating to obliteration of marks, and (2) imposition of a $1,000 penalty for nonfraudulent violations of drawback law and regulations, unless the manufacturer establishes reasonable cause for a violation. Sections affected are: §§ 17.148 and 17.184.

With respect to the $1,000 penalty, the statute requires that the penalty be imposed "for each failure to comply" with law or regulations. This means that a separate penalty can be imposed for each product listed on a claim. For example, if several products were not manufactured according to formula, but were still unfit for beverage use, a $1,000 penalty could be imposed for each nonconforming product. If the amount claimed on any such product is less than $1,000, the penalty is limited to the amount claimed.

Recordkeeping violations can also result in imposition of a penalty for each separate product. However, if the violations are so serious that they prevent the manufacturer from establishing either the unfitness of a product for beverage use or the quantity of the product that was made, then the penalty provision would not apply. Each claim must be considered on its own merits, and the burden of proving entitlement to drawback is always on the manufacturer. If this burden is not met with respect to any product, the claim for drawback relating to that product would be denied.

The preceding comments also apply to products manufactured without submission of a formula. If the manufacturer can sustain the burden of proof, the claim would be approved subject to the penalty. However, without a formula, it is unlikely that this burden could be sustained other than by examination of batch records. ATF is not obliged to send an inspector to examine batch records when a manufacturer refuses to comply with the requirement to submit a formula.

With respect to timely filing, a late-filed claim or formula counts as just one "failure to comply." So if the only noncompliance is lateness in filing a claim, the maximum penalty would be $1,000. Late-filed formulas result in a separate penalty for each late formula. Special tax paid subsequent to final action on a claim also results in a $1,000 penalty. It should be noted that in no case will a claim be paid more than 6 years after the quarter in which the products were manufactured, due to the statute of limitations of 28 U.S.C. 2401.

Finally, the penalty provision does not apply in a case of fraud. Fraud is considered to be a deliberate violation with intent to deceive. If there is fraud the entire claim will be denied, and the manufacturer may be subject to other civil and criminal penalties as well.

27. *Changes in recordkeeping requirements.* Items deleted from the supporting data have been incorporated into the records required by subpart H of part 17 to be maintained at each nonbeverage premises. Certain formerly required records that are duplicative of the information provided by the supporting data have been deleted from subpart H. The holding of Industry Circular 79–5 with respect to records of raw materials and finished products has been clarified and incorporated in the regulations (see §§ 17.164 and 17.165). An amendment to § 19.780, specifying that the record required by that section must show the contents of each container, will facilitate the use of that record by nonbeverage manufacturers in complying with § 17.162 in instances where a shipment consists of non-uniform containers.

28. *Gains in spirits received or on hand.* This final rule requires gains in spirits received, as disclosed by the receiving gauge, and gains in spirits on hand, as disclosed by physical inventory, to be deducted from the claim covering the period in which the gain occurs. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (untaxpaid) spirits or an excessive claim in a previous period. Regulations stating this requirement are in §§ 17.147(d), 17.162(d), and 17.167(a).

With respect to spirits received, § 17.162(d) sometimes allows a gain to be avoided by recording the shipping plant's taxpayment gauge as the quantity received. For spirits received in a tank car or tank truck, this is only allowed when the drawback manufacturer's receiving gauge is within 0.2% of the taxpayment gauge. (This duplicates § 197.130a(a) in former regulations.) If the taxpayment gauge was inaccurate within the 0.2% limitation, the discrepancy will tend to resolve itself as a gain or loss on the drawback manufacturer's next physical inventory.

If the gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by *more* than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received. This rule is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. Under § 17.162(d) any gain disclosed in such

circumstances must be immediately recorded as such and deducted from the manufacturer's next claim.

29. *Evidence of taxpayment.* A new provision in § 17.163 requires manufacturers to obtain commercial invoices or other documentation when spirits are purchased from wholesale and retail liquor dealers. This new requirement will help provide evidence of taxpayment of the spirits.

In addition, § 17.163 requires all manufacturers to obtain evidence of the effective tax rate paid on spirits other than alcohol, grain spirits, neutral spirits, distilled gin, and straight whisky. Spirits other than those kinds may contain wine and/or flavoring material that brings the effective tax rate below the normal distilled spirits rate ($13.50 per proof gallon). The effective tax rate is significant for nonbeverage drawback, because the drawback rate is $1 less than the rate at which tax was paid or determined (26 U.S.C. 5134(a)).

For shipments received from a distilled spirits plant, an effective tax rate below $13.50 per proof gallon must be noted on the record of shipment required by § 19.780 to be forwarded to the nonbeverage manufacturer. For spirits purchased from wholesale or retail liquor dealers, the drawback claimant must obtain the evidence of effective tax rate from the bottler, producer, or importer. If the required evidence is not obtained, drawback will only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

30. *Production (batch) records.* Under § 17.164, the production records for nonbeverage and intermediate products generally must be kept by batch. To enable an ATF officer to compare the ingredients used in each batch with the ingredients listed in the product's formula, the records must refer to ingredients by the same names as are used for them in the product's formula. Synonymous names may additionally be shown. Alcohol usage may be shown by weight or by volume, and the proof of the spirits must also be shown.

The alcohol content of nonbeverage products must be tested "at representative intervals." This requirement is a variable, because the appropriate interval will vary to a great degree depending on the type of product and the frequency with which it is manufactured. The purpose of testing alcohol content is to verify the accuracy of the formula and to monitor compliance with it. If a manufacturer feels unsure of how frequently alcohol content should be tested to accomplish this purpose for a particular product, advice may be requested from ATF. Whenever the manufacturer does make a test, the results must be recorded in the production records.

31. *Specifications for physical inventories.* These final regulations (§ 17.167) specify that the "on hand" figures in the supporting data must be verified by physical inventories "as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback." The words "as of" indicate that the inventory need not be taken exactly at the end of the quarter; but if it is taken at a slightly different time, the data must be worked backward or forward to the end of the quarterly period. The regulations also authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever such inventories are deemed necessary to ensure compliance with regulations.

32. *Recovered alcohol.* Recordkeeping requirements for recovered alcohol, formerly in § 170.617(c), are incorporated in new § 17.168. The regulations as proposed in Notice No. 748 did not provide for destruction of recovered alcohol, although permission for such destruction could be granted under § 17.3, subject to such recordkeeping and other conditions as the approving official might have deemed appropriate. Since the need for destruction of recovered alcohol is an eventuality that can be expected to occur from time to time, this final rule provides a standard procedure to replace the need for an application under § 17.3. Section 17.168 provides standard recordkeeping requirements and § 17.183 requires a notification, which will give ATF the option of witnessing the destruction.

33. *Records retention.* Section 17.170 (corresponding to former § 197.133) extends the records retention period from 2 years to 3 years, for consistency with other ATF regulations. This change will ensure the availability of records to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, § 17.170 contains a provision that permits the regional director (compliance) to require a longer records retention period, not to exceed an additional 3 years.

34. *Inspection of records.* In addition to the records specifically required by regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary of the Treasury) to inspect any records "bearing upon the matters required to be alleged" in drawback claims. This authority is reiterated in § 17.171.

In carrying out this authority, ATF will continue to protect proprietary information. For example, the production records in § 17.164 do not require greater detail as to ingredients than is shown on a product's formula. If some secret ingredients of a product are referred to in general terms, such as "essential oils," on the formula, then the required production record for that product would only need to show the quantity of "essential oils" used in the production of each batch. The production record would not have to specify the secret ingredients. If unusual circumstances should require an ATF officer to examine other records, such as master formulas that do specify the secret ingredients, § 17.171 does not provide authority for copies of such formulas to be made without the consent of the proprietor. (However, such copies could be required by the Director or a regional director (compliance) under § 17.123.)

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information obtained in the course of his or her employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. "Returns" and "return information" in that section include drawback claims and the records and reports which support them.

35. *Discontinuance of business.* A requirement has been added, in § 17.187, for notification to ATF when a manufacturer permanently discontinues business. This will enable ATF to manage its files, and it is reasonable in view of the conditional exemption from basic permit and special (occupational) tax requirements for the sale of alcohol remaining on hand.

36. *Nonbeverage products from Puerto Rico and the Virgin Islands.* Amendments to 27 CFR 250.173 and 250.309 allow use of the new supporting data form (ATF F 5154.2) and specify that claims and bonds shall be filed with the Chief, Puerto Rico Operations, for nonbeverage products brought into the U.S. from Puerto Rico and the Virgin Islands. Although Notice No. 748 only proposed to amend the place for filing drawback claims, the place for filing bonds should be amended as well, since bonds and claims are filed at the same

place. Other changes in part 250 are miscellaneous technical and conforming changes.

Distribution Table for Part 197

Former section	New section
Subpart A	
§ 197.1	§ 17.1.
§ 197.2	§ 17.2.
§ 197.3	Deleted.
Subpart B	
§ 197.5: (generally)	§ 17.11.
"Director of the Service Center".	Deleted.
"District Director"	Deleted.
"Time distilled spirits used".	§ 17.152(a).
"Total annual withdrawals".	Deleted.
"Used"	§ 17.151.
"Year"	Deleted.
Subpart C	
§ 197.25	§ 17.21 & § 17.22.
§ 197.25a	§ 17.22.
§ 197.26	§ 17.23.
§ 197.27	§ 17.24.
§ 197.28	§ 17.31.
§ 197.29	§ 17.32.
§ 197.29a(a)	§ 17.41.
§ 197.29a(b)	§ 17.42.
§ 197.29a(c)	§ 17.43.
§ 197.30 (except last sentence).	§ 17.33.
§ 197.30 (last sentence).	Covered by § 17.6.
§ 197.31	§ 17.34.
Subpart D	
§ 197.40	§ 17.51.
§ 197.40a	§ 17.52.
§ 197.41	§ 17.54.
§ 197.42	§ 17.53.
§ 197.43	§ 17.61.
§ 197.46	§ 17.62.
§ 197.47	§ 17.63.
§ 197.47a	§ 17.55.
§ 197.48	§ 17.71.
§ 197.49	§ 17.72.
§ 197.50	§ 17.73.
§ 197.51	§ 17.74.
§ 197.52	§ 17.81.
§ 197.53	§ 17.82.
§ 197.54	§ 17.83.
§ 197.57	§ 17.91.
§ 197.58	§ 17.92.
§ 197.59	§ 17.93.
Subpart E	
§ 197.65	§ 17.101 (up to last sentence).
§ 197.66	§ 17.103.
§ 197.67	§§ 17.105, 17.6.
§ 197.68	§ 17.104.
§ 197.69	§ 17.106.
§ 197.70	§ 17.144 (2nd sentence).
§ 197.71	§ 17.101 (last sentence).
§ 197.72	§ 17.107.
§ 197.73	§ 17.108.
§ 197.75	§ 17.111.
§ 197.76	§ 17.112.

Distribution Table for Part 197—Continued

Former section	New section
§ 197.77 (except last sentence).	§ 17.113.
§ 197.77 (last sentence).	Covered by § 17.108 (last sentence).
§ 197.79	Covered by § 17.111.
§ 197.80	§ 17.114.
Subpart F	
§ 197.95 (sentences 1–2, 6, 8–9).	§ 17.121.
§ 197.95 (sentences 3 & 4).	§ 17.131.
§ 197.95 (5th sentence).	§ 17.137.
§ 197.95 (7th sentence).	§ 17.122.
§ 197.95 (last sentence).	Deleted.
§ 197.96	§ 17.132(a).
§ 197.97	§ 17.123.
§ 197.98	§ 17.124.
§ 197.99	§ 17.125(a).
Subpart G	
§ 197.105	§ 17.141.
§ 197.106 (up to proviso).	§ 17.142(a).
§ 197.106 (proviso, except next-to-last sentence).	§ 17.143.
§ 197.106 (next-to-last sentence).	§ 17.146(b).
§ 197.107 (except first & last sentences).	§ 17.102.
§ 197.107 (first & last sentences).	§ 17.144 (first & last sentences).
§ 197.108	§ 17.145.
§ 197.109	§ 17.146(a).
§ 197.110	§ 17.147.
§ 197.111	New supporting data form.
§ 197.112–113	§ 17.162(a).
§ 197.114	§ 17.162(b).
§ 197.115	§ 17.147 & new supporting data form.
§ 197.116 (except last sentence).	New supporting data form.
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), & § 197.119 (2nd sentence).	§ 17.167(a).
§ 197.117 (first sentence).	New supporting data form.
§ 197.117 (3rd & 4th sentences).	§ 17.153(b).
§ 197.117 (last sentence).	§ 17.153(c).
§ 197.118 (first sentence).	New supporting data form.
§ 197.118 (last sentence).	§ 17.153(a).
§ 197.119 (first sentence).	Deleted; covered by new supporting data form and § 17.164(b).
§ 197.119 (last sentence).	§ 17.155.

Distribution Table for Part 197—Continued

Former section	New section
Subpart H	
§ 197.130 (introduction).	§ 17.161 (first sentence).
§ 197.130(a)–(d)	Covered by § 17.162(a)–(c).
§ 197.130(e)–(g)	§ 17.164(b).
§ 197.130(h)–(j)	§ 17.166(a).
§ 197.130a(a)	§ 17.162(d).
§ 197.130a(b)	§ 17.164(d).
§ 197.130b	§ 17.163 (a) & (c).
§ 197.131	§ 17.166(c).
§ 197.132 (except last clause).	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause).	Covered by § 17.171.
§ 197.133 (except last sentence).	§ 17.170.
§ 197.133 (last sentence).	§ 17.171.

Derivation Table for Part 17

New section	Source
Subpart A	
§ 17.1	§ 197.1.
§ 17.2	§ 197.2.
§ 17.3	NEW.
§ 17.4	NEW.
§ 17.5	NEW.
§ 17.6	NEW (cf. §§ 197.30 and 197.67(a)).
Subpart B	
§ 17.11: (generally)	§ 197.5.
"Alcohol & Tobacco Laboratory".	NEW.
"Approved"	NEW.
"CFR"	NEW.
"Eligible"	NEW.
"Food products"	Rev. Rul. 63–87.
"Medicines"	ATF Rul. 82–7.
"Month"	NEW.
"Person"	NEW.
"Proof gallon"	NEW.
"Quarter"	NEW.
"Recovered spirits".	NEW.
"Subject to drawback".	NEW.
"Taxpaid"	NEW.
"This chapter"	NEW.
Subpart C	
§ 17.21	§ 197.25.
§ 17.22	§ 197.25a.
§ 17.23	§ 197.26.
§ 17.24	§ 197.27.
§ 17.31	§ 197.28.
§ 17.32	§ 197.29.
§ 17.33	§ 197.30.
§ 17.34	§ 197.31.
§ 17.41	§ 197.29a(a).
§ 17.42	§ 197.29a(b).
§ 17.43	§ 197.29a(c).
Subpart D	
§ 17.51	§ 197.40.
§ 17.52	§ 197.40a.

Derivation Table for Part 17—Continued

New section	Source
§ 17.53	§ 197.42.
§ 17.54	§ 197.41.
§ 17.55	§ 197.47a.
§ 17.61	§ 197.43.
§ 17.62	§ 197.46.
§ 17.63	§ 197.47.
§ 17.71	§ 197.48.
§ 17.72	§ 197.49.
§ 17.73	§ 197.50.
§ 17.74	§ 197.51.
§ 17.75	NEW.
§ 17.76	ATF Rul. 74–2.
§ 17.77	NEW.
§ 17.81	§ 197.52.
§ 17.82	§ 197.53.
§ 17.83	§ 197.54.
§ 17.91	§ 197.57.
§ 17.92	§ 197.58.
§ 17.93	§ 197.59.
Subpart E	
§ 17.101	§§ 197.65 & 197.71.
§ 17.102	§ 197.107 (except first & last sentences).
§ 17.103	§ 197.66.
§ 17.104	§ 197.68.
§ 17.105	§ 197.67.
§ 17.106	§ 197.69.
§ 17.107	§ 197.72.
§ 17.108	§ 197.73.
§ 17.111	§§ 197.75 & 197.79.
§ 17.112	§ 197.76.
§ 17.113	§ 197.77.
§ 17.114	§ 197.80.
Subpart F	
§ 17.121	§ 197.95 (sentences 1–2, 6, 8–9).
§ 17.122	§ 197.95 (7th sentence) & ATF Rul. 77–27.
§ 17.123	§ 197.97.
§ 17.124	§ 197.98.
§ 17.125(a)	§ 197.99.
§ 17.125(b)	NEW.
§ 17.126(a)	NEW.
§ 17.126(b)	Rev. Rul. 69–138.
§ 17.127	NEW.
§ 17.131	§ 197.95 (3rd & 4th sentences).
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a) (7)–(9), Rev. Rul. 63–87 & ATF Rul. 73–1.
§ 17.134	NEW.
§ 17.135	Rev. Ruls. 56–239 & 56–367.
§ 17.136	Rev. Rul. 58–350.
§ 17.137	§ 197.95 (5th sentence) & Rev. Rul. 56–314.
Subpart G	
§ 17.141	§ 197.105.
§ 17.142(a)	§ 197.106 (up to proviso) & ATF Order 1100.95A.
§ 17.142(b)	NEW.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence).

Derivation Table for Part 17—Continued

New section	Source
§ 17.144	§§ 197.70 & 197.107 (first & last sentence).
§ 17.145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) & 197.109.
§ 17.147(a)	§ 197.110.
§ 17.147(b)	§ 197.115 (last sentence).
§ 17.147 (c) & (d)	NEW.
§ 17.148	NEW.
§ 17.151	§ 197.11 ("Used").
§ 17.152(a)	§ 197.11 ("Time distilled spirits are used").
§ 17.152(b)	ATF Rul. 76–17.
§ 17.152(c)	Rev. Ruls. 56–394 & 69–138.
§ 17.152(d)	Rev. Rul. 69–138.
§ 17.153	§§ 197.117 (last three sentences) & 197.118 (last sentence).
§ 17.154	§ 197.11 ("Intermediate products").
§ 17.155	§ 197.119 (last sentence).
Subpart H	
§ 17.161	§§ 197.130 (introduction) & 197.132 (except last clause).
§ 17.162(a)	§§ 197.112–113 & 197.130 (a)–(d).
§ 17.162(b)	§§ 197.114 & 197.130 (a)–(d).
§ 17.162(c)	NEW.
§ 17.162(d)	§ 197.130a(a).
§ 17.163 (a) & (c)	§ 197.130b.
§ 17.163(b)	NEW.
§ 17.164	§§ 197.130 (e)–(g) & 197.130a(b).
§ 17.165	Industry Circular 79–5.
§ 17.166(a)	§ 197.130 (h)–(j).
§ 17.166(b)	NEW.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116–119.
§ 17.167(b)	Industry Circular 79–5.
§ 17.168	§ 170.617(c).
§ 17.169	NEW.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197.133 (last sentence) & Industry Circular 79–5.
Subpart I	
§ 17.181	Rev. Rul. 56–335.
§ 17.182	Rev. Rul. 56–336.
§ 17.183	ATF Rul. 81–8 (modified).
§ 17.184	NEW.
§ 17.185 (a) & (c)	NEW.
§ 17.185(b)	ATF Rul. 76–19.
§ 17.186	Rev. Rul. 56–395.

Derivation Table for Part 17—Continued

New section	Source
§ 17.187	Rev. Rul. 55–689.

Executive Order 12866

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

Paperwork Reduction Act

The collections of information contained in this final regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and approved under control numbers 1512–0078, 1512–0079, 1512–0095, 1512–0141, 1512–0188, 1512–0378, 1512–0379, 1512–0472, 1512–0492, 1512–0500, and 1512–0514. The likely respondents and recordkeepers are businesses or other for-profit institutions, including small businesses or organizations.

The collection of information under control number 1512–0078 is in § 17.106. This information is required by ATF to obtain the surety's agreement to any changes in the terms of bonds. The collections of information under control number 1512–0079 are in §§ 17.6 and 17.105. This information is required when agents obtain authority to sign official documents on behalf of the principal.

The collections of information under control number 1512–0095 are in §§ 17.121, 17.126, 17.127, 17.132, and 17.136. This information is required by ATF to describe the formulas for nonbeverage and intermediate products. The information is used to ensure that drawback products meet the statutory requirements for approval as being medicines, medicinal preparations, food

products, flavors, flavoring extracts, or perfume that are unfit for beverage use.

The collections of information under control number 1512–0141 are in §§ 17.92, 17.93, 17.142, 17.145, and 17.146. The information on this claim form must be submitted to ATF by manufacturers claiming nonbeverage drawback or refund of special (occupational) tax. The information is used to determine whether the claim is valid.

The collection of information under control number 1512–0188 is in § 17.6. The information on this form provides ATF with notification of corporate officials authorized to sign documents on behalf of the corporation.

The collections of information under control number 1512–0378 are in §§ 17.3, 17.54, 17.111, 17.112, 17.122–17.125, 17.143, 17.168(a), 17.183, and 17.187. This control number covers miscellaneous information required by ATF on an irregular basis to ensure compliance with law and regulations or to grant permission for the use of optional procedures.

The collections of information under control number 1512–0379 are in §§ 17.161–17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186. This information is required to support claims for drawback. The records kept by manufacturers at their plants are used by ATF inspectors conducting on-site inspections.

The collections of information under control number 1512–0472 are in §§ 17.31–17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74. The information on this special tax return is required when paying special (occupational) tax. The collections of information under control number 1512–0492 are in §§ 17.42, 17.43, 17.52, and 17.55. This control number pertains to records associated with the preparation and filing of the special tax return. The collections of information under control number 1512–0500 are in §§ 17.31–17.34, 17.41, and 17.53. This requirement is the same special tax return covered by control number 1512–0472, except that the form is modified (simplified) for use by renewal taxpayers.

The collection of information under control number 1512–0514 is in §§ 17.147 and 17.182. This collection of information consists of supporting data required to accompany claims for drawback. The supporting data submitted to ATF is used to make a preliminary verification of claims before they are paid.

The estimated total number of respondents and recordkeepers affected by these collections of information is 611. The estimated average annual burden is approximately 36 hours per respondent or recordkeeper. (This figure represents the additional time that would be required, beyond what a manufacturer would customarily spend on recordkeeping in the ordinary course of his business.) Comments on these collections of information, including comments relating to the accuracy of the burden estimate and suggestions for reducing this burden, were requested by Notices No. 634 and 748. Public comments pertaining to the collections of information prescribed by this final rule are discussed above, under the headings "Public Comments on Notice No. 634" and "Public Comments on Notice No. 748." 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this final rule. A final regulatory flexibility analysis has been prepared and reads as follows:

I. Rationale for Agency Action

The law (26 U.S.C. 5131–5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (A) Was actually used, (B) was used in the manufacture of the particular products for which drawback is authorized, and (C) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: to require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF), only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

II. Objective and Legal Basis for the Rule

A. *Objective basis.* The objective basis of these regulations is that a dual control system is used to verify the propriety of claims: Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report is checked every time; however, a sufficient number are checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. *Legal basis.* The legal basis of these regulations is found in 26 U.S.C. 5131–5134 and 7805. These laws give the Secretary of the Treasury broad discretion to promulgate regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120–01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. *Estimate of number of small entities affected and types.* It is estimated that this document will affect about 611 small entities which use taxpaid alcohol to manufacture nonbeverage products.

III. Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements

A. *Reporting requirements.* The most significant reporting requirements of this document pertain to the supporting data that is required to accompany each claim. The supporting data must include information regarding: the amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the

product in which used, the amount of alcohol recovered (if any), the amount of claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies disclosed by physical inventory. Other reports which are required less frequently include: Statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (as required by law in 26 U.S.C. 5131–5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry is helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping is needed to maintain the required accounts for submission.

B. *Recordkeeping requirements.* The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; otherwise, a claimant under investigation might falsely deny keeping the records, and if there were no requirement that the records be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: Copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An elementary knowledge of bookkeeping is needed to prepare and record the prescribed accounts.

C. *Compliance requirements.* The compliance requirements of this regulation are: To retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restrictions for filing of claims (six months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered, except as provided by regulation. All classes of nonbeverage drawback manufacturers are affected by these requirements. No special skills are needed for compliance.

IV. Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service (IRS). The reason for this is that the IRS requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There is no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration (FDA) may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records will also satisfy the ATF requirement, due to the fact that these regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

V. Alternatives

A. *Multitiering.* This concept is not used, because the large majority of manufacturers of nonbeverage products are small entities. Consequently, the regulatory requirements have been specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. *Simplification of requirements.* The requirements as they are established are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5132.

C. *Performance standards.* This concept was utilized as much as possible. For example, an ATF form for "supporting data" reports is provided—but the format presented on that form is not required. (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and tax payments, mandate prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. *Exemption of small entities.* The law does not authorize exemption of any entity from the requirements.

VI. Issues Raised by Comments

No comments directed to the issues addressed in the Initial Regulatory Flexibility Analyses of Notices No. 634 and 748 have been received from the public or the Chief Counsel for Advocacy of the Small Business Administration.

Drafting Information

The principal drafter of this document was Steven C. Simon of the Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Parts 17 and 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Issuance

Accordingly, title 27 of the Code of Federal Regulations is amended as follows:

Paragraph A. Title 27 CFR part 17 is added to read as follows:

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

Subpart A—General Provisions

Sec.
17.1 Scope of regulations.
17.2 Forms prescribed.
17.3 Alternate methods or procedures.
17.4 OMB control numbers assigned under the Paperwork Reduction Act.
17.5 Products manufactured in Puerto Rico or the Virgin Islands.
17.6 Signature authority.

Subpart B—Definitions

17.11 Meaning of terms.

Subpart C—Special Tax

17.21 Payment of special tax.
17.22 Rate of special tax
17.23 Special tax for each place of business.
17.24 Time for payment of special tax.

Special Tax Returns

17.31 Filing of return and payment of special tax.
17.32 Completion of ATF Form 5630.5.
17.33 Signature on returns, ATF Form 5630.5.
17.34 Verification of returns.

Employer Identification Number

17.41 Requirement for employer identification number.
17.42 Application for employer identification number.
17.43 Preparation and filing of Form SS–4.

Subpart D—Special Tax Stamps

17.51 Issuance of stamps.
17.52 Distribution of stamps for multiple locations.
17.53 Correction of errors on stamps.
17.54 Lost or destroyed stamps.
17.55 Retention of special tax stamps.

Change in Location

17.61 General.
17.62 Failure to register.
17.63 Certificates in lieu of lost stamps.

Change in Control

17.71 General.
17.72 Right of succession.
17.73 Failure to register.
17.74 Certificates in lieu of lost stamps.
17.75 Formation of partnership or corporation.
17.76 Addition or withdrawal of partners.
17.77 Reincorporation.

Change in Name or Style

17.81 General.
17.82 Change in capital stock.
17.83 Sale of stock.

Refund of Special Tax

17.91 Absence of liability, refund of special tax.
17.92 Filing of refund claim.
17.93 Time limit for filing refund claim.

Subpart E—Bonds and Consents of Sureties

17.101 General.
17.102 Amount of bond.
17.103 Bonds obtained from surety companies.
17.104 Deposit of collateral.
17.105 Filing of powers of attorney.
17.106 Consents of surety.
17.107 Strengthening bonds.
17.108 Superseding bonds.

Termination of Bonds

17.111 General.
17.112 Notice by surety of termination of bond.
17.113 Extent of release of surety from liability under bond.
17.114 Release of collateral.

Subpart F—Formulas and Samples

17.121 Product formulas.
17.122 Amended or revised formulas.
17.123 Statement of process.
17.124 Samples.
17.125 Adoption of formulas and processes.
17.126 Formulas for intermediate products.
17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

Approval of Formulas

17.131 Formulas on ATF Form 5154.1.
17.132 U.S.P., N.F., and H.P.U.S. preparations.
17.133 Food product formulas.
17.134 Determination of unfitness for beverage purposes.
17.135 Use of specially denatured alcohol (S.D.A.).
17.136 Compliance with Food and Drug Administration requirements.
17.137 Formulas disapproved for drawback.

Subpart G—Claims for Drawback

17.141 Drawback.
17.142 Claims.
17.143 Notice for monthly claims.
17.144 Bond for monthly claims.
17.145 Date of filing claim.
17.146 Information to be shown by the claim.
17.147 Supporting data.
17.148 Allowance of claims.

Spirits Subject to Drawback

17.151 Use of distilled spirits.
17.152 Time of use of spirits.
17.153 Recovered spirits.
17.154 Spirits contained in intermediate products.
17.155 Spirits consumed in manufacturing intermediate products.

Subpart H—Records

17.161 General.
17.162 Receipt of distilled spirits.
17.163 Evidence of taxpayment of distilled spirits.
17.164 Production record.
17.165 Receipt of raw ingredients.

17.166 Disposition of nonbeverage products.
17.167 Inventories.
17.168 Recovered spirits.
17.169 Transfer of intermediate products.
17.170 Retention of records.
17.171 Inspection of records.

Subpart I—Miscellaneous Provisions

17.181 Exportation of medicinal preparations and flavoring extracts.
17.182 Drawback claims by druggists.
17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.
17.184 Distilled spirits container marks.
17.185 Requirements for intermediate products and unfinished nonbeverage products.
17.186 Transfer of distilled spirits to other containers.
17.187 Discontinuance of business.

Authority: 26 U.S.C. 5010, 5131-5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

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

(b) Requests for forms should be mailed to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950.

§ 17.3 Alternate methods or procedures.

(a) *General.* The Director may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

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

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

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

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

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96–511.

(b) *OMB control number 1512–0078.* OMB control number 1512–0078 is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512–0095.* OMB control number 1512–0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512–0188.* OMB control number 1512–0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512–0378.* OMB control number 1512–0378 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1512–0379.* OMB control number 1512–0379 is assigned to the following sections in this part: §§ 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512–0492.* OMB control number 1512–0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512–0500.* OMB control number 1512–0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

(l) *OMB control number 1512–0514.* OMB control number 1512–0514 is assigned to the following sections in this part: §§ 17.147 and 17.182.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see part 250, subparts I and Ob, of this chapter.

§ 17.6 Signature authority.

No claim, bond, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office where the required document must be filed. The ATF officer with whom the claim or other required document is filed may, when he or she considers it necessary, require additional evidence of the authority of the agent or representative to execute the document. Except as otherwise provided by this part, powers of

attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, ATF Form 5100.1, Signing Authority for Corporate Officials, may be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or *approved for drawback.* When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his or her delegate.

Distilled spirits, or *spirits.* That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Effective tax rate. The net tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or *eligible for drawback.* When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been "filed" when it is received by the office of the proper Government official; but if an item is mailed timely with postage prepaid, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products to which all three of the following conditions apply: they are made with taxpaid distilled spirits, they have been disapproved for drawback, and they are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. However, ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon 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.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part, or his or her delegate.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become "subject to drawback" when they are used in the manufacture of a nonbeverage product. When spirits have become "subject to drawback," they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

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

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

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

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.21 Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rate of special tax.

Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the claim.

Special Tax Returns

§ 17.31 Filing of return and payment of special tax.

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

(26 U.S.C. 6091, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

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

(3) The employer identification number (see §§ 17.41–43).

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

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

(6) Ownership and control information: The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

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

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

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

§ 17.34 Verification of returns.

ATF Forms 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

Employer Identification Number

§ 17.41 Requirement for employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS–4, Application for Employer Identification Number, filed by the taxpayer. Form SS–4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS–4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS–4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS–4.

The taxpayer shall prepare and file the application on IRS Form SS–4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by § 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall

examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Refund of Special Tax

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the Chief, Tax Processing Center, PO Box 145433, Cincinnati, OH 45203. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the **Federal Register** annually on the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR part 225.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, any consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When

such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

(a) Bonds on ATF Form 5154.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(1) Pursuant to a notice by the surety as provided in § 17.112.

(2) Following approval of a superseding bond, as provided in § 17.108.

(3) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis.

(b) However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in §§ 17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing.* Formulas shall be filed with the Alcohol and Tobacco Laboratory on ATF Form 5154.1, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering.* The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas.* One copy of each approved Form 5154.1 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Except as provided in this section, amended or revised formulas are considered to be new formulas and shall be numbered accordingly. Minor changes may be made to a current formula on ATF Form 5154.1 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5154.1 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

Any person claiming drawback under the regulations in this part may be required, at any time, to file a statement of process, in addition to that required by ATF Form 5154.1, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

Any person claiming drawback or submitting a formula for approval under the regulations in this part may be required, at any time, to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of

adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the regional director (compliance). The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5154.2) filed with the first claim relating to the adopted formula(s).

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5154.1 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5154.1 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see Reg. .152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5154.1. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5154.1.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5154.1 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by paragraph (b) of this section or by ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5154.1.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4×") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5154.1 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces or syrups.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the

ingredients as shown on ATF Form 5154.1, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5154.1 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479 A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, provided—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; recovered S.D.A., with or without its original denaturants, shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5154.1 to the Alcohol and Tobacco Laboratory. This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved because it is fit for beverage use, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place of business. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilize only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file with the regional director (compliance) an executed bond on ATF Form 5154.3, conforming to the provisions of subpart E of this part. A

monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

(a) Whether the special tax has been paid.

(b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.

(c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under subpart F of this part. (If not, attach explanation.)

(e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5154.2 may be used without prior authorization, if the modified format clearly shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the regional director (compliance) may require additional supporting data when needed to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown, with separate totals for each effective tax rate. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains shall not be offset by known losses.

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of $1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause exists where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case is individually evaluated.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(b) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to the production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage

product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of each tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) *Distilled spirits received in bottles.* For distilled spirits received in bottles, the manufacturer shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the U.S. Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained with the commercial invoice (i.

the latter is a separate document) as evidence of taxpayment of the spirits. The record shall show the effective tax rate(s) (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whisky (as defined in the standards of identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* The production record shall refer to ingredients by the same names as are used for them in the product's formula. This includes formulas submitted to ATF and formulas contained in the publications listed in § 17.132. Other names for the ingredients may be added in the production record, if necessary for the manufacturer's operations. Usage of ingredients (including spirits) may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See subpart E of part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

(1) The type of disposition;

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either contains less than 3 percent of distilled spirits by volume, or is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The "on hand" figures reported in Part II of ATF Form 5154.2 shall be verified by physical inventories taken as of the end of each quarter in which nonbeverage products were manufactured for purposes of drawback. Spirits taxpaid at different effective tax rates shall be inventoried separately. The inventory record shall show the date inventory was taken, the person(s) by whom it was taken, subtotals for each product inventoried, and any gains or losses disclosed; and shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5154.2) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by known losses. If no claim is filed for a quarter (nor for any monthly period therein), then no physical inventory is required for that quarter.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients

intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the regional director (compliance). Any apparatus used to separate alcohol is subject to the registration requirements of 26 U.S.C. 5179 and subpart C of part 170 of this chapter. Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(1) The date of recovery;

(2) The commodity or process from which the spirits were recovered;

(3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;

(4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;

(5) The commodity in which the recovered distilled spirits were reused; and

(6) The date of reuse.

(c) Whenever recovered spirits are destroyed (see § 17.183), the record shall further show—

(1) The reason for the destruction;

(2) The date, time, location, and manner of destruction;

(3) The number of proof gallons destroyed; and

(4) The name of the individual who accomplished or supervised the destruction.

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5154.1 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous claim period, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *Recovered alcohol.* Manufacturers of nonbeverage products shall not sell or transfer recovered spirits to any other premises without ATF authorization under § 17.3. If recovered spirits are stored pending reuse, storage facilities shall be adequate to protect the revenue. If recovered spirits are destroyed, the record required by § 17.168(c) must be kept. Spirits recovered from intermediate products may be destroyed without notice to ATF. Spirits recovered from nonbeverage products may be destroyed pursuant to a notice filed with the regional director (compliance) at least 12 days prior to the date of destruction. The notice shall state the reason for the destruction, the intended date of destruction, and the approximate quantity involved. The regional director (compliance) may impose specific conditions, including requiring that the destruction be witnessed by an ATF officer. Unless the manufacturer is otherwise advised by the regional director (compliance) before the date specified in the notice, the destruction may proceed as planned.

(b) *By-product material (general).* By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (c) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed

to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(c) *Spent vanilla beans.* Specific approval from the regional director (compliance) is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by Part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5154.1. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as an integral part of the production records for the related nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 19—[AMENDED]

Paragraph B. The regulations in 27 CFR part 19 are amended as follows:

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

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Part 19, subpart D, is amended to add §§ 19.57–19.58 grouped under an undesignated center heading, to read as follows:

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Sec.

Activities Not Subject to This Part

19.57 Recovery and reuse of denatured spirits in manufacturing processes.

19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Activities Not Subject to This Part

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is

actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Exceptions; products classed as beverages.* Products specified under part 17 of this chapter as being fit for beverage use are alcoholic beverages. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also alcoholic beverages. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under paragraph (a) of this section is being used for beverage purposes, or for mixing with beverage spirits other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. (However, the provisions of this paragraph shall not prohibit such products, which are unfit for beverage use, from being used in small quantities for flavoring drinks at the time of serving for immediate consumption.) Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96–39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

3. Section 19.69 is removed.

4. Section 19.780(c) (4) and (5) are revised to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

* * * * *

(c) * * *

(4) Kind, proof, and quantity of distilled spirits in each container;

(5) Number of containers of each size;

* * * * *

PART 70—[AMENDED]

Paragraph C. The regulations in 27 CFR part 70 are amended as follows:

1. The authority citation for part 70 is revised to read as follows:

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

2. The concluding text of § 70.321(a) is amended to read as follows:

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register.* * * *

* * * * *

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 (Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

* * * * *

§ 70.411 [Amended]

3. Section 70.411 is amended by removing paragraphs (c)(2)(v) and (c)(2)(vii), redesignating existing paragraph (c)(2)(vi) as paragraph (c)(2)(v), and by adding a new paragraph (c)(2)(vi) to read as follows:

* * * * *

(c) * * *

(2) * * *

(vi) Floor stocks tax on alcoholic beverages and imported perfumes held for sale on January 1, 1991.

* * * * *

4. Section 70.411(c)(17) is amended by replacing the words "Part 197" with the words "part 17".

5. Section 70.414(j) is revised to read as follows:

§ 70.414 Preparation and filing of claims.

* * * * *

(j) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims for drawback of excise tax and claims for refund of special (occupational) tax, submitted by persons using distilled spirits in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes, are contained in part 17 of title 27 CFR.

* * * * *

PART 170—[AMENDED]

Paragraph D. The regulations in 27 CFR part 170 are amended as follows:

1. The authority citation for part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5101, 5102, 5179, 5291, 5301, 5362, 5601, 5615, 5687, 7805; 31 U.S.C. 9304, 9306.

§§ 170.611–170.618 Subpart U [Removed and reserved]

2. Subpart U is removed and reserved.

PART 194—[AMENDED]

Paragraph E. The regulations in 27 CFR part 194 are amended as follows:

1. The authority citation for part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

2. Section 194.33(b) is revised to read as follows:

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

* * * * *

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 194.191 [Amended]

3. Section 194.191(a) is amended by replacing the words "Part 170" with the words "§ 19.58".

PART 197—[REMOVED]

Paragraph F. Title 27 CFR part 197 is removed.

PART 250—[AMENDED]

Paragraph G. The regulations in 27 CFR part 250 are amended as follow

1. The authority citation for part 2: continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.11 [Amended]

2. The definition of "Chief, Puerto Rico Operations" in § 250.11 is amended by replacing the words "Room 329" with the words "Room 659".

3. The definition of "Eligible article" in § 250.11 is amended by replacing the words "flavor or flavoring extract" with the words "flavor, flavoring extract or perfume".

§ 250.51 [Amended]

4. Paragraph (a) of § 250.51 is amended by replacing the words "part 197" with the words "part 17".

5. Paragraph (c) of § 250.51 is amended by replacing the words "5530.5 (1678)" with the words "5154.1 (formerly 1678)".

§ 250.171 [Amended]

6. The second sentence of § 250.171 is amended by replacing the words "part 197" with the words "part 17".

7. Section 250.172 is revised to read as follows:

§ 250.172 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

8. In § 250.173, the first sentence of paragraph (a), the introductory text of paragraph (c), and the first sentence of paragraph (d) are revised to read as follows:

§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. * * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

§ 250.221 [Amended]

9. Paragraph (a) of § 250.221 is amended by replacing the words "part 197" with the words "part 17".

10. Paragraph (c) of § 250.221 is amended by replacing the words "5530.5 (1678)" with the words "5154.1 (formerly 1678)".

§ 250.307 [Amended]

11. The second sentence of § 250.307 is amended by replacing the words "Part 197", wherever they occur, with the words "part 17".

12. Section 250.308 is revised to read as follows:

§ 250.308 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

13. In § 250.309, the first sentence of paragraph (a), the introductory text of paragraph (c), paragraph (c)(1) in its entirety, and the first sentence of paragraph (d) are revised to read as follows:

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. * * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

Signed: April 5, 1996.

Bradley A. Buckles,

Acting Director.

Approved: May 9, 1996.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

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