



This document is scheduled to be published in the Federal Register on 12/22/2016 and available online at <https://federalregister.gov/d/2016-29201>, and on [FDsys.gov](https://FDsys.gov)

[Billing Code: 4810–31–U]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Parts 1, 4, 5, 7, 26, 27, and 41**

**[Docket No. TTB–2016–0004; T.D. TTB–145; Ref: Notice No. 159]**

**RIN 1513–AC15**

### **Amendments to Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System**

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

**ACTION:** Final rule; Treasury decision.

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

**DATES:** This final rule is effective December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453–1039, extension 066.

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#### I. Background

##### A. TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury regulates, among other things, the importation of distilled spirits, wine, and malt beverages<sup>1</sup> pursuant to the Federal Alcohol Administration Act (FAA Act). TTB also administers the provisions of the Internal Revenue Code of 1986, as amended (IRC), with respect to the taxation of distilled spirits, wine, beer,<sup>2</sup> tobacco products, processed tobacco, and cigarette papers and tubes. These statutory provisions are the basis of TTB regulations that require importers to submit certain information upon importation.

Section 103(a) of the FAA Act (27 U.S.C. 203(a)) requires that a person obtain a permit before engaging in certain activities related to distilled spirits, wine, and malt beverages, including importation. This section of the FAA Act states that it shall be unlawful, except pursuant to a “basic permit” issued by the

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

<sup>2</sup> The IRC defines “beer” as “beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.” See 26 U.S.C. 5052(a). Throughout this document, the term “beer” is used in reference to the IRC or regulations promulgated thereunder.

Secretary of the Treasury (the Secretary), to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. Section 103(a) of the FAA Act also states that it is unlawful, except pursuant to a basic permit, for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. The terms “distilled spirits” and “wine,” when used in the context of the FAA Act, apply only to distilled spirits and wine for nonindustrial use.

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

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

equal to the internal revenue tax imposed on like commodities produced in the United States.

In general, the tax on distilled spirits, wine, and beer either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by U.S. Customs and Border Protection (CBP), along with any import duties. Puerto Rico is within the customs territory of the United States, and, as a result, shipments of such products from Puerto Rico do not pass through customs custody when brought into the United States. Furthermore, Puerto Rico is part of the United States for purposes of the FAA Act. See 27 U.S.C. 211(a)(1). This rule primarily addresses amendments to the TTB regulations to facilitate the electronic filing of information with CBP, and, as a result, distilled spirits, wine, and beer brought into the United States from Puerto Rico are not addressed in this document.

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

plant, bonded wine cellar, and brewery at which operations are to be conducted. The IRC registry number issued to distilled spirits plants has been historically referred to as the “distilled spirits plant number.”

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

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

Chapter 52 of the IRC contains excise tax and related provisions pertaining to tobacco products and cigarette papers and tubes. Section 5701 of the IRC (26 U.S.C. 5701) imposes Federal excise tax on such commodities

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

In general, the tax on tobacco products and cigarette papers and tubes either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by CBP, along with any import duties. Under 26 U.S.C. 5704, imported tobacco products and cigarette papers and tubes may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse<sup>3</sup> or to a manufacturer of tobacco products or cigarette papers and tubes if such commodities are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(c). Imported tobacco products and cigarette papers and tubes previously exported and returned may be released from customs custody without payment of tax for delivery to the original manufacturer or to an export warehouse proprietor authorized by such manufacturer to receive the commodities, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(d).

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

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

TTB administers the FAA Act and chapters 51 and 52 of the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions. Responsibility for collecting the excise taxes incident to the importation of distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes is vested by statute with the Secretary of the Treasury. See 26 U.S.C. 7801. TTB regulations provide that such taxes are collected, accounted for, and deposited as internal revenue collections by CBP in accordance with CBP requirements. See 27 CFR 27.48 and 41.62. Under the authority of the Homeland Security Act of 2002, see 6 U.S.C. 212 and 215(1), the Secretary has delegated these customs revenue functions to the Secretary of Homeland Security. See Treasury Department Order 100–16, 68 FR 28322 (May 23, 2003).

TTB has authority under section 2(d) of the FAA Act, Pub. L. 74–401 (1935) “to prescribe such rules and regulations as may be necessary to carry out

[its] powers and duties” under the FAA Act. In addition, as previously mentioned, section 105(e) of the FAA Act (27 U.S.C. 205(e)), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. Section 7805(a) of the IRC (26 U.S.C. 7805(a)) provides the general authority to the Secretary to issue regulations to carry out the provisions of the IRC.

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

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

Regulations implementing the importation-related provisions of chapter 51 of the IRC are found in 27 CFR part 27. Specifically, this part contains procedural and substantive requirements that apply to the importation of distilled spirits, wine, and beer into the United States from foreign countries, including requirements related to recordkeeping and reporting. Regulations implementing

the IRC as it applies to distilled spirits, wine, and beer brought into the United States from Puerto Rico or the U.S. Virgin Islands are found in 27 CFR part 26.<sup>4</sup>

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

#### B. The International Trade Data System

The International Trade Data System (ITDS) is an interagency program to establish an electronic “single window” through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347) mandates participation in ITDS by all agencies that require documentation for clearing or licensing the importation and exportation of cargo.

Currently, importers and exporters that are regulated by multiple agencies or that import or export commodities regulated by multiple agencies submit data to those agencies through various channels, often in paper form. Through the implementation of ITDS, data is submitted through CBP’s Automated Broker Interface (ABI) to the Automated Commercial Environment (ACE), a CBP

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

system, and then made available through ACE to each government agency. Accordingly, TTB is providing electronic filing options for information related to the importation of commodities regulated by TTB.

C. Executive Order 13659—Streamlining the Export/Import Process for America’s Businesses

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

D. Electronic Submission of TTB-Required Information to CBP

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

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

73.40 was the result of amendments to the TTB regulations published in the **Federal Register** (79 FR 17029) on March 27, 2014, as a final rule, T.D. TTB–119, and it generally removes any regulatory barrier to the submission of documents to CBP electronically.

On August 7, 2015, TTB published in the **Federal Register** (80 FR 47558) a notice, “Importation of Distilled Spirits, Wine, Beer, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes; Availability of Pilot Program and Filing Instructions to Test the Collection of Import Data for Implementation of the International Trade Data System.” In the notice, TTB announced a pilot program in which importers, CBP, and TTB would test, as part of the ITDS project, the electronic collection of TTB import data and the transfer of that data through ACE to TTB. Technical instructions on the submission of data using the TTB Partner Government Agency (PGA) Message Set provided in ACE were made available in “ACE Filing Instructions for TTB-Regulated Commodities” at Docket No. TTB–2016–0004 on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)). That document also appears on the CBP website at [www.cbp.gov](http://www.cbp.gov). On October 21, 2015, TTB also published on its website, [www.ttb.gov](http://www.ttb.gov), Industry Circular 2015–1, “Automated Commercial Environment Pilot Program; Alternate Method for Participants to Fulfill TTB Requirements for Importation,” to allow importers to test the usability and functionality of the TTB PGA Message Set, while still complying with regulatory requirements.

TTB notes that under these amended regulations, importers may elect not to file TTB data electronically, but may instead continue to submit paper documentation consistent with existing requirements.

## **II. Publication of Notice of Proposed Rulemaking**

On June 21, 2016, TTB published in the **Federal Register** (81 FR 40404) a notice of proposed rulemaking, Notice No. 159, setting forth the proposed amendments to parts 1, 4, 5, 7, 26, 27, and 41 of the TTB regulations concerning the implementation of ITDS. Notice No. 159 and the comments received in response to that document may be viewed in their entirety within Docket No. TTB–2016–0004 at the Regulations.gov website ([www.regulations.gov](http://www.regulations.gov)).

As described in Notice No. 159, TTB's general approach in the proposed regulations was to set forth new information submission requirements to better support administration and enforcement of the IRC and FAA Act with regard to imports, and require information to be submitted or made available through one of the following methods: (1) The electronic submission of TTB-required data along with the submission of the customs entry or entry summary, as appropriate; or (2) the retention and provision of information only upon specific request by TTB or CBP.

There are generally two methods of electronic submission of information: Electronic submission of data directly and electronic submission of documents as electronic images. In many instances, TTB has chosen the former, that is, to provide importers with the option to directly submit required data electronically. The regulations, however, also allow for the submission of certain paper

documents as electronic images in some circumstances. In circumstances in which the amended regulations require that the importer make a document available to TTB or CBP upon request, the document may be submitted through ACE as an electronic image. Specifically, electronic images may be uploaded into ACE through the Document Imaging System (DIS) module. More information regarding the submission of data using the DIS module is available in the “ACE Filing Instructions for TTB-Regulated Commodities” at Docket No. TTB–2016–0004 on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)).

Notice No. 159 describes in detail the rationale for each proposed regulatory amendment. The principal regulatory amendments proposed in Notice No. 159 can be summarized as follows:

- Filing of the FAA Act Basic Permit Number: TTB proposed amendments to 27 CFR 1.58 to require that importers of alcohol beverages file their FAA Act basic permit number with CBP when filing TTB data electronically, and, regardless of the method of filing, to require that such importers make their basic permit available to TTB or CBP upon request. TTB also proposed amendments to 27 CFR 26.202 removing the requirement that importers of alcohol beverages file a copy of their FAA Act basic permit with CBP at the port of entry when bringing such products into the United States from the U.S. Virgin Islands, and instead requiring that such importers file their basic permit number with the customs entry when filing TTB data electronically, and, regardless of the method of filing, make their basic permit available to TTB or CBP upon request.

- Filing of a COLA Identification Number or COLA Documents: TTB proposed amendments to 27 CFR 4.40, 5.51, and 7.31 allowing importers of alcohol beverages, when filing TTB data electronically, to file with the customs entry the TTB-assigned identification number of the COLA associated with bottled wine, distilled spirits, or malt beverages. TTB also proposed amendments to 27 CFR 26.314 and 27.204 to remove requirements, applicable to distinctive liquor bottles, for importers to provide a photograph of the bottle to CBP upon entry. The proposed regulations retained the current requirement that, if the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry.

- Removal of Requirement for Certain Gin Statements of Process: TTB proposed removing the regulatory requirement in 27 CFR 5.51(d) that a COLA covering labels for imported gin bearing the word “distilled” be accompanied by a statement of process. TTB notes that a requirement remains, pursuant to 27 CFR 5.33(g) and TTB guidance, that a statement of process be submitted to TTB as part of the application for a COLA covering labels on distilled gin products.<sup>6</sup> The amendment to the regulation clarifies that the statement of process is not submitted at importation along with the approved COLA.

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<sup>6</sup> At the time of publication of Notice No. 159, Industry Circular 2007–4, which addresses pre-COLA evaluation requirements, identified imported distilled gin as requiring the submission of a “pre-import letter” with the application for a COLA. Following publication of Notice No. 159, TTB issued updated pre-COLA evaluation requirements addressing distilled spirits products in guidance document TTB G 2016–3. Under both Industry Circular 2007–4 and TTB G 2016–3, as part of the application for a COLA, an importer of distilled gin must submit a pre-import letter detailing, among other things, the manufacturing process of distilled gin.

- Possession and Retention of Certificates of Age, Origin, or Identity Issued by Foreign Governments for Importations of Certain Wine and Distilled Spirits Products: TTB proposed amendments to 27 CFR 4.45, 5.52, and 5.56 to clearly state that certain wine and distilled spirits are not eligible for release from customs custody, and no person may remove those products from customs custody, unless that person has obtained and is in possession of a certificate of age, origin, or identity, as applicable, from an official duly authorized by the appropriate foreign government. The certificate must be made available to TTB or CBP upon request. TTB proposed amending those regulatory sections and adding a new section, 27 CFR 4.53, to specify that the certificates must be retained and made available upon request for five years following importation.

- Certification of Imported Vintage Wine: TTB proposed amendments to 27 CFR 4.27 removing the requirement that the importer or bottler of imported vintage wine possess a specific certificate issued by a duly authorized official of the country of origin certifying that the wine meets various criteria related to the vintage wine and, instead, requiring that the importer or domestic bottler of wine be able to demonstrate upon request that the wine is entitled to be labeled with the vintage date. Other rules set forth in § 4.27 relating to the use of a vintage date on labels of imported wine remain unchanged.

- Imported Natural Wine and Possession of Certificates: TTB proposed amendments to 27 CFR 26.11 and 27.11 adding a definition of natural wine applicable to all of parts 26 and 27. TTB also proposed amendments to 27 CFR 4.43, 4.45, and 27.140 allowing importers and domestic bottlers to meet

requirements related to natural wine certificates by having the applicable certificates in their possession, to be made available to TTB or CBP upon request. The proposed amendment to part 27 requires the certificates to be retained for three years, and the proposed amendment to part 4 requires the certificates to be retained for five years.

- Removal of Requirement to Present CBP with Certificates of Nonstandard Fill for Wine and Distilled Spirits: TTB proposed removing requirements at 27 CFR 4.46 and 5.53 that an importer present to CBP certification that wine or distilled spirits imported in containers not conforming to authorized standards of fill meet certain criteria showing that it is eligible for release. Review of such certification is performed by TTB when the importer submits to TTB the COLA application covering the products, and the proposal reflects TTB's view that the showing of certification to CBP is no longer necessary.
- Removal of Requirements Concerning Liquor Bottles and Filing Certain Applications in Triplicate: TTB proposed amendments to 27 CFR 26.316 and 27.206 clarifying that liquor bottles found to be deceptive by the appropriate TTB officer may not be brought into the United States. TTB proposed removing provisions in 27 CFR 26.318 and 26.208 requiring that applications for authorization to receive such bottles be filed in triplicate. TTB also proposed removing provisions in §§26.319, 26.331, 27.209, and 27.221 requiring that applications related to receipt of used liquor bottles and applications for alternate methods or procedures be filed in triplicate.

- Filing of Data on Distilled Spirits, Wine, and Beer Imported or Brought into the United States from the U.S. Virgin Islands Subject to Tax: TTB proposed amendments to 27 CFR 27.48 and 26.200 requiring that importers file with CBP and/or retain certain information identifying distilled spirits, wine, and beer imported or brought into the United States from the U.S. Virgin Islands subject to tax, as well as information identifying the importer and ultimate consignee of such products. Information retained would be required to be made available upon request to TTB or CBP. The proposed amendments also provide that any information provided to CBP to meet CBP requirements, and any supporting documentation must also be made available upon request to TTB or CBP.

- Distilled Spirits to Which an Effective Tax Rate or Standard Effective Tax Rate Applies: TTB proposed amendments to 27 CFR 27.76 and 27.77 removing the requirement that the importer submit the certificate of effective tax rate or the standard effective tax rate approval applicable to distilled spirits at entry or entry summary, and instead requiring that the importer have the certificate in its possession at the time of filing the entry summary and make it available upon request to TTB or CBP. In the case of distilled spirits withdrawn from customs custody without payment of tax for transfer to the bonded premises of a distilled spirits plant, the current requirement remains unchanged, which is that the importer must provide a copy of the certificate of effective tax rate or the standard effective tax rate approval to the proprietor of the distilled spirits plant.

- Alcohol Beverages Imported or Brought into the United States from the U.S. Virgin Islands in Bulk: TTB proposed amendments to 27 CFR 27.171 and

26.300 to set forth the general provisions related to bulk beer and natural wine imported or brought into the United States from the Virgin Islands without payment of tax. The proposed amendments generally provide for the transfer of tax liability to the proprietor of the bonded wine cellar or bonded brewery receiving such bulk wine or beer, respectively. TTB also proposed amendments to 27 CFR 27.138, 27.172, 26.273a, and 26.301 to include transfer record requirements for bulk wine and beer released from customs custody without payment of tax, and to add specific information that is required to be captured in such records. Finally, TTB proposed various clarifying amendments in 27 CFR parts 26 and 27 relating to imports in bulk, including amendments to the definition of “bulk container” in 27 CFR 27.11 and 27 CFR 26.11.

- Filing of Permit Number and Other Information for Industrial Alcohol Shipments to the United States from the U.S. Virgin Islands: TTB proposed amendments to 27 CFR 26.292, 26.294, and 26.296 to provide for electronic filing of the consignee permit number and other information for tax-free industrial alcohol shipments to the United States from the U.S. Virgin Islands.

- Filing of Permit Number and Data by Government Agencies Importing Distilled Spirits Free of Tax: TTB proposed amendments to 27 CFR 27.183 and 27.284 to provide for electronic filing of the permit number of government agencies importing distilled spirits for nonbeverage purposes free of tax, and for electronic filing of other information associated with such imports. TTB also proposed to remove 27 CFR 27.185, as it describes customs processes and inspection related to the release of distilled spirits free of tax to government

agencies. (As noted in Notice No. 159, TTB generally proposed to remove most references to actions that CBP will take at entry, and replace them, where appropriate, with text that clarifies the requirements that apply to the importer at entry.)

- Certificate Covering Distilled Spirits, Wine, or Beer Brought into the United States from the U.S. Virgin Islands: TTB proposed amendments to 27 CFR 26.205 and 26.260. Section 26.205 requires that every person bringing distilled spirits, wine, or beer into the United States from the U.S. Virgin Islands, except tourists, obtain a certificate in the English language from the manufacturer detailing certain information, such as the name and address of the consignee, the kind and brand name of the products, the quantity, and information upon which an effective tax rate is based. The proposed amendments no longer require this certificate to be filed with CBP at the time of entry summary, and instead provide that the information associated with the certificate must be maintained as a record by the importer and must be made available upon request to TTB or CBP. The proposed amendments also provide that for distilled spirits, natural wine, or beer withdrawn from customs custody without payment of tax, the importer must furnish a copy of the certificate described in § 26.205 to the proprietor of the distilled spirits plant, bonded wine cellar, or brewery receiving the products.

- Clarification of Record Retention Requirements: TTB proposed amendments to 27 CFR 26.276 and 27.137, which set forth recordkeeping requirements for all documents or copies of documents that support records

required by parts 26 and 27. The proposed amendments clarify that the three-year record retention requirements in parts 26 and 27 are measured from the time of release from customs custody, and require that such records, which include information and supporting documentation filed with CBP pursuant to CBP requirements, be made available to TTB or CBP upon request.

- Removal of Requirements for CBP to Gauge or Inspect: TTB proposed removing various provisions in 27 CFR parts 26 and 27 that state that customs officers shall inspect or gauge shipments of alcohol before release.
- Filing of Data for Importation of Tobacco Products Subject to Tax and Processed Tobacco: TTB proposed amendments to 27 CFR 41.81 providing for electronic filing of data required for imports of tobacco products and cigarette papers and tubes subject to tax. The proposed amendments require that importers of tobacco products file information identifying the importer (including the TTB permit number for importers of tobacco products) and ultimate consignee, and further require that the importer retain the required information and supporting documentation, to be made available to TTB or CBP upon request. Similar provisions applicable to imports of processed tobacco were proposed at a new section 27 CFR 41.265. In both cases, the proposed regulations additionally provide that any information and supporting documentation required as part of the entry or entry summary by CBP for CBP purposes must be made available upon request to TTB. TTB also proposed amendments to 27 CFR 41.204, which concerns records and reports, to remove references to “physical” receipt and disposition of tobacco products. The

proposed amendments require importers of tobacco products to account for all tobacco products released from customs custody under the importer's TTB permit, including receipt and disposition. Proposed § 41.204 would also require recordkeeping by importers of cigarette papers and tubes.

- Filing of Data for Importation of Tobacco Products Without Payment of Tax: TTB proposed amendments to 27 CFR 41.86, which addresses the release of tobacco products and cigarette papers and tubes from customs custody without payment of tax under internal revenue bond, to provide for electronic filing of data required for imports of such articles without payment of tax. While the current regulations require the filing of a paper form, TTB F 5200.11, the proposed amendments allow the data required on TTB F 5200.11 to be input directly into ACE. The proposed amendments additionally require the filing of the importer's TTB permit number (for tobacco products only) and the employer identification number (EIN) of the recipient of the tobacco products or cigarette papers and tubes, and require that the importer retain the required information and supporting documentation, to be made available to TTB or CBP upon request.

- Entries for Warehousing: TTB proposed amendments to 27 CFR 26.200, 27.45, and 27.48, and proposed a new section at 27 CFR 41.84, to incorporate statutory provisions, codified in the IRC at 26 U.S.C. 5061(a)(2) for distilled spirits, wine, and beer and at 26 U.S.C. 5703(b)(2) for tobacco products and cigarette papers and tubes, providing generally that tax is due on products entered for warehousing not later than the 14th day after the last day of the

semimonthly period during which the products are removed from the first such warehouse.

Subject to certain clarifying changes described in the Discussion of Comments and Other Clarifying Changes sections below, TTB is finalizing the proposed amendments in this rulemaking.

### **III. Discussion of Comments**

#### Comment Overview

TTB received seven comments in response to Notice No. 159, which included comments submitted by or on behalf of one customs brokers and several trade organizations: Portside Customs Service, Inc. (Portside Customs Service); the Comité Interprofessionnel du Vin de Champagne (Comité Champagne); the Bureau National Interprofessionnel du Cognac; the French Federation of Wine and Spirits Exporters (or “Fédération des Exportateurs de Vins et Spiritueux de France”); the Distilled Spirits Council of the United States, Inc. (DISCUS); the National Association of Beverage Importers (NABI); and the National Association of Foreign-Trade Zones (NAFTZ).

Comments from the Comité Champagne, the French Federation of Wine and Spirits Exporters, DISCUS, and NABI expressed general support for the implementation of the electronic “single window” through which importers may submit electronically the data required by Federal government agencies for clearing imports. Each of these entities, along with the remaining commenters, also submitted requests for clarifications and/or changes to the regulatory amendments proposed in Notice No. 159.

Descriptions of the comments, along with TTB's responses, are organized by topic and set forth below.

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

*Comment*

Three commenters expressed concern over amendments to 27 CFR 4.45 and 27 CFR 5.52. The commenters generally express concern with any shift from a requirement that certificates of age, origin, and identity be submitted to CBP in order to obtain release from customs custody to a solely post-release review, viewing such a shift as weakening the implementation of the certificate requirements and encouraging non-compliance.

The current regulations at 27 CFR 4.45 and 27 CFR 5.52 contain requirements under which importers must possess certain certifications from duly authorized foreign officials in order for the labels of those beverages to bear certain designations. In general, paragraph (a) of § 4.45 addresses certificates of origin and identity for wine, which certify the identity of the wine and that the wine has been produced in compliance with the laws of the respective foreign government regulating the production of such wine for home consumption. Paragraphs (a) through (e) of § 5.52 set forth similar certificate of origin requirements for Scotch, Irish, and Canadian whiskies; brandy, Cognac, and rum; Tequila; other whiskies; and other distilled spirits, respectively. In some cases, the certificates must also address production practices or age statements.

Under current TTB regulations, the above certificates must generally accompany the wines or distilled spirits (or accompany the invoice applicable to

such wines or distilled spirits). The amended regulations at 27 CFR 4.45(a) and 27 CFR 5.52(a) through (e) instead require the importer to have the certificate in its possession, to be made available to TTB or CBP upon request.

The Comité Champagne, which is the body authorized by the government of France to issue documents that certify that wines are produced according to Champagne appellation requirements, notes in its comment its belief that systematic controls of certificates of origin remain the most effective anti-counterfeit methods. Its comment further states that since Champagne certificates of origin are secured electronic documents, systematic controls would not create unnecessary burdens for importers or U.S. controllers.

With respect to the amendments to 27 CFR 5.52(b), the Bureau National Interprofessionnel du Cognac, which describes itself as the governing body entitled by French and EU Law to protect the geographical indication Cognac and represent and defend the interest of all the Cognac producers and trade houses, expresses concern that a shift from a systematic pre-release monitoring of certificates of age and origin to a potential post-release review may encourage noncompliance and eventually erode Cognac's status as a distinctive product of France under TTB's regulations. The Bureau National Interprofessionnel du Cognac requests retention of the requirement that the certificates required under § 5.52(b) accompany the shipment.

The French Federation of Wine and Spirits Exporters, which is a trade association representing the wine and spirit exporting companies of France, commented supporting the proposed requirement that the importer must possess

the certificates required under 27 CFR 4.45 and 27 CFR 5.52, as opposed to the existing requirements that the certificate accompany the wines or distilled spirits when clearing CBP. However, the French Federation of Wine and Spirits Exporters notes its concern that a shift to a “post release review on a random basis” from a systematic control upon importation might weaken the implementation of these provisions, encourage non-compliance, and eventually result in weakening the level of protection afforded to the consumer under the present regulations. The French Federation of Wine and Spirits Exporters expresses its view that certificates required under §§ 4.45 and 5.52 must be issued with each single shipment, and properly reference the shipment information, so that a given certificate can be traced back to a single shipment. The French Federation of Wine and Spirits Exporters also encourages TTB to enforce post-entry review in a manner and at a frequency that will encourage compliance, and to enforce tough penalties for noncompliance, especially when there is suspicion or proof of fraud.

TTB response: As noted above, the current regulations at 27 CFR 4.45 and 27 CFR 5.52 contain certain requirements under which importers must possess certifications from duly authorized foreign officials that the wines or distilled spirits being imported have been produced using specific practices or in conformity with certain laws of the country of origin in order for the labels of those beverages to bear certain designations. Under current TTB regulations, such certificates must generally accompany the wines or distilled spirits (or accompany the invoice applicable to such wines or distilled spirits). The

amended regulations at 27 CFR 4.45(a) and 27 CFR 5.52(a) through (e) instead require the importer to have the certificate in its possession, to be made available to TTB or CBP upon request. The amended regulations also require importers to retain these certificates for a period of five years.

TTB notes that the amendments to 27 CFR 4.45 and 5.52 are not intended to change in any way the eligibility requirements for wines or distilled spirits to be released from customs custody. Under the amended regulations, as under the current regulations, products requiring a certificate of age, origin, or identity may not enter the United States for consumption unless covered by such a certificate. CBP has the authority to examine such certificates prior to release, and the amended regulations do not in any way diminish this authority. Additionally, for electronic filers, the TTB PGA Message Set allows the importer to attest to the possession of certificates of age, origin, or identity at importation, where such certificates are required by regulation.

TTB exercises its authority to regulate beverage alcohol importers under the FAA Act in part through post-release review of compliance with requirements such as the certificate requirements of 27 CFR 4.45 and 5.52. This includes the review of documents that an importer is required to have in its possession at the time of the filing of the entry. As noted in Notice No. 159, TTB now has timely access to importation information through ACE and has the ability to determine whether a certificate of age, origin, or identity is required for a certain product and whether a certificate is valid, including by requesting that the importer upload an image of the certificate through the Document Imaging System (DIS) module in

ACE. Under the amended regulations, TTB will be able, through post-release review of the importation information, to determine whether the appropriate certificate of age, origin, or identity is in the possession of the importer. TTB's post-release review capabilities include the ability to reconcile certificates of age, origin, or identity with the specific shipments covered by those certificates. This approach supports compliance in a way that facilitates legitimate trade, expedites the release of compliant wines and distilled spirits from customs custody, and allows enforcement resources to be focused on identifying noncompliance and preventing future noncompliance by taking enforcement action against noncompliant actors.

*Comment*

Two commenters expressed concern over TTB's proposed amendments to 27 CFR 5.56. Under current regulation, 27 CFR 5.56 provides that distilled spirits imported in bulk for bottling in the United States may not be removed from the plant where bottled unless the bottler possesses the certificates of age and certificates of origin required under 27 CFR 5.52 for like spirits were they imported in bottles. The current § 5.56 provides that bottler must possess certificates "which are similar to" the certificates required under § 5.52. The amendment to § 5.56 proposed in Notice No. 159 would require that the bottler possess certificates which provide the "same information" as a certificate required under § 5.52 would provide for like spirits imported in bottles.

The French Federation of Wine and Spirits Exporters notes reservations about the proposed amendment to § 5.56, particularly concerning the potential

meaning of the amendment. It states that if the proposed change results in certificates of age and origin being issued by an entity different from the authorized issuer (e.g, the Bureau National Interprofessionnel du Cognac in the case of Cognac), the amendment would significantly weaken the trust and confidence that the U.S. consumer has in the integrity of the product. The Bureau National Interprofessionnel du Cognac notes similar concerns, and states that if the proposed change would allow entities other than the Bureau National Interprofessionnel du Cognac to issue certificates of age and certificates of origin for Cognac imported in bulk, it may affect the impact the authenticity, age, or quality of the Cognac sold in the United States and seriously damage the confidence of U.S. consumers in Cognac.

TTB response: The proposed amendment to § 5.56 was not intended to change the entities that may issue certificates of age, origin, or identity; rather, TTB intended to replace the reference to “certificates which are similar to the certificates required under § 5.52” with a more specific reference to the content of the certificates. TTB did not intend to imply that the certificates could be issued by an entity other than an official duly authorized by the appropriate foreign government. TTB understands the commenters’ concerns regarding the potential ambiguity created by the proposed regulatory text. In the amended regulations finalized in this document, we have clarified that the certificates required under § 5.56 are those issued by an official duly authorized by the foreign government as set forth in § 5.52. TTB has further determined that the same ambiguity identified by the commenters may exist in the proposed new 27

CFR 4.53, and so has also clarified this issue in the § 4.53 regulatory text finalized in this document.

*Comment*

DISCUS requests that TTB adopt a single three-year recordkeeping retention requirement for all components of an entry filing, specifically noting that TTB has specified a record retention period of five years for certificates of age, origin, or identity, while other documents have a three-year record retention requirement.

TTB response: TTB has set forth a five-year record retention period for certificates of age, origin, or identity because the requirement for such certificates is promulgated under the FAA Act, and there is a five-year statute of limitations for criminal violations of the FAA Act. Specifically, the TTB regulations at 27 CFR 4.45, 27 CFR 4.53, 27 CFR 5.52, and 27 CFR 5.56 concerning certificates of age, origin, or identity implement labeling provisions of the FAA Act codified in the United States Code at 27 U.S.C. 205. Pursuant to the United States Code at 27 U.S.C. 207, violation of section 205 is a criminal offense.

While the FAA Act does not contain any specific recordkeeping requirements applicable to certificates of age, origin, or identity, such records are necessary to enforce the requirements of the FAA Act. See, e.g., National Confectioners Ass'n v. Califano, 569 F.2d 690, 693–94 (D.C. Cir. 1978), which upheld the U.S. Food and Drug Administration's authority to require records in the absence of a specific statutory requirement, where records were necessary to help in the efficient enforcement of the Federal Food, Drug and Cosmetic Act.

Additionally, as noted above, TTB has authority under section 2(d) of the FAA Act, Pub. L. 74-401 (1935) “to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties” under the FAA Act.

TTB further notes that the amended regulations do not require industry members to retain paper copies of each certificate; they may retain electronic copies of certificates.

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

*Comment*

Portside Customs Service comments on the proposed amendments to 27 CFR 4.40, 5.51, and 7.31 which require that importers of alcohol beverages enter the COLA identification number for the COLA applicable to each wine, distilled spirit, or malt beverage included in a shipment. Portside Customs Services comments that requiring importers of alcohol beverages to enter a COLA identification number for each line of an import entry will require too much time for customs brokers to clear shipments or, alternatively, will result in customs brokers charging more for their services. Portside Customs Service requests that TTB remove this requirement.

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

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

As explained in Notice No. 159, TTB believes it is not necessary to require the importer to deposit a paper copy of the approved COLA upon importation when filing TTB data electronically. Each approved COLA has a number associated with it, and images of approved COLAs can be accessed by entering the COLA identification number into TTB's online database, the Public COLA Registry.<sup>7</sup> TTB is therefore amending §§ 4.40, 5.51, and 7.31 to require that, upon importation, the importer either file with the customs entry the TTB-assigned identification number of the COLA (when filing electronically), or provide a copy of the COLA to CBP. Accordingly, importers may satisfy the requirements of amended §§ 4.40, 5.51, and 7.31 by entering the COLA identification numbers applicable to an entry in the TTB PGA Message Set in ACE, or may continue the current practice of providing a copy of the COLA to CBP.

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

TTB believes that the amendments to §§ 4.40, 5.51, and 7.31 ultimately streamline the implementation of the FAA Act's COLA provisions, and provide options that can ease compliance burdens on industry members.

*Comments*

Two commenters suggest that TTB implement in ACE a method for importers to identify whether they are the holder of the COLA(s) applicable to an entry, or instead are authorized to import products covered by that COLA(s) by the entity to which the COLA is issued. In the case of an importer that is using another entity's COLA with authorization, the commenters request that TTB implement in ACE a method for importers to submit proof of that authorization to ensure that COLAs are used only by authorized entities. Both commenters frame their request in the specific context of "direct import" transactions.

DISCUS notes that the proposed amendments to 27 CFR 5.51 would provide that no person may remove bottled distilled spirits from customs custody unless the person "has obtained and is in possession of a certificate of label approval (COLA)." DISCUS explains that importers that are the holders of the COLA for a brand often will have imported product delivered directly to a domestic wholesaler; i.e., a "direct import." DISCUS notes that in direct import transactions, the domestic wholesaler often does not have in its possession the COLA applicable to the imported products. DISCUS requests that TTB implement in ACE a "drop-down" box where the wholesaler could indicate that it is in the possession of a letter from the importer authorizing the wholesaler's use of the importer's COLA, or submit such a letter. DISCUS states that this feature

would provide all interested stakeholders with the confidence that only appropriate parties are clearing customs for the appropriate brands. DISCUS also states that requiring the person removing the product from customs custody to be in possession of the COLA could disrupt current supply chain dynamics and efficiencies, without any commensurate benefit.

NABI states that direct imports are a component of a secure supply chain, and encourages TTB to work with the importer and brokerage communities to assure that COLAs are only used by authorized partners in the international supply chain. NABI explains that direct import transactions involve beverage wholesalers acting as agents of authorized importers. NABI states that the authorized importer is the holder of the COLA and, in the case of a direct import by the importer's business partner, a letter of authorization is issued to facilitate the release of cargo from CBP. NABI concludes that these letters of authorization must be incorporated into ACE to assure that there is no interruption in CBP release of products.

TTB response: As noted above, the TTB regulations at 27 CFR 4.40, 5.51, and 7.31 currently state that no bottled wine, distilled spirits, or malt beverages, respectively, shall be released from customs custody for consumption unless an approved COLA covering the label of the product has been deposited with the appropriate customs officer at the port of entry. Pursuant to ATF Ruling 84-3, TTB has allowed, under certain specified circumstances, the use of a COLA by an importer that is not the importer to which the COLA was issued if: (1) The importer to which the COLA was issued

has authorized such use, (2) each bottle or individual container bears the name (or trade name) and address of the importer to which the COLA was issued and (3) the importer to which the COLA was issued maintains records of the companies it has authorized to use its certificate. TTB notes that, under current regulations, an importer importing products using a COLA issued to another entity must possess the COLA to meet the requirement of §§ 4.40, 5.51, and 7.31 to deposit the COLA with the appropriate customs officer at the port of entry.

The amendments proposed in Notice No. 159 to §§ 4.40, 5.51, and 7.31 would provide, in pertinent part, that bottled wine, distilled spirits, or malt beverages, respectively, are not eligible for release from customs custody, and no person may remove such products from customs custody for consumption, unless “the person removing the [products] has obtained and is in possession of a certificate of label approval (COLA)”. The proposed amendment would also require that any person removing such products from customs custody for consumption “must first apply for and obtain a COLA covering the [products] from the appropriate TTB officer.”

TTB agrees that the proposed amendments to §§ 4.40, 5.51, and 7.31 failed to capture this practice, which was not TTB’s intent. Accordingly, in the regulatory text finalized in this document, we have changed the amendments to §§ 4.40, 5.51, and 7.31 to clarify that bottled wine, distilled spirits, or malt beverages may be released to an importer who is authorized by a COLA holder to import products covered by the COLA. TTB notes that these amendments do

not supersede ATF Ruling 84–3 or its holding that the COLA holder remains responsible for the imported product and its distribution in the United States.

Both commenters requested that TTB implement a method in ACE for a domestic wholesaler to indicate that it is in the possession of a letter from the importer authorizing the wholesaler's use of the importer's COLA, or submit such a letter, in order to ensure that only authorized entities are entering products subject to the COLA requirements.

TTB believes it is necessary to clarify certain facts related to this request. First, the provisions of §§ 4.40, 5.51, and 7.31 are applicable to the importer of the products, that is, the entity under whose FAA Act basic permit the products are released. Under the amended regulations, an importer filing electronically must file with CBP, at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the alcohol beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In neither scenario is a wholesaler to whom the products may ultimately be shipped required by TTB regulations to provide information or documentation for the products to be released. In general, a wholesaler is not required to submit information or documentation into ACE for the release of bottled wine, distilled spirits, or malt beverages unless that wholesaler is itself the importer.

Second, in situations where an importer imports products covered by a COLA issued to another entity (with the authorization of the entity to which the COLA was issued), there is no requirement in the TTB regulations that a COLA

authorization letter be submitted to CBP in order for such products to be released. However, the amended regulations clarify that proof of such authorization must be made available to TTB or CBP upon request. Where an importer is authorized to import products covered by another importer's COLA, the importer importing the products must have a copy of the COLA, and as a result will also have the COLA identification number, either of which may be used to satisfy the initial release eligibility requirements of §§ 4.40, 5.51, and 7.31. If CBP or TTB requests that an importer submit proof of their authorization to use another person's COLA, any supporting documentation may be uploaded into ACE through the DIS module, or submitted in paper. More information regarding the submission of data using the DIS module is available in the "ACE Filing Instructions for TTB-Regulated Commodities" at Docket No. TTB-2016-0004 on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)).

TTB appreciates the commenters' input regarding the need to ensure that all alcohol beverages imported into the United States comply with the labeling provisions of the FAA Act. TTB is considering the enforcement efficacy of implementing an indicator in the TTB PGA Message Set through which importers would indicate that they are using a COLA held by another entity. If TTB determines that these steps would be valuable for purposes of enforcing §§ 4.40, 5.51, and 7.31, they will be proposed in a separate action.

#### *Comments*

Three commenters request that requests for waivers from the COLA requirement for imports for trade shows and/or sales samples be accepted

electronically. DISCUS specifically requests that acceptance of such documents in ACE be allowed, as either an electronic document upload or as an electronic certification that the waiver is in the importer's possession. The French Federation of Wine and Spirits Exporters generally requests that electronic submission, or electronic certification of possession, be available for such documents. NABI suggests that TTB convert COLA waivers to electronic documents, or electronically stamp COLA waiver applications, so that COLA waivers may be submitted as digital documents along with documentation filed with CBP.

TTB response: TTB first notes that there is an exemption code in the TTB PGA Message Set for importers to indicate that a product is exempt from the COLA requirement under a waiver. Further, COLA waiver documents may be uploaded electronically into ACE through the DIS module.

With regard to the suggestions that TTB further streamline the way that it indicates authorization of a waiver, although that is outside the scope of the current rulemaking (as this rulemaking is directed at amending current regulations to provide for electronic submission of information to CBP or TTB upon import), TTB is considering further streamlining of the COLA waiver process, which may be addressed in a future rulemaking.

Reporting of Certain Required Information for Foreign-Trade Zone Related Entries

*Comment*

NAFTZ requests that, for foreign-trade zone (FTZ) related entries, the “importer of record” continue to be considered the consignee for purposes of reporting CBP and TTB information in ACE “at the time of a Type 06 FTZ entry.”

TTB response: TTB first notes that a “Type 06 FTZ entry” refers to a withdrawal of products from an FTZ for consumption in the United States; this type of entry is an importation for purposes of TTB regulations. TTB also notes that “importer of record” is a term specific to CBP regulations and CBP forms; TTB regulations and requirements refer to the “importer” (which is specifically defined in parts 27 and 41), but not to the “importer of record”. Accordingly, information submitted in ACE regarding the importer of record is required for purposes of fulfilling CBP requirements, and does not necessarily apply to TTB requirements.

Under the amended regulations, TTB requires electronic filers to supply information via the TTB PGA Message Set regarding the importer of products which are subject to TTB regulation. For purposes of the TTB PGA Message Set, the “importer” refers to the individual or entity identified as the importer in the corresponding TTB regulations and possessing the applicable TTB permit (which TTB will refer to here as the “TTB importer”). Generally, the amended regulations require that electronic filers supply information such as the TTB importer’s TTB permit number, address, and employer identification number. The amended regulations also require that electronic filers identify the name and

address of the ultimate consignee of the imported products in the TTB PGA Message Set. The ultimate consignee is the person to whom the products being imported are shipped. Depending on the individual circumstances of a transaction, the TTB importer may be the same entity as the importer of record reported to CBP.

#### **IV. Other Clarifying Changes**

In addition to the clarifying changes described in the Discussion of Comments section above, the regulatory amendments finalized in this document incorporate additional changes to 27 CFR 26.276, 27.137, and 26.292. As proposed in Notice No. 159, amended §§ 26.276 and 27.137 set forth record retention requirements for all records required by parts 26 and 27, respectively, and documents or copies of documents that support such records (including data filed with CBP pursuant to CBP requirements). Under the proposed regulations, and those finalized in this document, all such records and supporting documents are required to be retained in accordance with TTB recordkeeping requirements and made available to TTB or CBP upon request. TTB is adding in this final rule cross references in §§ 26.276 and 27.137 to recordkeeping and retention regulations issued by CBP, as such CBP regulations may affect the same records.

Section 26.292 relates to shipments of industrial spirits or specially denatured spirits brought into the United States from the U.S. Virgin Islands. As proposed in Notice No. 159, amended § 26.292 would require, when filing electronically, the consignor or consignee to file with CBP the number associated

with the consignee's permit issued under 27 CFR part 20 (for shipments of specially denatured spirits) or 27 CFR part 22 (for shipments of industrial spirits), along with the customs entry. TTB is clarifying in this final rule that it is the importer filing the entry that must file the number associated with the consignee's permit.

## **V. Regulatory Analyses and Notices**

### **A. Executive Order 12866**

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

### **B. Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While TTB believes the majority of businesses subject to this rule are small businesses, the regulatory amendments in this document will not have a significant impact on those small entities. Electronic filing will not be required under the changes. For entities filing on paper, the changes generally only require that certain additional information must be kept as a record. Furthermore, the majority of changes that TTB is making in this document will provide importers with more predictability regarding the data required at importation, and the electronic filing option will allow importers to more easily provide information required to import alcohol and tobacco products. This will facilitate the movement of the commodities from the

port of entry into U.S. commerce, and reduce the possibility of cargo being delayed at the port. As small entities typically have fewer resources than large entities to devote to regulatory compliance and logistics, these benefits may have a disproportionately positive effect for small entities.

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

The changes in this document can be divided into three classes with respect to their impact on entities: (1) Providing an electronic filing alternative to requirements to submit paper documents to U.S. Customs and Border Protection (CBP) as part of the customs entry or entry summary filing; (2) replacing reporting requirements with recordkeeping requirements, under which the importer must make documents available upon request; and (3) adding some filing requirements. An example of the electronic filing alternative is the change to address the certificate of label approval (COLA) for alcohol beverages. Current regulations require that the COLA be “deposited with” CBP before the alcohol beverages covered by the COLA are released from customs custody. TTB is instead requiring that importers that file TTB data electronically input the number of the COLA with the filing of the customs entry. Electronic filing provides a non-paper alternative to submitting information. It is likely that such an alternative will be welcomed by importers that prefer to file electronically, as including paper documents in shipments is likely more burdensome than submitting data

electronically. Paper COLAs will continue to be required from importers that do not file TTB data electronically.

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

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

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, TTB submitted the notice of proposed rulemaking (Notice No. 159, 81 FR 40404, June 21, 2016) to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations. The SBA had no comment on the proposed rule.

### C. Paperwork Reduction Act

Regulations addressed in this document contain current collections of information that have been previously reviewed and approved by the Office of

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

In conjunction with Notice No. 159, TTB submitted revisions to OMB control numbers 1513–0064, 1513–0056, 1513–0059, 1513–0062, 1513–0088, and 1513–0119 to OMB for review. Those revisions generally account for the regulatory amendments proposed in Notice No. 159 and finalized in this document. The revisions and their connections to the proposed regulatory amendments are described in detail in Notice No. 159, which also solicited comments regarding the information collection revisions. TTB received no comments in response to the revisions, and the revisions have now been approved by OMB.

Following the revisions described in Notice No. 159, TTB submitted one clarifying revision to OMB control number 1513–0064 to OMB for approval. The amended regulations at §§ 4.40, 5.51, and 7.31 clarify that, if an importer is

importing distilled spirits, wine, or malt beverages using another person's COLA, with the COLA holder's authorization, the importer must make proof of that authorization available to TTB or CBP upon request. While the estimated burden hours for OMB control number 1513-0064 put forth in Notice No. 159 did capture the submission of proof of a COLA holder's authorization, TTB did not specifically explain that this collection of information was being accounted for by OMB control number 1513-0064. TTB submitted a revision to OMB control number 1513-0064 to include that explanation, and TTB has received approval for that revision.

D. Administrative Procedures Act

TTB finds good cause under 5 U.S.C. 553(d)(3) to dispense with the effective date limitation in 5 U.S.C. 553(d). A 30-day delayed effective date is unnecessary because the regulatory changes in this final rule that provide an electronic filing alternative to paper filing are optional. Further, a delay in the applicability of the new recordkeeping provisions contained in this final rule is unnecessary because TTB provided notice of these requirements on June 21, 2016 through Notice No. 159 (81 FR 40404). Notice No. 159 explained that Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses" mandated that agencies be able to utilize ITDS by December 31, 2016. The effective date of this final rule is December 31, 2016, in accordance with the Executive Order.

## **List of Subjects**

### 27 CFR Part 1

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

### 27 CFR Part 4

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

### 27 CFR Part 5

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

### 27 CFR Part 7

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

### 27 CFR Part 26

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

27 CFR Part 27

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

27 CFR Part 41

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

**Amendments to the Regulations**

For the reasons discussed above in the preamble, TTB is amending 27 CFR parts 1, 4, 5, 7, 26, 27, and 41 as follows:

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

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

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

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

**§ 1.10 Meaning of terms.**

\* \* \* \* \*

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted

cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to the use of processing methods and flavors in malt beverage production appear in § 7.11 of this chapter.

\* \* \* \* \*

3. Section 1.58 is revised to read as follows:

**§ 1.58 Filing of permits.**

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

**PART 4—LABELING AND ADVERTISING OF WINE**

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

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

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

**§ 4.10 Meaning of terms.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 4.27 Vintage wine.**

\* \* \* \* \*

(c) \* \* \*

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

7. Section 4.40 is amended by:

- a. Revising paragraph (a);
- b. Removing and reserving paragraph (b); and

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

The revision and addition read as follows:

**§ 4.40 Label approval and release.**

(a) Certificate of label approval. Wine, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless the person removing the wine has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing wine in containers from customs custody for consumption must first apply for and obtain a COLA covering the wine from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned number of the valid COLA that corresponds to the label on the brand or lot of wine to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition,

the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to wine that is removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of wine.

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

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

**§ 4.46 [Removed]**

9. Section 4.46 is removed.

10. Section 4.53 is added to read as follows:

**§ 4.53 Retention of certificates.**

Wine that would be required under § 4.45 to be covered by a certificate of origin and identity and/or a certification of proper cellar treatment and that is imported in bulk for bottling in the United States may be removed for consumption from the premises where bottled only if the bottler possesses a certificate of origin and identity and/or a certification of proper cellar treatment of natural wine applicable to the wine, issued by the appropriate entity as set forth in §§ 4.45 and 27.140 of this chapter respectively, that provides the same information as a certificate required under § 4.45(a) and (b) would provide for like wine imported in bottles. The bottler of wine imported in bulk must retain for five years following the removal of such wine from the bonded wine cellar where

bottled copies of the certificates required by § 4.45(a) and (b), and must provide them upon request of the appropriate TTB officer.

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

11. Section 4.70 is amended by:

a. In paragraph (b)(3), removing the word “or” following the semicolon;

b. Redesignating paragraph (b)(4) as paragraph (b)(5);

c. Adding new paragraph (b)(4); and

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

The additions read as follows:

**§ 4.70 Application.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

**PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS**

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

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

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

**§ 5.11 Meaning of terms.**

\* \* \* \* \*

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

\* \* \* \* \*

14. Section 5.45 is revised to read as follows:

**§ 5.45 Application.**

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

(b) Section 5.47a does not apply to:

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

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and

certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

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

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

**§ 5.47a [Amended]**

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

16. Section 5.51 is amended by:

a. Revising paragraph (a);

b. Removing and reserving paragraphs (b) and (d); and

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

The revision and addition read as follows:

**§ 5.51 Label approval and release.**

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

distilled spirits from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

\* \* \* \* \*

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

**17.** Section 5.52 is amended by:

**a.** Revising paragraphs (a), (b), (c), (d) introductory text, and (e);

b. Adding paragraph (f); and

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

The revisions and additions read as follows:

**§ 5.52 Certificates of age and origin.**

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

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

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

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

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

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

so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(c) Tequila. (1) Tequila imported in bottles is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a certificate issued by an official duly authorized by the Mexican Government stating that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

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

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

\* \* \* \* \*

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

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

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

**§ 5.53 [Removed]**

**18.** Section 5.53 is removed.

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

**§ 5.56 Certificates of age and origin.**

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

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

**PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES**

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

**Authority:** 27 U.S.C. 205.

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

**§ 7.10 Meaning of terms.**

\* \* \* \* \*

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

\* \* \* \* \*

**22.** Section 7.31 is amended by:

**a.** Revising paragraph (a);

**b.** Removing and reserving paragraph (b); and

**c.** Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

**§ 7.31 Label approval and release.**

(a) Certificate of label approval. Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing malt beverages in containers from customs custody for consumption must first apply for and obtain a COLA covering the malt beverages from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the

person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the brand or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported malt beverages.

\* \* \* \* \*

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

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

**23.** The authority citation for part 26 is revised to read as follows:

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111-5114, 5121, 5122-5124, 5131-5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 26.1 [Amended]**

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

25. Section 26.11 is amended by:

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

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

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

The revisions and additions read as follows:

**§ 26.11 Meaning of terms.**

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any proper cellar treatment and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids. For purposes of this definition, “proper cellar treatment” means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported

subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

\* \* \* \* \*

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

\* \* \* \* \*

**26.** Section 26.200 is amended by:

- a. Adding paragraphs (d), (e), (f), and (g);
- b. Revising the authority citation at the end of the section; and
- c. Adding an Office of Management and Budget control number reference at the end of the section.

The additions and revision read as follows:

**§ 26.200 Taxable status.**

\* \* \* \* \*

(d) Internal revenue taxes payable on liquors brought into the United States from the Virgin Islands are collected by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the liquors are duty- and tax-paid to CBP will be treated as a return for purposes of this part. The person bringing such liquors into the United States, if filing electronically, must file the information specified in this

section with the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. The following information is required as described under this section:

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

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

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

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

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

(e) Distilled spirits, natural wines, and beer in bulk containers may be released from customs custody without payment of tax under the provisions of

subpart Oa of this part and thereafter removed subject to tax from internal revenue bonded premises. The tax will be collected and paid under the provisions of parts 19, 24, and 25 of this chapter, respectively.

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

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

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

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

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

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

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

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

28. Section 26.202 is revised to read as follows:

**§ 26.202 Requirements of the Federal Alcohol Administration Act.**

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

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

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

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

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

**29.** Section 26.205 is amended by:

- a.** Revising paragraph (b);
- b.** Adding paragraphs (c) and (d); and
- c.** Revising the Office of Management and Budget control number

reference at the end of the section.

The revisions and additions read as follows:

**§ 26.205 Certificate.**

\* \* \* \* \*

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

(c) The person bringing liquors into the United States from the Virgin Islands must maintain a copy of the certificate described in paragraph (a) of this section along with records to substantiate the information on the certificate, including information required under § 26.204, in accordance with the record

retention requirements of § 26.276 and must make them available upon request of the appropriate TTB officer or a customs officer.

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

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

\* \* \* \* \*

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

**§ 26.260 Required information.**

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

**§ 26.261 [Removed and reserved]**

**31.** Section 26.261 is removed and reserved.

**32.** Section 26.263 is revised to read as follows:

**§ 26.263 Determination of tax on beer.**

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

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

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

**§ 26.264 Determination of tax on wine.**

\* \* \* \* \*

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

**§ 26.273 [Amended]**

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

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

**§ 26.273a Transfer record.**

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

(1) Date prepared;

(2) Serial number of the transfer record, beginning with “1” each January 1;

(3) Name of the proprietor and TTB-issued IRC registry number of the plant to which consigned;

(4) Name and address of the consignor;

(5) Kind of spirits;

- (6) Name of the producer;
- (7) Age (in years, months and days) of the spirits;
- (8) Proof of the spirits;
- (9) Type and serial number of containers;
- (10) Proof gallons of spirits in the shipment; and
- (11) The customs entry number and amount of duty paid.

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

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

(c) Beer. The transfer record prescribed in § 26.301 must identify the importer and show the following:

- (1) The date prepared;

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

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

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

(5) The country of origin of the beer;

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

(7) The kind of beer; and

(8) The brewer.

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

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

**36.** Section 26.276 is revised to read as follows:

**§ 26.276 Retention.**

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

case where the appropriate TTB officer determines retention necessary or advisable. (For record retention periods under CBP regulations, see 19 CFR part 163.) Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

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

37. Section 26.292 is revised to read as follows:

**§ 26.292 Consignee permit number.**

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

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

38. Section 26.294 is revised to read as follows:

**§ 26.294 Record of shipment.**

(a) Filing information with U.S. Customs and Border Protection. Each person bringing industrial spirits or specially denatured spirits into the United States from the Virgin Islands, who files electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this

paragraph, with the entry or entry summary, as appropriate. Any information required by this paragraph that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this paragraph. In addition to the consignee's permit number or a copy of the consignee's permit as required by § 26.292, the following information is required:

- (1) The name and address of the consignee;
- (2) The name and address of the consignor; and
- (3) The total quantity shipped.

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

- (1) For each formula of specially denatured spirits, the formula number prescribed by part 21 of this chapter;
- (2) For each formula of specially denatured spirits, the total quantity in liters or gallons and the serial numbers or package identification numbers of containers; and
- (3) For industrial spirits, the total quantity in proof liters or proof gallons and the package identification numbers of containers.

(c) Retaining records and making them available upon request. The person bringing industrial spirits or specially denatured spirits into the United

States from the Virgin Islands must maintain records to substantiate the information required under paragraph (a) of this section, and any information provided to CBP to meet CBP requirements, in accordance with the record retention requirements of § 26.276. Such records also must be made available upon request of the appropriate TTB officer or a customs officer.

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

39. Section 26.296 is revised to read as follows:

**§ 26.296 Record of shipment.**

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

- (1) The consignor's name and address;
- (2) The consignee's name and address; and
- (3) The total quantity shipped.

(b) Maintaining additional information as a record. For each shipment of completely denatured alcohol or products made with denatured spirits from the Virgin Islands to the United States, the importer shall possess and maintain a

record of shipment. The record of shipment shall consist of an invoice, bill of lading, or similar document that shows the information required under paragraph (a) of this section, as well as the following:

(1) The capacity and number of containers;

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

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

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

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

**§ 26.297 [Removed]**

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

**41.** The heading of subpart Oa is revised to read as follows:

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

42. Section 26.300 is amended by:

- a. Revising the section heading;
- b. Removing “(a)” and “(b)” from the second sentence;
- c. Designating the existing text as paragraph (a);
- d. Adding a heading to newly designated paragraph (a); and
- e. Adding paragraphs (b) and (c).

The revision and additions read as follows:

**§ 26.300 General provisions.**

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

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

wine from customs custody, the person bringing in the wine is relieved of the liability for the tax.

(c) Transfer of beer from customs custody to brewery premises. Bulk beer brought into the United States from the Virgin Islands may, under the provisions of this subpart, be withdrawn by the proprietor of a bonded brewery from customs custody and transferred in bulk containers to the bonded brewery premises, without payment of the internal revenue tax imposed on such beer by 26 U.S.C. 7652. Beer so withdrawn and transferred to bonded brewery premises may be withdrawn from a brewery's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic beer. The proprietor of the bonded brewery to which the beer is transferred becomes liable for the tax on beer withdrawn from customs custody under 26 U.S.C. 5418. Upon release of the beer from customs custody, the person bringing in the beer from the Virgin Islands is relieved of the liability for the tax.

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

**§ 26.301 Record of shipment.**

(a) Preparation of records. (1) The importer bringing distilled spirits, natural wines, or beer into the United States from the Virgin Islands under this subpart must prepare a transfer record according to § 26.273a. A separate transfer record must be prepared for each conveyance. The importer bringing in the distilled spirits, natural wines, or beer must maintain these records and any additional records necessary to substantiate the information provided under paragraph (b) of this section, in accordance with the record retention

requirements of § 26.276, and must make them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

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

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

make it available for inspection by the appropriate TTB officer or a customs officer. The following information is required:

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

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

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

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

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

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

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

#### **§ 26.302 [Removed and Reserved]**

44. Section 26.302 is removed and reserved.

#### **§ 26.303 [Removed and Reserved]**

45. Section 26.303 is removed and reserved.

**§ 26.314 [Amended]**

**46.** In § 26.314:

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

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

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

**d.** Remove the Office of Management and Budget control number reference from the end of the section and add in its place the Office of Management and Budget control number reference “(Approved by the Office of Management and Budget under control number 1513–0020)”.

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

**§ 26.316 Bottles not constituting approved containers.**

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

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

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

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

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

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

**§ 26.319 [Amended]**

**49.** Section 26.319 is amended by:

- a.** Removing the words “filed in triplicate”; and
- b.** Removing “§ 31.263” and adding in its place “§ 31.203”.

**§ 26.331 [Amended]**

**50.** Section 26.331 is amended by removing the words “, in triplicate,” and removing the Office of Management and Budget control number reference at the end of the section and adding in its place “(Approved by the Office of Management and Budget under control number 1513–0064)”.

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

**51.** The authority citation for part 27 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

**52.** Section 27.11 is amended by:

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

The revisions and additions read as follows:

**§ 27.11 Meaning of terms.**

\* \* \* \* \*

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

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

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

term “bulk container” means any container having a capacity larger than one barrel of 31 gallons.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

53. Section 27.48 is revised to read as follows:

**§ 27.48 Imported distilled spirits, wines, and beer.**

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

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

requirements of this section. For all distilled spirits, wines, and beer imported under this paragraph, the following information is required:

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

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

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

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

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

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

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

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

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

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

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

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

**FEDERAL ALCOHOL ADMINISTRATION ACT REQUIREMENTS FOR IMPORTATION OF DISTILLED SPIRITS, WINES, AND MALT BEVERAGES**

**§ 27.55 Requirements of the Federal Alcohol Administration Act.**

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

(b) FAA Act basic permit. Any person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, who intends to engage in the business of importing distilled spirits, wines, or malt beverages into the United States must, prior to importing such products into the United States, obtain an importer's basic permit, in accordance with the requirements of the FAA Act and regulations issued pursuant to the FAA Act, and must file with U.S. Customs and Border Protection (CBP) the number associated with this permit with the filing of the customs entry when filing electronically as

required under 27 CFR 1.58. Also, as required under § 1.58 of this chapter, if the importer is not filing electronically, the importer must have a copy of the FAA Act basic permit and make it available upon request of the appropriate TTB officer or a customs officer.

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

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

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

**55.** Section 27.76 is amended by:

- a. In paragraph (a), by removing “TTB Form 5530.5 (1678)” and adding in its place “TTB Form 5154.1 (formerly TTB Form 5530.5 and ATF Form 1678)”;
- b. Revising paragraph (d);
- c. Adding paragraph (e); and
- d. Revising the OMB control number reference at the end of the section.

The revisions and additions read as follows:

**§ 27.76 Approval and certification of wine and flavors content.**

\* \* \* \* \*

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

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

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

\* \* \* \* \*

**56.** Section 27.77 is amended by:

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

- b. Adding paragraphs (e) and (f); and
- c. Revising the OMB control number reference at the end of the section.

The revisions and additions read as follows:

**§ 27.77 Standard effective tax rate.**

\* \* \* \* \*

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

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

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

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

**§ 27.120 [AMENDED]**

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

**58.** Section 27.137 is revised to read as follows:

**§ 27.137 Retention.**

All records required by this part, documents or copies of documents supporting these records (including data filed with U.S. Customs and Border Protection (CBP) pursuant to CBP requirements), and file copies of reports required by this part, must be retained for not less than three years following each withdrawal from customs custody, and during this period must be made available upon request of the appropriate TTB officer or a customs officer. Furthermore, the appropriate TTB officer may require these records to be kept for an additional period of not more than three years in any case where the appropriate TTB officer determines retention necessary or advisable. (For record retention periods under CBP regulations, see 19 CFR part 163.) Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

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

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

**§ 27.138 Transfer record.**

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

(1) The date prepared;

(2) Serial number of the transfer record, beginning with “1” each

January 1;

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

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

(5) The name of the foreign producer;

(6) The kind of spirits;

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

(8) The proof of the spirits;

(9) The type and number of containers;

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

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

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

(1) The date prepared;

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

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

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

(5) The country of origin of the wine;

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

(7) The kind of wine; and

(8) The foreign producer.

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

- (1) The date prepared;
- (2) The name and address of the brewery receiving the beer from customs custody;
- (3) The TTB-issued IRC registry number of the brewery receiving the beer from customs custody;
- (4) The number of containers transferred and quantity of beer in each container;
- (5) The country of origin of the beer;
- (6) The customs entry number and the amount of duty paid;
- (7) The kind of beer; and
- (8) The foreign brewer.

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

**60.** Section 27.140 is amended by:

**a.** In paragraph (a):

- i.** Removing the definitions of “Importer” and “Natural wine”; and
- ii.** Revising the definition of “Proper cellar treatment”;

**b.** Revising the introductory text of paragraph (b)(1); and

**c.** Adding an Office of Management and Budget control number reference at the end of the section.

The revisions and addition read as follows:

**§ 27.140 Certification requirements for wine.**

(a) \* \* \*

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

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

The certification:

\* \* \* \* \*

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

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

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

62. Section 27.171 is amended by:

- a. Removing “(a)” and “(b)” from the second sentence;
- b. Designating the existing text as paragraph (a);
- c. Adding a heading to paragraph (a);
- d. Adding paragraphs (b) and (c); and
- e. Revising the authority citation at the end of the section.

The additions and revision read as follows:

**§ 27.171 General provisions.**

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

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

the tax on wine withdrawn from customs custody under 26 U.S.C. 5364. Upon release of the wine from customs custody, the importer is relieved of the liability for the tax.

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

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

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

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

(a) Preparation of records. (1) The person importing distilled spirits, natural wines, or beer under this subpart must prepare a transfer record according to § 27.138. A separate transfer record must be prepared for each conveyance. The importer must maintain these records and any records to substantiate the information required under paragraph (b) of this section, in accordance with the record retention requirements of § 27.137, and must make

them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

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

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

(1) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable,

as required by 27 CFR 1.20, and the importer's employer identification number (EIN) associated with that permit;

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

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

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

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

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

**§ 27.173 [Removed and Reserved]**

64. Section 27.173 is removed and reserved.

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

**§ 27.175 Receipt of distilled spirits by consignee.**

\* \* \* \* \*

66. Section 27.183 is revised to read as follows:

**§ 27.183 Use of Government agency permit, Form 5150.33.**

Each Government agency must retain the original of its permit, Form 5150.33, on file. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit must list all locations authorized to withdraw spirits free of tax from customs custody. When withdrawing spirits free of tax from a port of entry, the agency, if filing electronically, must file its TTB-issued permit number along with the filing of any other information required by

U.S. Customs and Border Protection to be filed with the customs entry. If the agency is not filing electronically, rather than file the TTB-issued permit number, the agency must make a copy of the permit available to the customs officer upon request.

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

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

**§ 27.184 Information required for entry.**

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

**§ 27.185 [Removed]**

**68.** Section 27.185 is removed.

**§ 27.204 [Amended]**

**69.** Section 27.204 is amended by:

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

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

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

**d.** Adding the Office of Management and Budget control number reference “(Approved by the Office of Management and Budget under control number 1513–0020)” at the end of the section.

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

**§ 27.206 Bottles not constituting approved containers.**

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

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

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

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

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

**§ 27.209 [Amended]**

**72.** Section 27.209 is amended by:

- a. Removing the words “filed in triplicate”;
- b. Removing “§ 31.263” and adding in its place “§ 31.203”; and

c. Removing the Office of Management and Budget control number reference at the end of the section and adding in its place the Office of Management and Budget control number reference “(Approved by the Office of Management and Budget under control number 1513–0064)”.

**§ 27.221 [Amended]**

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

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

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

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

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

**§ 41.11 Meaning of terms.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 41.81 Taxpayment.**

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Pipe tobacco. For pipe tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product under the Internal Revenue Code, as “pipe tobacco,” and will also state the number of pounds and ounces or kilograms and grams of the product.

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

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

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

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

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

(iv) The total taxable quantity of each.

\* \* \* \* \*

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

77. Section 41.84 is added to read as follows:

**§ 41.84 Entry for warehousing.**

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

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

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

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

**§ 41.86 Entry process for releases without payment of tax.**

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

supporting documentation and such records must be available for inspection upon request by the appropriate TTB officer or a customs officer.

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

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

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

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

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

(v) For tobacco products, the employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided to TTB by the importer on its permit application to TTB on TTB Form 5230.4;

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

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

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

(2) Tobacco products or cigarette papers or tubes not put up in packages. Tobacco products or cigarette papers or tubes not put up in packages, as defined at § 41.11, may not be released from customs custody subject to tax, and no

person may obtain release of such products from customs custody. Tobacco products or cigarette papers or tubes not put up on packages may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers or tubes, as provided in 26 U.S.C. 5704(c). As a result, if the information required in paragraphs (a)(2)(i) through (iii) of this section is not filed with the entry or entry summary, as appropriate, or, if the information required in paragraph (c) of this section is not made available to CBP upon request, tobacco products or cigarette papers or tubes not put up in packages are not eligible for release from customs custody for consumption, and no person may remove such product from customs custody.

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

form available to a customs officer upon request at such time. After release of the products, the TTB F 5200.11 must be retained by the manufacturer or export warehouse proprietor and made available to the appropriate TTB officer or a customs officer upon request.

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

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

**§ 41.204 Records and reports in general.**

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

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

**80.** Section 41.265 is added to read as follows:

**§ 41.265 Processed tobacco importation process.**

(a) General. In the case of processed tobacco imported into the United States, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in paragraph (b) of this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed as part of the entry or entry summary for CBP purposes. If the information required by this section is required by, and filed with, CBP for purposes of meeting CBP requirements, such

filing will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information required as part of the entry or entry summary by CBP for CBP purposes, and any supporting documentation, and must make such records available upon request by the appropriate TTB officer or a customs officer.

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

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

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

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

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

(5) The quantity of processed tobacco.

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

Signed: November 14, 2016.

**John J. Manfreda,**

Administrator.

Approved: November 21, 2016.

**Timothy E. Skud,**

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

[FR Doc. 2016-29201 Filed: 12/21/2016 8:45 am; Publication Date: 12/22/2016]