

# Treasury Decisions

## Subpart A – ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—  
CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

### **Distribution and Use of Denatured Alcohol and Rum (2000R-291P)**

**27 CFR Part 20**

**T.D. ATF-476**

**RIN 1512-AB57**

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

**ACTION:** Final rule (Treasury decision).

**SUMMARY:** This final rule amends the regulations in part 20 of title 27 of the Code of Federal Regulations by eliminating the requirement for users and dealers of specially denatured spirits (SDS) to file a bond. It also liberalizes certain qualification requirements relating to industrial alcohol user permits.

**DATES:** This rule is effective on June 11, 2002.

### **FOR FURTHER INFORMATION**

**CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at [LMGesser@atfhq.atf.treas.gov](mailto:LMGesser@atfhq.atf.treas.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Background on Specially Denatured Spirits**

Specially denatured spirits (SDS) are alcohol or rum that have been treated with denaturants to make them unfit for beverage use. SDS include specially denatured alcohol (SDA) and specially denatured rum (SDR). A user purchases SDS to use in a process or in the manufacture of a substance, preparation, or product requiring SDS. SDS have many uses, such as:

- In laboratories as a solvent, for cleansing purposes, or in the preparation of indicator solutions and reagents.
- In the manufacture of such articles as perfumes, proprietary solvents, tobacco flavors, lotions, and sprays.
- In conversion processes to produce other substances, such as vinegar or ethyl acetate.

An industrial alcohol user permit is needed to procure, use, recover, or deal in SDS. To obtain an industrial alcohol user permit, certain registration requirements must be met. These requirements may include the submission of a detailed application with supporting data, the payment of special (occupational) tax (SOT), and the acquisition of bond coverage. Once such registration requirements are met, the applicant is issued an industrial alcohol user permit and may commence conducting any of the uses authorized under the law and regulations for industrial alcohol user permittees. The permittee is allowed to purchase and acquire alcohol from a bonded dealer or a registered distilled spirits plant (DSP) free of the excise tax payments normally required by the DSP proprietor. For this reason, SDS authorized uses are limited or restricted under the law. Any permittee who uses SDS in a manner that violates the laws and regulations becomes liable for the tax and other provisions of the Internal Revenue Code of 1986, 26 U.S.C. 5001(a)(5).

#### **Notice of Proposed Rulemaking**

On July 17, 2001, ATF published a notice of proposed rulemaking (NPRM) Notice No. 923, to solicit public comment on proposed regulations that would eliminate the requirement for users or dealers of SDS to file a bond. ATF also proposed to liberalize certain qualification requirements relating to industrial alcohol user permits. The public was invited to submit written comments on this notice for a period of 60-days ending September 17, 2001.

#### **Comments on the NPRM**

We received two comments as a result of Notice No. 923. The first was

from an industry member who agreed with our proposal but suggested that in addition to eliminating the requirement for users of SDS to file a bond, we should eliminate the same requirement for dealers of SDS. While the original notice may not be clear, the intent of our suggested language is to eliminate the bond requirement for both users and dealers. We have rewritten our background material to make that clarification.

We received a second comment after the close of the comment period from the Surety Association of America opposing our proposal. The Association indicated that the bond requirement should not be eliminated because it provides two valuable services to ATF:

(1) The bond is available to pay required taxes in the event the permit holder uses the SDS improperly; and

(2) The surety provides pre-qualification so that ATF can be assured that, in the surety's estimation, the applicant is capable of complying with the terms of the permit.

ATF agrees that bond requirements had reduced the risk of tax revenue losses. Our recent experience indicates that SDS users and dealers pose a minimal risk to the revenue. Further, the elimination of the bond requirement does not leave the ATF without a means to recover revenues. Any permit holder who uses SDS in a manner that violates the laws and regulations is still directly liable for the tax as provided in 26 U.S.C. 5001(a)(5).

In summary, ATF has concluded that the bond requirement in 27 CFR part 20 is now unnecessary to protect the revenue, and the proposal to eliminate

the bond requirement for users and dealers of SDS has been adopted in this final rule.

### **Bonds and Consents of Surety**

Section 5272 of the Internal Revenue Code of 1986 provides that bond coverage may be required as a part of the industrial alcohol user permit qualification process. Prior to 1985, the regulations required applicants (other than States, political subdivisions, and the District of Columbia) who wished to obtain more than 120 gallons of SDS per year, to submit an Industrial Alcohol Bond, ATF Form 5150.25. In 1985, the SDS regulations were revised and the exemption from bond coverage was expanded. See, T.D. ATF-199, (50 FR 9152), published on March 6, 1985. Under those revisions, the percentage of users of SDS who were exempt from filing a surety bond increased from 43 percent, under the prior regulations, to 75 percent under the adopted regulations.

Subpart E of 27 CFR part 20 still reflects that expansion today. Specifically, applicants (other than States, political subdivisions, and the District of Columbia) who wish to obtain more than 5,000 gallons of SDS per year must, in addition to other requirements, submit an Industrial Alcohol Bond, ATF Form 5150.25.

Based on the post-1985 experience in administering part 20, ATF has determined that bond coverage should no longer be required of any applicant for an industrial alcohol use permit. Additionally, ATF believes that elimination of the bond requirement under subpart E will result in substantially reduced administrative and financial burdens on industrial alcohol permittees. Therefore, ATF is

eliminating the requirement for users and dealers of SDS to file a bond.

### **Qualification Requirements**

Section 5271 of the Internal Revenue Code of 1986 requires the submission of an application before a permit may be issued to procure, deal in, or use SDS. Current regulations require the submission of a detailed application with supporting data by all applicants. The appropriate ATF officer is authorized to waive some of the application and supporting data requirements for applicants who are a State, political subdivisions thereof, or the District of Columbia, or whose annual withdrawal and sale or usage of SDS will not exceed 5,000 proof gallons.

ATF has determined that this waiver should be available to all applicants when the appropriate ATF officer concludes that the revenue is adequately protected with respect to the person submitting the application and that there is no hindrance to the effective administration of part 20. Therefore, ATF is amending the regulations to allow the appropriate ATF officer to waive detailed applications with supporting data for all applicants.

### **Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new reporting or recordkeeping requirements.

### **Regulatory Flexibility Act**

It is hereby certified that these regulations will not have a significant

economic impact on a substantial number of small entities. The regulations will simplify the qualification process for an industrial alcohol user permit by eliminating the requirement to obtain a bond. A copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

#### **Executive Order 12866**

This regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this rule is not subject to the analysis required by this Executive Order.

#### **Drafting Information**

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### **List of Subjects in 27 CFR Part 20**

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

#### **Authority and Issuance**

For the reasons set forth in the preamble, ATF is amending title 27 of the Code of Federal Regulations, chapter 1, as follows:

#### **PART 20--DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM**

**Paragraph 1.** The authority citation for 27 CFR part 20 continues to read as follows:

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

#### **§20.3 [Amended]**

**Par. 2.** Amend §20.3 by removing the reference to “31 CFR Part 225 – Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lien of Surety or Sureties on Penal Bonds.”

#### **§20.21 [Amended]**

**Par. 3.** Amend §20.21(a) by removing the word “bonds” from the first sentence.

#### **§20.22 [Amended]**

**Par. 4.** Amend §20.22 as follows:

- a. Remove paragraph (a)(3); and
- b. Redesignate paragraph (a)(4) as paragraph (a)(3).

#### **§20.26 [Removed]**

**Par. 5.** Remove §20.26.

**Par. 6.** Amend §20.43 by revising paragraphs (a)(2) and (b) to read as follows:

#### **§20.43 Exceptions to application requirements.**

(a) \* \* \*

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements

does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part

\* \* \* \* \*

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in §20.56(a)(2).

**Par. 7.** Revise the second sentence of §20.58 to read as follows:

**§20.58 Adoption** of documents by a fiduciary.

\* \* \*. The fiduciary may adopt the formulas and statements of process of the predecessor. \* \* \*.

**§20.59 [Amended]**

**Par. 8.** Amend §20.59 as follows:

- a. Remove paragraph (b);
- b. Redesignate paragraph (c) as paragraph (b); and
- c. Redesignate paragraph (d) as paragraph (c).

**§20.61 [Amended]**

**Par. 9.** Amend §20.61 by removing the last sentence of the text.

**§20.62 [Amended]**

**Par. 10.** Amend §20.62 as follows:

a. Remove the paragraph letter and title designation “(a) Permit”; and

b. Remove paragraph (b).

**§20.68 [Amended]**

**Par. 11.** Amend §20.68 as follows:

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

**Subpart E [Removed]**

**Par. 12.** Remove and reserve Subpart E—Bonds and Consents of Surety.

**Par. 13.** Revise paragraph (c) of §20.175 to read as follows:

**§20.175 Shipment for account of another dealer.**

\* \* \* \* \*

(c)1 The dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the person actually shipping the specially denatured spirits shall not be liable.

**§20.177 [Amended]**

**Par. 14.** Amend paragraph (b) of §20.177 by removing the word “bonded” in the first sentence.

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1 Originally read "(a)" in FR Doc. 02-8523, at 67 FR 17939 (1<sup>st</sup> column), April 12, 2002. Corrected to read "(c)" in Federal Register Correction C2-8523, 67 FR 20868, April 26, 2002.

**§20.232 [Amended]**

Approved: March 11, 2002.

**Par. 15.** Amend §20.232 as follows:

**Timothy E. Skud,**

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

*Acting Deputy Assistant Secretary  
(Regulatory, Tariff and Trade  
Enforcement)*

**§20.241 [Amended]**

**Par. 16.** Amend §20.241 by removing the words “and filing of a bond are” and add, in their place, the word “is”.

(Filed with the Office of the Federal Register on 4-11-02 at 8:45 a.m. as FR Doc. 02-8523; published in the Federal Register on 4-11-02 at 67 FR 17937. Corrected published as FR Doc. C2-8523 on 4-26-02 at 67 FR 20868.)

Signed: February 11, 2002.

**Bradley A. Buckles,**

*Director.*