

## Subpart B – TOBACCO

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

### **Elimination of Application To Remove Tobacco Products From Manufacturer's Premises For Experimental Purposes**

**27 CFR Part 40**

**T.D. ATF-478**

**RIN 1512-AC32**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule eliminates the requirements that manufacturers of tobacco products apply to ATF to remove tobacco products from their factories in bond for experimental purposes and that they maintain the approved applications for their records. In place of these requirements, manufacturers of tobacco products will prepare and maintain records of tobacco products removed from their factories in bond for experimental purposes. In addition, this final rule defines "experimental purposes" under section 5704(a) of Title 26 of the United States Code.

**DATES:** The effective date for this final rule is May 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202-927-8210 or e-mail [alctob@atfhq.atf.treas.gov](mailto:alctob@atfhq.atf.treas.gov)).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

We published a notice of proposed rulemaking in the Federal Register on October 6, 2001 (66 FR 52730). It requested comments about a proposal to eliminate the requirements that manufacturers of tobacco products apply to ATF to remove tobacco products from their factories in bond for experimental purposes and that they maintain the approved applications for their records. In place of these requirements, manufacturers of tobacco products will prepare and maintain records of tobacco products removed from their factories in bond for experimental purposes. In addition, the proposed rule defined "experimental purposes" under section 5704(a) of Title 26 of the United States Code.

We did not receive any comments in response to our notice of proposed rulemaking. Consequently, we are publishing this final rule without any substantial changes except for the control number given by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

We certify that these regulations will not have a significant economic impact

on a substantial number of small entities. Consequently, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. We also submitted the revised regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment in accordance with 26 U.S.C. 7805(f). No comments were received.

### **Executive Order 12866**

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

### **Paperwork Reduction Act**

The collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). No public comments were received. The Office of Management and Budget (OMB) has issued control number 1512-0562 for this recordkeeping requirement. 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.

The collection of information in this rule is found in 27 CFR 40.232. We use this information to verify the kind and amount of tobacco products removed in bond from the premises of manufacturers for experimental purposes. In addition, we may use this information to determine that the persons to whom such removals are made are using the tobacco products for legitimate experimental purposes and that the tobacco products are properly destroyed or returned to the premises of a manufacturer following their experimental use. If such tobacco products are not destroyed or returned to the premises of a manufacturer, we will use this information to collect the taxes due.

The collection of information is mandatory. The likely respondents may include small businesses or organizations. We have estimated 165 recordkeepers and the total annual recordkeeping burden as 1 hour. The recordkeeping is customary and usual for business purposes.

### **Administrative Procedure Act**

In accordance with the provisions of 5 U.S.C. 553, we issued a notice of proposed rulemaking (66 FR 52730) prior to this final rule.

### **List of Subjects in 27 CFR Part 40**

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

## Authority and Issuance

For the reasons set forth in the preamble, part 40 of title 27 of the Code of Federal Regulations is amended to read as follows:

### PART 40—MANUFACTURERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

**Paragraph 1.** The authority citation for part 40 continues to read as follows:

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

**Par. 2.** Revise § 40.232 to read as follows:

#### § 40.232 Experimental purposes.

A manufacturer of tobacco products may use tobacco products for experimental purposes without determination and payment of tax as set forth in this section.

(a) *What are experimental purposes?* Experimental purposes are operations or tests carried out under controlled conditions to discover an unknown scientific principle or fact, to gather or confirm data about a known scientific principle or fact, or to test manufacturing, packaging, or other such equipment. Examples of uses for experimental purposes are:

(1) Use by manufacturers to determine scientific facts relating to tobacco products, such as their chemical content;

(2) Use by producers of packaging machines to test the operation of such machines; and

(3) Use by laboratories, hospitals, medical centers, institutes, colleges, or universities, for scientific, technical, or medical research.

(b) *What purposes are not experimental?* The uses of tobacco products outside the factory premises for advertising or consumer testing or as salespersons' or customers' samples are not experimental purposes.

(c) *Use in factory.* A manufacturer of tobacco products may use tobacco products without determination and payment of tax for experimental purposes in a factory.

(d) *Use outside factory.* A manufacturer may remove tobacco products in bond for experimental purposes outside a factory. When tobacco products are shipped for experimental purposes outside the factory, the proprietor of the factory remains liable for the taxes imposed by 26 U.S.C. 5701 until the occurrence of one of the following events:

(1) The tobacco products are returned to the premises of the factory from which they were shipped; or

(2) The tobacco products are destroyed during or after their use for experimental purposes.

(e) *Record of use.* In addition to the records prescribed by § 40.183, a manufacturer who removes tobacco products in bond for experimental purposes outside a factory must prepare and maintain a record containing the following information:

(1) Name and address of the consignee;

(2) Kind and quantity of tobacco products removed;

(3) Description of packaging, if any, of the tobacco products removed;

(4) Description of how and when the consignee will use the tobacco products; and

(5) Disposition of any remaining tobacco products after the consignee's use.

(Approved by the Office of Management and Budget under Control Number 1512-0562.)

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

Signed: February 26, 2002.

**Bradley A. Buckles,**

*Director.*

Approved: March 28, 2002.

**Timothy E. Skud,**

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

(Filed with the Office of the Federal Register on 4-18-02 at 8:45 a.m. as FR Doc. 02-9633; published in the Federal Register on 4-19-02 at 67 FR 19332.)