

Subpart B — TOBACCO

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

Puerto Rican Tobacco Products and Cigarette Papers and Tubes Shipped From Puerto Rico to the United States

27 CFR Part 275

T.D. ATF-444

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

ACTION: Treasury decision, temporary rule.

SUMMARY: This temporary rule eliminates ATF on-site supervision of tobacco products and cigarette papers and tubes of Puerto Rican manufacture that are shipped from Puerto Rico to the United States and related ATF forms. Specifically, this temporary rule eliminates the requirements that persons who ship such articles notify ATF prior to the shipment and that an ATF officer inspects, certifies that the amount of tax on such articles has been calculated correctly for, and releases, each shipment. Consequently, four ATF forms are eliminated. However, this rule requires that persons who ship such articles maintain records so that the amount of tax is calculated and recorded for ATF audit and examination. Also, this temporary rule revises certain sections to simplify and clarify and corrects a few typographical errors. In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60-day period following the publication of this temporary rule.

EFFECTIVE DATE: This rule is effective March 8, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division,
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alctob@atfhq.atf.treas.gov).

SUPPLEMENTARY INFORMATION:

Background

Elimination of On-Site Supervision and Forms

ATF is eliminating the on-site supervision of, and ATF forms for, shipments of tobacco products and cigarette papers and tubes of Puerto Rican manufacture from Puerto

Rico to the United States. ATF believes that the elimination of this supervision and these ATF forms will benefit the companies involved with such shipments and the Government.

ATF has discussed the proposed changes with the three companies in Puerto Rico who currently ship Puerto Rican tobacco products from Puerto Rico to the United States. All of the companies were in favor of eliminating the on-site ATF supervision of shipments of Puerto Rican tobacco products and cigarette papers and tubes from Puerto Rico to the United States. In addition, all of the companies reported that they were ready to use commercial records immediately to replace the ATF forms 2987(5210.8) and 3075(5200.9). The replacement of these ATF forms with commercial records would not be an additional burden since the ATF forms repeat much of the information contained in the companies' commercial records. In fact, it would eliminate the time spent in preparing, distributing and maintaining these ATF forms and arranging for ATF personnel to supervise each shipment.

This temporary rule allows greater flexibility and choice in managing the limited resources of the Bureau. ATF now conducts audits of the commercial records of companies who ship Puerto Rican tobacco products or cigarette papers and tubes from Puerto Rico to the United States. This temporary rule eliminates the requirement that ATF personnel be present at a particular place and time to inspect and certify each shipment. In addition, this temporary rule relieves the Bureau from the costs associated with revising, printing, stocking and distributing the four ATF forms related to shipments of such products from Puerto Rico to the United States.

In addition, this temporary rule eliminates the requirement that an ATF officer prepare a certificate (ATF Forms 2989 and 3074) for each shipment of Puerto Rican tobacco products or cigarette papers or tubes. These certificates are affixed to the outside of the package of each container and state that the United States tax has been paid. We believe that these certificates are not necessary to protect the revenue and do not improve compliance with the Federal excise tax on tobacco products and cigarette papers and tubes. For commercial shipments, the records maintained by the manufacturer or shipper may be examined by an appropriate ATF officer to determine that the tax has been paid. In the case of noncommercial mail shipments, an appropriate ATF officer may request ATF Form 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico), from the taxpayer as evidence that the tax has been paid.

Delegations

In the sections of the regulations that are affected by this document, we have removed references to specific ATF officers with whom an ATF Form is filed. The instructions on the ATF form specify the ATF officer with whom the ATF form is filed. Also, we changed "ATF officer" in Sec. 275.106(b) to read "appropriate ATF officer". The "appropriate ATF officer" is specified in a delegation order, ATF O 1130.16A. Conforming changes for referencing this ATF order have also been made in this document. The titles of ATF officials in the sections of this part which are not revised by this temporary rule will be updated by a future technical amendment.

Other Changes

Whenever possible, we tried to simplify and clarify the format and language of the particular sections involved. For example, we revised Sec. 275.121 by revising its language and used a chart to explain some of its requirements. Also, we have made a conforming and clarifying addition to the definition of “records” in Sec. 275.11. This addition will ensure that persons in Puerto Rico who ship Puerto Rican tobacco products or cigarette papers or tubes from Puerto Rico to the United States prepare and maintain appropriate records of each shipment. In addition, we have removed the reference to the ATF official and the requirement that ATF Form 5000.25 be filed in duplicate in the first sentence of Sec. 275.105 from “repay” to “prepay” and the references to the ATF form number in section 275.114.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. A copy of this temporary 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

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

Paperwork Reduction Act

The 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)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0560. 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 document is found in 27 CFR Secs. 275.106, 275.110 and 275.121(b). This information ensures that the excise tax on Puerto Rican tobacco products and cigarette papers and tubes shipped from Puerto Rico to the United States is properly determined and recorded and that bond coverage, if applicable, is sufficient. For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-

referenced notice of proposed rulemaking published in the proposed rules section of this Federal Register.

“Plain Language” Changes

During the revision of the regulations in this document, we also tried to simplify and clarify the language of the affected regulations. Any suggestions for improving the readability of these regulations may be submitted as comments to the cross-referenced notice of proposed rulemaking.

Administrative Procedure Act

We find that there is good cause for issuing this temporary rule without prior notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation under 5 U.S.C. 553(d). This document will relieve the burden on companies in Puerto Rico by eliminating the requirement that ATF personnel inspect and supervise each shipment of Puerto Rican tobacco products or cigarette papers and tubes from Puerto Rico to the United States. This document also eliminates two ATF forms that companies in Puerto Rico were required to prepare for ATF personnel to inspect and supervise such shipments and two ATF forms that ATF personnel were required to execute for each shipment.

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 275 is revised to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.11 [Amended]

Par. 2. The definition of “Appropriate ATF officer” in Sec. 275.11 is amended by the adding the capital letter “A” at the end of the numbers “1130.16”.

Par. 3. Paragraphs (1), (3)(i) and (3)(ii) of the definition of “Records” in Sec. 275.11 are amended by adding the phrases “or shipment into the United States from Puerto Rico” after the word “importation”.

§ 275.29 [Amended]

Par. 4. Section 275.29 is amended by removing the numbers “1130.15” each place it appears and adding, in substitution, the numbers “1130.16A”.

Par. 5. Section 275.105 is revised to read as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper must file, or cause to be filed, a tax return, ATF Form 5000.25, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes.

* * * * *

Par. 6. Section 275.106 is revised to read as follows:

§ 275.106 Examination and record of shipment by taxpayer.

(a) Shipments other than noncommercial mail shipment. The taxpayer will ensure that the tax has been prepaid on the tobacco products and cigarette papers and tubes in each shipment. The taxpayer will identify the tobacco products or cigarette papers or tubes on the bill of lading or similar record to accompany the shipment with the following information:

- (1) The marks and numbers on shipping containers;
- (2) The number of containers;
- (3) The kind of taxable article and the rate of tax, as specified by 275.30 through 275.35;
- (4) The number of small cigarettes, large cigarettes or small cigars to be shipped;
- (5) The number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped;
- (6) The number of large cigars with a sale price of more than \$235.294 per thousand to be shipped;
- (7) The pounds and ounces of chewing tobacco or snuff to be shipped;
- (8) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;
- (9) The number of cigarette papers or tubes to be shipped;

(10) The amount of the tax paid on such articles under the provisions of this subpart; and

(11) The name and address of the consignee in the United States to whom such products are being shipped. The taxpayer will note such bills of lading or similar records to identify the particular ATF Form 5000.25 on which taxes have been prepaid.

(b) Noncommercial mail shipments. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of paragraph (a) of this section, except that the taxpayer will provide a copy of the ATF Form 5000.25 upon request of an appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512-0560)

Par. 7. Section 275.110 is revised to read as follows:

§ 275.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.

Where tobacco products or cigarette papers or tubes are to be shipped to the United States involving deferred taxpayment, the bonded manufacturer must calculate the tax from the information contained in the bill of lading or a similar record. The bonded manufacturer will identify each shipment on such record with the following information:

- (a) The marks and numbers on shipping containers;
- (b) The number of containers;
- (c) The kind of taxable article and the rate of tax as specified in 275.30 through 275.35;
- (d) The number of small cigarettes, large cigarettes or small cigars to shipped;
- (e) The number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped;
- (f) The number of large cigars with a sale price of more than \$235.294 per thousand to be shipped;
- (g) The pounds and ounces of chewing tobacco or snuff to be shipped;
- (h) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;
- (i) The number of cigarette papers or tubes;
- (j) The amount of the tax to be paid on such articles under the provisions of this subpart; and
- (k) The name and address of the consignee in the United States to whom such products are being shipped. The date of completing such record will be treated as the date of computation of the tax. Tobacco products or cigarette papers or tubes may be shipped to the United States in accordance with the provisions of this section only after computation of the tax.

(Approved by the Office of Management and Budget under control number 1512-0560)

Par. 8. Section 275.111 is revised to read as follows:

§ 275.111 Agreement to Pay Tax.

Upon shipment of tobacco products and cigarette papers or tubes the bonded manufacturer agrees:

- (a) To pay the tax on the shipment;
- (b) That there is no default in payment of tax chargeable against the manufacturer's bond on ATF Form 2986 (5210.12); and
- (c) That the amount of the manufacturer's bond is sufficient or in the maximum penal sum to cover the tax due on the shipment.

§ 275.114 [Amended]

Par. 9. Paragraphs (b)(1) and (b)(2) of Sec. 275.114 are amended by removing the numbers "5000.24" each place that they appear and adding, in substitution, the numbers "5000.25".

Par. 10. Section 275.121 is revised to read as follows:

§ 275.121 Amount and Account of Bond.

(a) *Bond Amount.* Except for the maximum and minimum amounts stated in this paragraph, the total amount of the bond or bonds for tobacco products or cigarette papers or tubes under the provisions of this subpart must be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond. A manufacturer who will defer payment of tax for a shipment of tobacco products or cigarette papers or tubes under the provisions of this subpart must have sufficient credit in this account to cover the taxes prior to making the shipment to the United States. The maximum and minimum amounts of such bond or bonds are as follows:

Taxable article	Bond amount maximum	Bond amount minimum
(1) Cigarettes	\$250,000	\$1,000
(2) Any combination of taxable articles	\$250,000	\$1,000
(3) One kind of taxable article other than cigarettes	\$150,000	\$1,000

(b) *Bond Account.* Where the amount of a bonded manufacturer's bond is less than the maximum amount prescribed in paragraph (a) of this section, a bonded manufacturer must maintain an account reflecting all outstanding taxes with which the manufacturer's bond is chargeable. A manufacturer must debit such account with the amount of tax that was agreed to be paid under Sec. 275.111 or is otherwise chargeable against such bond and then must credit the account for the amount paid on Form 5000.25 or other ATF-prescribed document, at the time it is filed.

(Approved by the Office of Management and Budget under control number 1512-0560)

Signed: February 5, 2001

Bradley A. Buckles,
Director

Approved: February 13, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)