

## **Subpart B - TOBACCO**

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

### **Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers and Miscellaneous Technical Amendments: Correction**

**T.D. ATF – 422c**

**27 CFR Part 275**

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correcting amendment to the temporary regulations, which were published in the **Federal Register** on December 22, 1999, [64 FR 71947]. The temporary regulations relate to implementing certain provisions of the Balanced Budget Act of 1997 that set forth requirements that, beginning January 1, 2000, importers of tobacco products must qualify for a permit to conduct that activity.

**DATES:** This rule is effective October 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruhf, Regulations Division,  
Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW.,  
Washington, DC 20226 (202-927-8210).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The temporary regulations that are the subject of this correction implemented some of the provisions of the Balanced Budget Act of 1997, (Pub. L. 105-33) and made clarifying changes to part 275. The temporary rules were published in the **Federal Register** on December 22, 1999, (T.D. ATF-422, 64 FR 71947), and two corrections to the temporary rules were published on March 21, 2000, (T.D. ATF – 422a, 65 FR 15058) and on July 24, 2000, (T.D. ATF-422b, 65 FR 45523). The temporary regulations require that, beginning January 1, 2000, importers of tobacco products must qualify for a permit to conduct that activity.

##### **Need for Correction**

As published, the temporary regulations contain an omission in the meaning of term “appropriate ATF officer.” The meaning of this term should also refer to ATF O 1130.15, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR parts 270, 275 and 296. This document corrects this omission.

### **List of Subjects in 27 CFR Part 275**

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Electronic funds transfers, Claims, Customs duties and inspections, Excise taxes, Imports, Labeling Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Accordingly, 27 CFR part 275 is corrected by making the following correctign amendments:

### **PART 275~~4~~IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

1. The authority citation for part 275 continues 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, 4606, 765, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

#### **§ 275.11 [Corrected]**

2. Remove the period at the end of the definition of the term “appropriate ATF officer” in § 275.11 and add the words “and ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director’s Authorities in 27 CFR Parts 270, 275 and 296.”

**Bradley A. Buckles,**  
*Director*

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

**Implementation of Public Law 105-33, Section 9302, relating to the  
imposition of permit requirements on the manufacturer of roll-your-own  
tobacco. (98R-370P)**

**[T.D. ATF – 429; Ref: T.D. ATF-424, T.D. ATF-424a, T.D. ATF-427 and Notice  
No. 889]**

## **27 CFR Parts 270, 275, 290, 295, 296**

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

**SUMMARY:** This final rule implements the provision of the Balanced Budget Act of 1997 requiring that manufacturers of roll-your-own tobacco obtain a permit. In addition to the permit requirements, this document addresses provisions for records, marks, labels and notices. In response to comments received, this final rule will allow manufacturers to mark packages with the term “cigarette tobacco” as an alternative to the terms “roll-your-own tobacco” or “Class J”. Also, this final rule adopts without change most of the temporary rules of regarding roll-your-own tobacco published earlier.

**DATES:** Effective date: September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8210; or [alc/tob@atfhq.atf.treas.gov](mailto:alc/tob@atfhq.atf.treas.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

This final rule implements the provision of the Balanced Budget Act of 1997, Public Law 105-33 (“the Act”), enacted on August 5, 1997 relating to roll-your-own tobacco. Section 9302 of the Act amended the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5701 and 5702 by imposing new permit requirements for manufacturers of roll-your-own tobacco. In addition to the permit requirements, this final rule addresses provisions for records, marks, labels and notices.

#### **Roll-Your-Own Tobacco**

Roll-your-own tobacco is defined by 26 U.S.C. §5702(p) of the IRC to mean “any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.” Since the Act amended the definitions of the terms “Tobacco products” and “Manufacturer of tobacco products” to include roll-your-own tobacco, manufacturers of roll-your-own tobacco are subject to all the statutory and regulatory controls set forth in chapter 52 of IRC. These controls include tax payment, permit qualification, bonding, recordkeeping, marks, labels, notices, and civil and criminal sanctions.

On or after January 1, 2000, manufacturers of roll-your-own tobacco must apply for a permit to engage in the business of manufacturing roll-your-own tobacco. Section 9302(i)(2) of the Act also contains a transitional rule which allows those who, on the date of enactment, August 5, 1997, were engaged in the manufacture of roll-your-own tobacco and made an application for a permit prior to January 1, 2000, to continue to engage in such business pending final action on the application.

Concerning marks required on packages, the temporary regulations of T.D. ATF-424 (64 FR 71929) required that every package of roll-your-own tobacco must, before

removal subject to tax, have imprinted thereon or on a label securely affixed to the package the designation “roll-your-own tobacco,” as well as a statement of the pounds and ounces of the product contained in the package. The temporary regulations provided “Tax Class J” as an alternative to the designation “roll-your-own tobacco”.

T.D. ATF-427 (65 FR 40050) extended the use-up rule to allow manufacturers and importers to continue using packages marked without the proper designation (“roll-your-own-tobacco” or “tax class J”) that were used before January 1, 2000. This decision allows manufacturers and importers to use up such packages until October 1, 2000. However, Treasury Decision ATF-427 did not extend the date for marking packages with the statement of pounds and ounces of roll-your-own tobacco. Manufacturers and importers have been required to place a statement of the pounds and ounces on packages of roll-your-own tobacco removed on and after April 1, 2000.

### **Technical Changes**

In addition to the above changes, Treasury Decision ATF-424 made several technical changes. It revised the title of Part 270, removed references to obsolete forms, and renumbered other forms. Since Treasury Decision ATF-424 discussed these changes and ATF did not receive any comments about these technical changes, we are not discussing these technical changes in this final rule.

### **Notice of Proposed Rulemaking**

On December 22, 1999, Notice 889 (64 FR 71935) was published in the Federal Register to request comments on the temporary regulations implemented by Treasury Decision ATF-424 (64 FR 71929). The deadline for comments was February 22, 2000.

### **Comments Received**

ATF received comments from two different organizations.

### **Analysis of Comments**

#### *Alternate Designation for Roll-Your-Own Tobacco*

The Pipe Tobacco Council, Washington, DC, stated that it represented domestic manufacturers and importers of roll-your-own tobacco who account for more than 90 percent of the current domestic sales of roll-your-own tobacco. This organization requested an extension of the deadline date from labeling packages as “roll-your-tobacco” for nine months. This extension was granted by Treasury Decision ATF-427 (65 FR 44050). In addition, the Pipe Tobacco Council proposed the alternate designation “cigarette tobacco” instead of using the designation of “roll-your-own tobacco” or “Tax Class J” for labeling packages.

In proposing the regulations at 27 CFR 275.72b that implemented this labeling requirement, we believed that allowing the use of this alternative designation would adequately protect the revenue by distinguishing the roll-your-own tobacco class from the

other classes of tobacco products. It would also facilitate the relabeling of many tobacco products which are subject to tax but which are currently labeled with terms other than roll-your-own tobacco.

The Pipe Tobacco Council submitted samples of some of the popular brands of roll-your-own tobacco. None of these samples were labeled with the designation “roll-your-own tobacco”, but most of these products currently use the designation “cigarette tobacco” on their packages. In addition, the Pipe Tobacco Council submitted a survey conducted by one of its members. The survey found that nine (9) brands of roll-your-own tobacco were labeled with the designation “cigarette tobacco”, two brands used “cigarette rolling tobacco”, and three other brands used other designations. However, none of the brands used “roll-your-own tobacco” as a designation. In conclusion, the Pipe Tobacco Council stated that most consumers of roll-your-own tobacco recognize the designation “cigarette tobacco” as a distinctive class.

In addition, the Pipe Tobacco Council cited the fact that we had allowed the use of the word “little” in place of the word “small” on packages of cigars (refer to 27 CFR 270.214(c)). Even though the law only refers to small cigars, we had allowed this alternate designation to be placed on packages of such cigars.

The Pipe Tobacco Council provided estimated costs that a manufacturer or importer would spend to comply with marking “Tax Class J” or “roll-your-own tobacco” on packages. It estimated that a manufacturer or importer would have to spend between \$13,000 to \$22,000 per brand of roll-your-own tobacco to place the designation “Tax Class J” on such packages and between \$33,000 to \$50,000 per brand of roll-your-own tobacco to place the designation “roll-your-own tobacco” on such packages.

We believe that there would be no jeopardy to the revenue to allow such products to be designated “cigarette tobacco.” First, we believe that the term “cigarette tobacco” is an accurate description of this tobacco product. It has been a standard term used by many roll-your-own manufacturers and importers and recognized by consumers. Second, the use of the term “cigarette tobacco” follows the same logic in describing the use of the tobacco product as the term “pipe tobacco.” Pipe tobacco is suitable to be smoked in a pipe. Roll-your-own tobacco by its definition is suitable for making cigarettes. Third, we do not anticipate any administrative problems for ATF or Customs if the designation “cigarette tobacco” is marked on packages (that is, the immediate container for sale or delivery to the consumer) as opposed to the alternative designations. Fourth, we recognize the considerable cost and time for manufacturers and importers if we only allowed the markings of “roll-your-own tobacco” or “tax class J” to be placed on their many brands of this tobacco product. Fifth, it is consistent with past practice since we have allowed the use of “little cigars” as an alternate marking for small cigars. Accordingly, we have amended the regulations to allow such products to be designated as “cigarette tobacco” as an alternative to marking such products as “roll-your-own tobacco” or “tax class J.”

#### *Permit Requirements*

The Friends of Tobacco, Pink Hill, NC, gave comments about the requirement that persons must have a permit to engage in the business manufacturing roll-your-own tobacco. The Friends of Tobacco stated that it is a national, non-profit organization

representing farmers, small businesses, retailers, wholesalers and allied industries associated with tobacco. This organization stated that the proposed regulation will cause small business closings, reduce competition and restrict business to a few large corporations.

The law (26 U.S.C. 5713) clearly states that a manufacturer of roll-your-own tobacco must have a permit to engage in this business. While we understand that this may impose burdens on the manufacturers of roll-your-own tobacco, the law is clear and provides no room for exceptions. Moreover, we do not believe that this regulation will prevent small businesses from operating.

There are costs involved with applying for a permit, getting a surety bond to ensure payment of tax, and the paperwork (records, inventories, reports, and tax returns) that must be maintained or filed. However, the costs should not keep most small businesses from operating as roll-your-own manufacturers. For example, there are many small cigar businesses who operate successfully as manufacturers of tobacco products and hundreds of small wineries and breweries who successfully operate under similar permit requirements.

We believe that the current requirements to become a manufacturer of tobacco products, including roll-your-own, are minimal but are necessary to protect the revenue. The application process ensures that only persons who are qualified may obtain a permit to operate as a tobacco products manufacturer. A person who will operate as a tobacco products manufacturer must also have a bond which ensures payment of taxes. The bond can be given by a corporate surety, cash or securities of the United States. The amount that needs to be covered ranges from a minimum of \$1,000 to a maximum of \$250,000. Most small companies can secure this coverage or put up cash or securities. We do not believe that the required paperwork will place an undue burden on small businesses who operate as roll-your-own manufacturers.

Most of the records required for a manufacturer are presently kept by small businesses for other purposes as part of their commercial records. ATF requires that a manufacturer inventory tobacco products, in this case roll-your-own tobacco, at the beginning and conclusion of business and at the request of ATF. The inventory requirement is based on the need to be able to determine the amount of taxable tobacco product on hand at a manufacturer. These inventories are not overly burdensome and are necessary to protect the revenue. In addition, ATF requires manufacturers to file semi-monthly tax returns and monthly reports. These records are necessary to protect the revenue. However, ATF within certain conditions may allow a variance from these recordkeeping requirements to accommodate the needs of small businesses. For example, ATF may grant a variance relieving a manufacturer from filing semi-monthly tax returns where no tax is due or payable or a variance from filing monthly reports where no reportable activity occurs.

The Friends of Tobacco requested that we grant permits to all roll-your-own manufacturers who were in business before January 1, 2000. We are bound by the provisions of Section 9302(i)(2) of the Balanced Budget Act of 1997. This section allows only persons who were engaged in business as a manufacturer of roll-your-own tobacco on or before August 5, 1997 and who applied for a permit before January 1, 2000, to continue operating pending final action on their application. All other persons must apply for, and obtain, a permit to manufacturer tobacco before commencing such

operations. ATF has and will continue to make every effort to process all such permit applications in a timely and expedient manner.

### **Temporary Regulations Adopted as Final**

Except as discussed above, this final rule adopts the temporary regulations, T.D. ATF-424 (64 FR 71929), T.D. ATF-424a (65 FR 31079) and T.D. ATF-427 (65 FR 40050), to implement the permit requirements for manufacturers of roll-your-own tobacco and related requirements for marks, labels and notices under the Balanced Budget Act of 1997 (111 Stat. 251). The following is a list of sections in the temporary regulations that are adopted without change.

#### **Part 270**

The heading of Part 270, authority citation, §§ 270.11, 270.61a, 270.61b, 270.133, 270.181, 270.182, 270.183, 270.201, 270.202, 270.216a, 270.216c, 270.231, 270.252, 270.255, 270.311, 270.476.

#### **Part 275**

The authority citation, §§ 275.11, 275.81, 275.86, 275.107, 275.110, 275.121, 275.139, 275.140, 275.141, 275.170, 275.172.

#### **Part 290**

The authority citation, §§ 290.11, 290.143, 290.147, 290.222, 290.224, 290.225, 290.226, 290.227, 290.232.

#### **Part 295**

The authority citation, §§ 295.11, 295.45c.

#### **Part 296**

The authority citation, §§ 296.72, 296.74, 296.163.

### **Regulatory Flexibility Act**

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The revenue effects of the roll-your-own requirements on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. A copy of the proposed and temporary rules were submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment as provided for in 26 U.S.C. 7805(f). No comments were received.

### **Executive Order 12866**

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

### **Paperwork Reduction Act**

The collections of information contained in this final rule have been reviewed and approved under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). No public comments were received. The Office of Management and Budget (OMB) has issued control numbers 1512-0358 and 1512-0502 for the collections of information. 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 proposed regulation is in 27 CFR 270.182, 270.183, 270.216b, 275.72b, and 295.45b. This information is required to ensure proper payment of excise taxes on roll-your-own tobacco products. We use this information to determine whether or not such excise taxes have been properly paid. The collection of information is mandatory. The likely respondents include small businesses or organizations.

We estimate that the total annual reporting and/or recordkeeping burden under control numbers 1512-0358 and 1512-0502 for the first year is 385 hours for initiating and obtaining required permits. For subsequent years, the total annual reporting/recordkeeping burden under 1512-0358 is 1,650 hours and under 1512-0502 the burden is 1 hour. Under 1512-0358 we estimate the burden at 11 additional respondents with an additional 150 hours burden per respondent. Under 1512-0502 we have estimated an additional 11 recordkeepers and for all respondents a total burden of 1 hour.

### **Administrative Procedure Act**

This final rule is issued in accordance with the Administrative Procedures Act (5 U.S.C. 553). It is exempt from the effective date provisions of 5 U.S.C. 553(d) because immediate guidance is necessary to inform manufacturers and importers of the revised regulations, which allow an alternative designation of "cigarette tobacco" to be marked on packages of roll-your-own tobacco, and because the revised regulations relieves a restriction by providing this alternative designation.

### **Drafting Information**

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

### **List of Subjects**



## **27 CFR Part 270**

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

## **27 CFR Part 275**

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic funds transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco, Warehouses.

## **27 CFR Part 290**

Administrative practice and procedure, Aircraft, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco, Vessels, Warehouses.

## **27 CFR Part 295**

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Tobacco.

## **27 CFR Part 296**

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

## **Authority and Issuance**

Accordingly, the temporary regulations published in T.D. ATF-424 (December 22, 1999, 64 FR 71929) as amended by T.D. ATF-424a (May 16, 2000, 65 FR 31079) and T.D. ATF-427 (June 29, 2000, 65 FR 40050) are adopted as final with the following changes.

## **PART 270--MANUFACTURE OF TOBACCO PRODUCTS**

**Paragraph 1.** The authority citation for 27 CFR Part 270 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.** Section 270.216b is revised to read as follows:

**§270.216b Notice for roll-your-own tobacco.**

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation “roll-your-own tobacco” or “cigarette tobacco” or “Tax Class J.”

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512-0502)

**PART 275--IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

**Par. 3.** The authority citation for 27 CFR Part 275 continues 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, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 4.** Section 275.72b is revised to read as follows:

**§275.72b Notice for roll-your-own tobacco.**

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation “roll-your-own tobacco” or “cigarette tobacco” or “Tax Class J.”

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512-0502)

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**PART 295--REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT FOR USE OF THE UNITED STATES**

**Par. 5.** The authority citation for 27 CFR Part 295 continues to read as follows:

**Authority:** 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

**Par. 6.** Section 295.45b is revised to read as follows:

**§295.45b Notice for roll-your-own tobacco.**

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation “roll-your-own tobacco” or “cigarette tobacco” or “Tax Class J.”

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512-0502)

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Dated: July 26, 2000

**Bradley A. Buckles,**  
*Director*

Approved: August 3, 2000.

**John P. Simpson,**  
*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)*