

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 Laws 106-476 and 106-554, Relating to Tobacco Importation Restrictions, Markings, Repackaging, and Destruction of Forfeited Tobacco Products (2000R-492P)

27 CFR Parts 44, 46 and 275

T.D. ATF-465 ; Ref: Notice No. 913

RIN 1512-AC35

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

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends the regulations governing tobacco products in order to implement several provisions of the Imported Cigarette Compliance Act of 2000 included as part of the Tariff Suspension and Trade Act of 2000. Sections 4002 and 4003 of this new law require that tobacco products and cigarette papers and tubes manufactured in the United States and labeled or shipped for exportation (under the Internal Revenue Code of 1986 (IRC)) can only be re-imported by the original manufacturer or by an export warehouse proprietor authorized to do so by the original manufacturer (except for a personal use exemption discussed below), provide that those articles labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label, and require the destruction of tobacco products forfeited under section 5761(c) of the IRC.

This final rule also amends the regulations governing tobacco products in order to implement section 315 of the Consolidated Appropriations Act, 2001. Travelers entering the United States, if they claim and are granted a personal use exemption, are allowed to bring U.S. manufactured tobacco products labeled for export back into the United States up to the quantity allowed entry free of tax and duty under Chapter 98 of the Harmonized Tariff Schedule of the United States. In addition, a traveler claiming such a personal use exemption upon arrival at the border may voluntarily relinquish to the U.S. Customs Service any excess of such quantity without incurring the penalty under section 5761(c) of the IRC.

This final rule implements these changes in the law by providing new and amended regulations in parts 44 (formerly part 290), 46 (formerly part 296) and 275 of title 27 of the Code of Federal Regulations (CFR). Note that the effective date of the above provisions of the Imported Cigarette Compliance Act of 2000 is February 7, 2001. Section 315 of the Consolidated Appropriations Act, 2001 is retroactive to the effective date of the Balanced Budget Act of 1997, January 1, 2000.

DATES: This final rule is effective on October 29, 2001.

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

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1999, the Bureau of Alcohol, Tobacco and Firearms published a temporary rule, T.D. ATF-421, in the Federal Register (64 FR 71918, Dec. 22, 1999). This temporary rule implemented several provisions found in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105-33, 111 Stat. 672. Section 9302 of the Act had amended the Internal Revenue Code of 1986 at sections 5704(b), 5712, 5754 and 5761(c). These amendments: placed restrictions on the importation of previously exported tobacco products, required markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provided penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorized the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit. These new provisions of law became effective January 1, 2000.

The temporary rule, T.D. ATF-421, implemented these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Concurrently with the temporary rule, ATF also published a notice of proposed rulemaking, Notice No. 887 (64 FR 71927, Dec. 22, 1999), that solicited comments regarding the temporary regulations.

On April 18, 2000 the United States District Court for the District of Columbia in the civil action, *World Duty Free Americas, Inc. v. Treasury*, (D.D.C. No. 00-00404 (RCL)), issued a temporary injunction enjoining the Treasury Department from enforcing the temporary regulations at 27 CFR 275.11 and 27 CFR 275.83, in T.D. ATF-421, to the extent that they prohibited the importation of cigarettes purchased in U.S. duty free stores up to the limit allowed by the personal use exemption provided by 19 U.S.C. 1555 and the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202, subheadings 9804.00.65, 9804.00.70 and 9804.00.72.

Later, on November 9, 2000, the President signed the Tariff Suspension and Trade Act of 2000, Public Law 106-476, 114 Stat. 2101, that included the Imported Cigarette Compliance Act of 2000 (ICCA 2000). Several sections of the IRC that were amended by Balanced Budget Act of 1997 were further amended by the ICCA 2000, including sections 5704(d), 5754 and 5761(c). These new amendments require that tobacco products and cigarette papers and tubes manufactured in the United States and labeled or shipped for exportation under the IRC can only be re-imported by the original manufacturer, or by an export warehouse proprietor authorized

to do so by the original manufacturer. Also, articles labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. Finally, the ICCA 2000 requires the destruction of tobacco products forfeited under section 5761(c).

In addition, the Consolidated Appropriations Act, 2001, signed December 21, 2000, Public Law 106-554, 114 Stat. 2763, amended the IRC at section 5761(c) by adding language to the law that provides that travelers entering the United States, if they claim and are granted a personal use exemption, are allowed to bring U.S. manufactured tobacco products labeled for export back into the United States up to the quantity allowed entry free of tax and duty under Chapter 98 of the Harmonized Tariff Schedule of the United States. In addition, a traveler claiming such a personal use exemption upon arrival at the border may voluntarily relinquish to the U.S. Customs Service any excess of such quantity without incurring the penalty under section 5761(c). However, no quantity of tobacco products, other than the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, may be reloaded or received as a personal use quantity.

ATF believes that the above-described changes in the law are clear and leave no discretion in implementation. However, because of the litigation then pending in *World Duty Free Americas, Inc. v. Treasury*, ATF decided to issue a notice of proposed rulemaking prior to the issuance of a final rule.

Notice of Proposed Rulemaking

On March 26, 2001, ATF published a notice of proposed rulemaking in the Federal Register (Notice No. 913, 66 FR 16425, March 26, 2001) to solicit public comments on proposed regulations. In that notice, ATF proposed to amend the regulations in 27 CFR parts 275, 290 (currently part 44) and 296 (currently part 46) in order to implement several of the new provisions of law found in the ICCA 2000 and the Consolidated Appropriations Act, 2001. The public was invited to submit comments on this notice for a period of 60 (sixty) days ending May 25, 2001.

Recodification of Parts 290 and 296

Following the publication of Notice No. 913 there were two separate rulemaking actions which affected the numbering system for the regulations that were proposed in Notice No. 913. The regulations at 27 CFR part 290 have been recodified as 27 CFR part 44. Similarly the regulations at 27 CFR part 296 have been recodified as 27 CFR part 46. Thus, all references to parts 290 and 296 in Notice 913 will now appear in this final rule as parts 44 and 46 respectively.

Comments on the NPRM

In response to Notice No. 913, ATF received one letter of comment from Mr. Craig A. Johnson of Philip Morris Incorporated. In his letter, Mr. Johnson stated that Philip Morris Incorporated urged prompt adoption (without change) of the proposed rule, which would implement the provisions of the ICCA 2000. He further stated that he understood that U.S. Customs will be promulgating regulations to implement the other provisions of this new law which amends the Tariff Act of 1930 and he urged ATF and U.S. Customs to coordinate with each other to enforce the law.

The proposed regulations have been largely adopted as proposed in Notice No. 913. The following is a summary of those sections of the IRC that were amended by the Balanced Budget Act of 1997 and further amended by the ICCA 2000 and the Consolidated Appropriations Act, 2001. Also discussed are the sections of the regulations that have been amended by this final rule.

Final Rule

Importation Restrictions

Balanced Budget Act

Section 9302 of the Balanced Budget Act of 1997 added a new section, 26 U.S.C. 5754, to the IRC entitled, "Restriction on importation of previously exported tobacco products." This new section became effective on January 1, 2000 and it placed severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. Section 5754 stated that such products may only be imported or brought into the United States as provided in section 5704(d). The referenced section, 5704(d), allowed previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes could be imported or brought into the United States was by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. However, section 5704(d) allowed previously exported tobacco products to be transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law did not mandate that the previously exported products return to the original manufacturer or export warehouse proprietor as authorized by the original manufacturer.

Imported Cigarette Compliance Act of 2000

Section 4002 of the ICCA 2000 further amended sections 5754 and 5704(d) of the IRC whereby tobacco products and cigarette papers and tubes manufactured in the United States and previously exported may be imported or brought into the United States, if such articles are released from Customs custody with the partial duty exemption provided in section 5704(d), or are returned to the original manufacturer of such articles as provided in section 5704(c). Further, section 5704(d) of the IRC was amended by deleting a reference to "a manufacturer of" and inserting "the original manufacturer of" tobacco products or cigarette papers and tubes. The term "proprietor of an export warehouse" was also amended by inserting the phrase "authorized by such manufacturer to receive

such articles” after the term “proprietor of an export warehouse.” Therefore, the amended language of the law in 5704(d) now refers to “proprietor of an export warehouse authorized by such manufacturer to receive such articles.”

Thus, with these amendments to sections 5754 and 5704(d), previously exported tobacco products and cigarette papers and tubes of United States manufacture may be imported or brought into the United States by: (1) release from Customs custody under 5704(d) to “the original manufacturer” or to “the proprietor of an export warehouse authorized by such manufacturer to receive such articles” or, (2) return to the original manufacturer of such articles as provided in 5704(c).

Amendments to the Regulations

This final rule amends the regulations at 27 CFR 275.82 to reflect the above described changes in the law at 26 U.S.C. 5754. Further, amended section 275.82(c) of the regulations is the section that provides for the type of importations described under 26 U.S.C. 5704(d) and amended section 275.82(d) of the regulations provides for the type of importations described under 26 U.S.C. 5704(c).

Tobacco Products Labeled for Export

Balanced Budget Act

As discussed above, section 9302 of the Balanced Budget Act of 1997 amended the IRC by adding section 5754 which imposed restrictions on the importation of previously exported tobacco products. Thus, only articles which had been exported from the United States were subject to the re-importation restriction. It also amended section 5704(b) by providing that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. 5704(b) unless they bear the proper marks, labels and notices.

Imported Cigarette Compliance Act of 2000

Section 4002 of the ICCA 2000 further amended the IRC by providing new language at section 5754 whereby tobacco products and cigarette papers and tubes manufactured in the United States and “labeled for exportation” are subject to the restrictions and penalties applicable to this section. Thus, the new language at section 5754 makes the law applicable to both exported articles and articles labeled for export, but not exported. The Committee report that accompanied the bill stated: “The provision expands the application of the special tax penalty for re-importing tobacco products to include the sale in the U.S. domestic market of tobacco products labeled for export (but not actually exported). Thus, this penalty can be imposed in addition to the present-law penalties and other sanctions that apply to tobacco products that might be removed for export, but instead are diverted into the U.S. domestic market.” S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Amendments to the Regulations

This final rule amends the regulations at 27 CFR 275.82 to reflect the above described change in the law. Specifically, 27 CFR 275.82(a) now states that the provisions of this section apply to “tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation.” The penalty provisions in 27 CFR 275.83(a), which implement verbatim section 5761(c), already applied to articles “labeled or shipped for exportation.” Therefore, since articles labeled for exportation are already addressed in section 275.83, it was not necessary to amend this section to add the term “labeled or shipped for exportation.”

Returned Articles in the U.S. Market

Balanced Budget Act

Section 9302 of the Balanced Budget Act of 1997 imposed a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. However, section 9302(i) of this Act also provided that the amendments to the IRC under the Balanced Budget Act of 1997 only applied to “articles removed” after December 31, 1999. As a consequence, articles that were removed on or before December 31, 1999 were not subject to the new penalty. Thus, relanded tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 were lawful products and not subject to the civil penalty, or other criminal provisions of Chapter 52 of the IRC.

Imported Cigarette Compliance Act of 2000

Section 4002 of the ICCA 2000 further amended the IRC by providing new language at section 5754(a)(1)(C) whereby tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. Further, the provisions of section 4002 take effect 90 days after enactment of the Act and, therefore, are effective on February 7, 2001. See section 4002(d) of the ICCA 2000 for the effective date.

The consequence of this amendment is that whereas the Balanced Budget Act of 1997 had allowed previously exported articles that were imported before January 1, 2000 to be legally sold on the domestic market, the ICCA 2000 makes the sale or holding for sale of such articles illegal effective February 7, 2001, unless they are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.

The Committee report that accompanied the bill, stated: “The provision also authorizes the Treasury Department to seize all export-labeled tobacco products found in the U.S. domestic market regardless of the date of removal.” S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Further, amended section 5754(a)(2) also provides that the restrictions on export-labeled articles also apply to articles that have been altered by a person other than the original manufacturer. Thus, if a person places stickers over the export label, or otherwise attempts to conceal or remove the export label on the packaging, the restrictions in 26 U.S.C. Sec. 5754 still apply to that article.

Amendments to the Regulations

This final rule amends the regulations at 27 CFR 275.82(e) and (f), and 46.166(b) and (c) (formerly 296.166(b) and (c)) to reflect these changes in the law.

Disposition of Forfeited Tobacco Products

Balanced Budget Act

Section 9302 of the Balanced Budget Act of 1997 amended the IRC by adding a new civil penalty at 26 U.S.C. Sec. 5761(c). The penalty applies to persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product could be imposed. However, section 5761(c) did not specify how the Department of the Treasury should dispose of forfeited tobacco products.

Imported Cigarette Compliance Act of 2000

Section 4002(c) of the ICCA 2000 amended section 5761(c) of the IRC by adding language which requires that all relanded tobacco products and cigarette papers and tubes shall be forfeited to the United States and destroyed. The Committee report that accompanied the bill stated, "The provision also provides that tobacco products that are forfeited to the Federal Government under present-law provisions must be destroyed (rather than being disposed of in any manner administratively determined by the Treasury Department)." S. Rep. No. 503, 106th Cong., 2nd Sess. 89 (2000).

Amendments to the Regulations

This final rule amends the regulations at section 275.83(c) by providing that forfeited tobacco products and cigarette papers and tubes will be destroyed.

Travelers Entering the United States

Balanced Budget Act

As discussed earlier, the Balanced Budget Act of 1997 amended the IRC by adding two new sections of law aimed at restricting the importation of previously exported tobacco products. 26 U.S.C. 5754 provided that only manufacturers of tobacco products and export warehouses can import previously exported tobacco products. In addition, section 5761(c) provided penalties for selling, receiving, and relanding of tobacco products labeled or shipped for export. Neither section of law provided an exemption for travelers entering the United States with small quantities of tobacco products for personal use.

This application of the law was challenged by several operators of duty free stores in a civil action, *World Duty Free Americas, Inc. v. Treasury*. The court in *World Duty Free* issued a temporary injunction enjoining the Treasury Department from enforcing the temporary regulations at 27 CFR 275.11 and 275.83 to the extent that they prohibited the importation of cigarettes purchased in U.S. duty free stores up to the limit allowed by the personal use exemption provided by 19 U.S.C. 1555 and the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202, subheadings 9804.00.65, 9804.00.70 and 9804.00.72.

ICCA 2000 and Consolidated Appropriations Act, 2001

As discussed earlier, on November 9, 2000 the President signed the ICCA 2000. Section 4003 of the ICCA 2000 amended the IRC at section 5761(c) by inserting the following language: "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Shortly thereafter, on December 21, 2000, the President also signed the Consolidated Appropriations Act, 2001. Section 315 of the Consolidated Appropriations Act, 2001 further amended section 5761(c) in the IRC by substituting the following language: "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Under this revised language in the law, travelers entering the United States, if they claim and are granted a personal use exemption, are allowed to bring U.S. manufactured tobacco products labeled for export back into the United States up to the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States. In addition, a traveler claiming such a personal use exemption upon arrival at the border may voluntarily relinquish to the U.S. Customs Service any excess of such quantity without incurring a penalty under this section. Only the numerical quantity allowable under the Harmonized Tariff Schedule of the United States free of tax and duty may be considered as a personal use quantity.

In addition, section 315 of the Consolidated Appropriations Act, 2001 made the above described allowance for travelers retroactive to January 1, 2000, when the original restrictions and penalties imposed by the Balanced Budget Act of 1997 took effect.

Amendments to the Regulations

In accordance with the above described amendments to the IRC, this final rule amends the regulations at 27 CFR 275.82(i) and 275.83(d) to provide that personal use quantities allowed under the law are exempt from the restrictions and penalties applicable to reimported tobacco products. Further, the definition of “relanding” at 27 CFR 275.11 has been amended to delete the second sentence relating to the relinquishment of tobacco products by travelers, which is now delineated in the revisions to 27 CFR 275.82 and 275.83.

Reimportation of Unpackaged Tobacco Products

During the comment period for Notice 913, ATF noted a technical inconsistency in the language of the law at 26 U.S.C. 5754 and 5761(c). That technical inconsistency and the solution are discussed as follows.

Prior to the enactment of the ICCA 2000, section 5754 of the IRC provided that tobacco products and cigarette papers and tubes previously exported from the United States could be imported into the United States “only as provided in section 5704(d)” (emphasis added). Further, the corresponding penalty in section 5761(c) specifically exempted “(b) and (d) of section 5704”. Thus, the importation of previously exported products under section 5704(d) was exempt from the penalty provisions in section 5761(c).

With the passage of the ICCA 2000, section 5754 was amended to provide that tobacco products and cigarette papers and tubes manufactured in the United States and labeled or shipped under the IRC for exportation may be imported or brought into the United States, after their exportation, only if such articles are either eligible to be released from customs custody “with the partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c).” Thus, under the revised language in section 5754, products may be imported by the original manufacturer under sections 5704(c) or 5704(d).

However, a problem arises with the language of the corresponding penalty provision in section 5761(c). Section 5761(c) continues to provide a penalty for selling, receiving, or relanding tobacco products “except as provided in (b) and (d) of section 5704.” This is the same language used in section 5754 when it was first introduced by the Balanced Budget Act of 1997.

Thus, while section 5754 now authorizes importations under sections 5704(c) and (d), the penalty provision in 5761(c) only exempts from penalty those imports that are made under sections 5704(b) and (d). Therefore, authorized importations under 5704(c) could still be subject to the penalty imposed by section 5761(c). This appears to be a technical error in the language of the law, with a result that Congress did not intend.

After consideration of this inconsistency, ATF has reviewed the law at 26 U.S.C. 5704(d) and determined that its language is broad enough to include the importation of both packaged articles and articles that “are not put up in packages.” Thus, ATF has concluded that articles that might be imported under section 5704(c) can also be imported under section 5704(d) and thereby become exempt from the penalty provision in section 5761(c).

Amendments to the Regulations

In order to address this problem, ATF has made some minor amendments to the language of the regulations at 27 CFR 275.82(c) and (d) and 275.83. Pursuant to these amendments, an original manufacturer that intends to import any bulk articles manufactured in the United States and labeled for exportation may do so under 27 CFR 275.82(d) (26 U.S.C. 5704(c)). Such articles will be administratively deemed to be imported or brought in under section 275.83(c) (26 U.S.C. 5704(d)). Thus, the potential penalty under section 275.83 (26 U.S.C. 5761(c)) will be avoided.

Miscellaneous Amendments

In addition to amendments described above, this final rule amended the authority cite that appears after 27 CFR 44.185 (formerly 27 CFR 290.185), Label or Notice, to include a reference to 26 U.S.C. 5704(b), which allows the Secretary to prescribe appropriate marks, labels or notices.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action As Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking 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. Pursuant to 26 U.S.C. 7805(f), a copy of the proposed regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

This final rule does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, 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 rulemaking.

Drafting Information

The principal author of this document is Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 44

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 products, Vessels, Warehouses.

27 CFR Part 46

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

27 CFR Part 275

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

Authority and Issuance

Accordingly, title 27, Chapter I, Code of Federal Regulations is amended as follows:

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Paragraph 1. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The authority citation that appears after Sec. 44.185 is revised to read as follows:

§ 44.185 Label or notice.

* * * * *

(26 U.S.C. 5704, 5723)

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 3. The authority citation for part 46 is revised to read as follows:

Authority: 18 U.S.C. 2341-2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

Par. 4. Section 46.166 is revised to read as follows:

§ 46.166 Dealing in tobacco products.

(a) All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark or notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see Sec. 275.83 of this chapter.

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

Par. 5. 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, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. In Sec. 275.11, the definition for “Relanding” is amended by removing the second sentence.

Par. 7. Section 275.82 is revised to read as follows:

§ 275.82 Restrictions on tobacco products labeled for export.

(a) The provisions of this section apply to tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under parts 44 and 270 of this chapter.

(b) Articles described in paragraph (a) of this section may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax as provided in this part.

(c) Articles described in paragraph (a) of this section may only be imported or brought into the United States, after their exportation, under the provisions of 26 U.S.C. 5704(d), by release from Customs custody 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 such articles. These products are transferred in bond and are released from Customs custody without payment of that part of the duty attributable to internal revenue tax.

(d) Articles described in paragraph (a) of this section that are not put up in packages may be imported or brought into the United States under 26 U.S.C. 5704(c) by release from Customs custody without payment of tax for delivery to the original manufacturer of such articles. However, because such articles are also eligible for release under 26 U.S.C. 5704(d), such articles will be treated as though released under section 5704(d), due to the penalty provisions in section 5761(c).

(e) Articles described in paragraph (a) of this section may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

(f) The provisions of this section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) any export label.

(g) For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required by Sec. 44.185 of this chapter.

(h) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

(i) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export under parts 44 and 270 of this chapter, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U. S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under section Sec. 275.83.

(j) For civil penalties and forfeiture provisions related to violations of this section, see Sec. 275.83. For a criminal penalty applicable to any violation of this section see 26 U.S.C. 5762(b).

Par. 8. Section 275.83 is revised to read as follows:

§ 275.83 Penalties and forfeiture for products labeled or shipped for export.

Except for the return of exported products that are specifically authorized under Sec. 275.82(b) and (c):

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under parts 44 and 270 of this chapter;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in title 26 U.S.C., be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.

(d) The provisions of this section do not apply to any person who, when entering U.S. manufactured tobacco products labeled for export, claims and is granted an exemption from duty and tax for such products under chapter 98 of the Harmonized Tariff Schedule of the United States. The quantity of tobacco products entered may not exceed the quantity limit imposed on such products under the applicable tariff provision. A traveler claiming an exemption under this subsection upon arrival at the border may voluntarily relinquish to the U. S. Customs Service at the time of entry any excess of such quantity without incurring the penalty under this section.

(e) For purposes of this section, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

Signed: July 9, 2001

Bradley A. Buckles,
Director

Approved: August 9, 2001

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

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