

number of small entities. The exemption levels of \$1,000,000 for the BE-47 and -48 surveys and \$500,000 for the BE-93 survey, below which reporting of foreign transactions of the types covered is not required, exclude small businesses from being reported.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: November 18, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 801 is amended as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

2. Section 801.9(b) (3), (4), and (5) is revised to read as follows:

§ 801.9 [Amended]

(b) * * *

(3) BE-47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons:

(i) *Who must report.* Form BE-47 must be filed by each U.S. person (other than U.S. Government agencies) providing the following types of services on a contract, fee, or similar basis to unaffiliated persons on foreign projects: The services of general contractors in the fields of building construction and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; services of a professional nature in the fields of engineering, architecture, and land surveying; and mining services in the development and operation of mineral properties, including oil and gas field services.

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if, for all countries and all projects combined, the gross value of new contracts received and gross operating revenues are both less than

\$1,000,000. If either the gross value of new contracts received or gross operating revenues is \$1,000,000 or more, then a report is required.

(4) BE-48, Annual Survey of Reinsurance and other Insurance Transactions by U.S. Insurance Companies with Foreign Persons:

(i) *Who must report.* Reports on Form BE-48 are required from U.S. persons who have engaged in reinsurance transactions with foreign persons, or who have received premiums from, or paid losses to, foreign persons in the capacity of primary insurers.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if, with respect to transactions with foreign persons, each of the following six items was less than \$1,000,000 in the reporting period: Reinsurance premiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, and primary insurance losses paid. If any one of these items is \$1,000,000 or more in the reporting period, a report must be filed.

(5) BE-93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons:

(i) *Who must report.* Reports on Form BE-93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding those copyrights and other intellectual property rights that are related to computer software, and excluding oil royalties and other natural resources (mining) royalties.

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each less than \$500,000 in the reporting year. If the total of either covered receipts or payments is \$500,000 or more in the reporting year, a report must be filed.

[FR Doc. 87-28252 Filed 12-8-87; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-264; Re: Notice No. 629]

Ben Lomond Mountain Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Ben Lomond Mountain, located in Santa Cruz County, California. The petition was submitted by Mr. Michael R. Holland. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert L. White, FAA, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

Mr. Michael R. Holland petitioned ATF to establish a viticultural area in Santa Cruz County, California, to be known as "Ben Lomond Mountain." This viticultural area is located entirely within Santa Cruz County in the central part of the State near the coast. The viticultural area consists of approximately 38,400 acres. There are nine separate vineyard operations established in the area totaling approximately 69.5 acres of grapes. In addition, two other vineyards are in the

development stages with a proposed planting of 330 acres. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 629, in the *Federal Register* on April 27, 1987 (52 FR 13844), proposing the establishment of the Ben Lomond Mountain viticultural area.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Evidence of Name

The name "Ben Lomond Mountain" can be found on all current U.S.G.S. maps of the mountain area northwest of the city of Santa Cruz, California (Santa Cruz and Davenport Quadrangles).

Historical/Current Evidence of Boundaries

Ben Lomond Mountain was first pioneered by Scotsman John Burns who gave the area its name in the 1860's. Burns was also the first grape grower in the area and made wine with little commercial success until the 1880's, setting the example for several other families.

Commercial winegrowing began in the Ben Lomond Mountain region in 1883 with the foundation of the Ben Lomond Wine Company by F.W. Billings. The Ben Lomond Wine Company, under the management of Billings' son-in-law, J.F. Coope, brought the Ben Lomond Mountain wines out of the obscurity of the remote mountain area to stand with other quality wines in the State.

In 1887, Coope wrote "Ben Lomond (Mountain) as a wine district is yet in its infancy and is struggling to establish a name for itself in that industry. The wine yield of 1886 (for the Ben Lomond Wine Company) was 28,000 gallons, chiefly Riesling, part of which was grown (by the Ben Lomond Wine Company), while a part was purchased (from neighboring vineyards)." By 1891, approximately 400 acres of vineyards were devoted to wine production on Ben Lomond Mountain.

Frona Eunice Waite Colburn, in her treatise "Wines and Vines of California" (1889), proclaimed the Ben Lomond Mountain region as a "future Chablis district * * * here the Ben Lomond Company makes a wine of the (Chablis) type which is unrivaled by any other product in the State, and is the only wine in California which has the thin, delicate, flinty dryness of a true Chablis * * * It is a superior table wine; not heady or earthy in flavor and has the fine bouquet and exquisite flavor of a high-type mountain wine. It is sold

under the classical name of Ben Lomond."

The Ben Lomond Mountain wine industry declined after the turn of the century. By the end of World War II, only the 75 acre Locatelli Ranch vineyard and the 40 acre Quistorff vineyard remained. Both had been abandoned by the mid-1960's.

During the 1970's Ben Lomond Mountain experienced a viticultural renaissance in and around the town of Bonny Doon. In 1972, the University of California Agricultural Extension Service released a study of climatologically prime growing areas for several commercial crops, including wine grapes. This study, entitled "California's Central Coast: Its Terrain, Climate, and Agro-Climate Implications," established Ben Lomond Mountain as being a prime growing region for wine grape production. This report stirred the interest of several individuals in the region. Since then, nine separate vineyard operations have been established within the Ben Lomond Mountain viticultural area.

Geographical/Climatological Features

The Ben Lomond Mountain viticultural area is distinguished from surrounding areas by differences in topography, soils, and climate. These differences are based on the following:

(a) *Topography.* Ben Lomond Mountain rises directly from the California coastline to an altitude of 2,630 feet above sea level. This mountain region is bordered by the Pacific Ocean to the west, the San Lorenzo River Basin to the east, the city of Santa Cruz (and river mouth of the San Lorenzo) to the south, and Scott Creek and Jamison Creek on the northwest and northeast sides, respectively. The Ben Lomond Mountain viticultural area is approximately 15 miles long and an average of four miles wide, defined by its borders which generally coincide with the 800-foot elevation level.

(b) *Soils.* The geophysical boundaries of the Ben Lomond Mountain region become apparent when examining the geologic stratigraphy of the area. Ben Lomond Mountain is comprised of a large geologic structure known as a pluton, composed primarily of granitic rocks (quartz diorite), with some intrusions of metamorphic rocks (quartzite and pelitic schists). This plutonic structure distinguishes Ben Lomond Mountain from surrounding areas and is unique within viticulturally viable growing areas in the Santa Cruz Mountains. The bedrock formations are covered at the lower elevations and isolated tablelands by depositions of

sandstone, primarily Santa Margarita sandstone and to a lesser extent Santa Cruz Mudstone. The combination of the granitic quartz diorite and metasedimentary rock structures with the sandstone deposits and forest detritus forms a variety of soil complexes which are generally described as slightly acidic, sandy loams. The resultant topsoil complexes are well-drained and deep, lending themselves readily to successful viticulture as demonstrated by past and present vineyards in the area.

(c) *Climate.* (1) The Ben Lomond Mountain area is particularly distinguishable by climatological evidence. Ben Lomond Mountain presents the first major obstruction to marine weather patterns. Winter storms lose much of their moisture on the western slope of coastal hills and mountains where the warm, moisture-laden marine air is lifted and cools, precipitating in fogs or rainfall. As a result, Ben Lomond Mountain draws much of the precipitation from marine air that moves onshore between the city of Santa Cruz and Ano Nuevo point. Consequently, Ben Lomond Mountain receives the highest average amount of precipitation in Santa Cruz County at 60 inches.

(2) During the summer, the mountain forms a barrier against the low-lying fogs that inundate the shore and coastal valleys. This fogbelt generally rests between the 400 and 800-foot elevations along the western slope of Ben Lomond Mountain. Above this level, the marine air climate tends to give way to a low mountain climate where abundant sunshine is characteristic of the summer months.

(3) The 1972 University of California climatological study of prime growing areas for commercial crops demonstrates the suitability of the climate afforded by Ben Lomond Mountain for wine grape production. Of special interest is the delineation of a "premium wine grape production thermal" existing along the ridgeline of the mountain above 1,500 feet.

Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Ben

Lomond Mountain viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Ben Lomond Mountain wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition, along with the appropriate maps with boundaries marked, is available for inspection during normal business hours at the

following location: ATF Reading Room, Room 4412, Office of Public Affairs and Disclosure, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

PART 9—[AMENDED]

27 CFR Part 9 is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add § 9.118 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.118 Ben Lomond Mountain.

* * * * *

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.118 to read as follows:

§ 9.118 Ben Lomond Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Ben Lomond Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ben Lomond Mountain viticultural area are four 7.5 minute series U.S.G.S. maps. They are titled:

(1) Davenport Quadrangle (1955, photorevised 1968);

(2) Big Basin Quadrangle (1955, photorevised 1973);

(3) Felton Quadrangle (1955, photorevised 1980); and

(4) Santa Cruz Quadrangle (1954, photorevised 1981).

(c) *Boundaries.* The Ben Lomond Mountain viticultural area is located entirely within Santa Cruz County, California, which is in the central part of the State near the coast. The beginning point is the intersection of sections 25, 26, 35 and 36 (Davenport Quadrangle, T. 10S., R. 3W.) which coincides with the 800-foot contour line and is approximately .6 mile northwest of the top of Bald Mountain.

(1) From the beginning point, the boundary follows the 800-foot contour line in a meandering manner in a generally northwesterly direction across

section 26 into section 27 (T. 10S., R. 3W.).

(2) Thence along the 800-foot contour line in an easterly and then generally a northeasterly direction through section 27 and then back across the northwest corner of section 26 and thence in a generally northwesterly direction along the 800-foot contour line across sections 23, 22 and into section 15.

(3) Thence along the 800-foot contour line in a northerly and then a southerly direction across section 22 and eventually in a generally northwesterly direction into section 20.

(4) Thence continuing along the 800-foot contour line in a generally northwesterly direction through sections 20, 17, 16, 17, 16, 9, 8, 5, 8, 7 and 6 (T. 10S., R. 3W.).

(5) Thence continuing in a northerly direction across sections 5 and 32 and thence in a southwesterly direction across sections 31 and 6.

(6) Thence continuing in a generally northerly direction across sections 1, 6, 31, 36, 31, 36 and 30 (T. 9S., R. 3W.) to the intersection of the 800-foot contour line and Scott Creek in section 19 (T. 9S., R. 3W.).

(7) Thence in a northeasterly direction along the south bank of Scott Creek through sections 19, 20 and 17 to the intersection of Scott Creek with the 1600-foot contour line in section 16 (T. 9S., R. 3W.).

(8) Thence in a generally northeasterly and then southerly direction along the 1600-foot contour line through section 16 and then through the southeast and southwest corners of sections 9 and 10 respectively to the intersection of the 1600-foot contour line with Jamison Creek in section 16 (T. 9S., R. 3W.).

(9) Thence in an easterly direction along the south bank of Jamison Creek across sections 15 and 14 (T. 9S., R. 3W.) to the intersection of Jamison Creek and the 800-foot contour line in the southeast corner of section 14 (T. 9S., R. 3W.).

(10) Thence in a southeasterly direction in a meandering manner along the 800-foot contour line across sections 14, 23, 24, 25 (T. 9S., R. 3W.), sections 30 and 31 (T. 9S., R. 2W.), and sections 32, 5, 8, 9, 16, 17 and 21 (T. 10S., R. 2W.).

(11) Thence in a southwesterly, then generally a southeasterly and then a northwesterly direction along the 800-foot contour line in a meandering manner to section 31 and then continuing on through sections 31 and 30 (T. 10S., R. 2W.).

(12) Thence continuing along the 800-foot contour line in a generally southerly and then a generally northwesterly direction through sections 25, 36, 31 and 36 to the point of beginning at the

intersection of sections 25, 26, 35 and 36 (T. 10S., R. 3W.).

Signed: November 9, 1987.

Stephen E. Higgins,
Director.

Approved: November 20, 1987.

John P. Simpson,
Deputy Assistant Secretary (Regulatory,
Trade and Tariff Enforcement).
[FR Doc. 87-28083 Filed 12-8-87; 8:45 am]
BILLING CODE 4810-31-M

27 CFR Part 250

[T.D. ATF-263; re. Notice No. 649]

Drawback of Distilled Spirits Taxes for Certain Nonbeverage Products From Puerto Rico and the Virgin Islands

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

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements section 1879(i) of the Tax Reform Act of 1986 (Pub. L. 99-514), which provides for the drawback of the Federal excise taxes paid on the distilled spirits contained in certain nonbeverage products (medicines, medicinal preparations, food products, flavors and flavor extracts) which are manufactured in Puerto Rico or the Virgin Islands and are brought into the United States. This temporary rule provides procedures for claiming drawback on such products. It will remain in effect until superseded by permanent regulations on the subject.

EFFECTIVE DATE: December 9, 1987.

FOR FURTHER INFORMATION CONTACT: Jackie White or Dick Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 ((202) 566-7531).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 26 U.S.C. 7652, distilled spirits products of Puerto Rican or Virgin Islands manufacture brought into the United States are subject to a tax equal to the tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

Additionally, all taxes collected on distilled spirits produced in Puerto Rico and transported to the United States or consumed in the island are covered into the Treasury of Puerto Rico. The Government of the Virgin Islands is paid from the taxes collected on distilled spirits produced in the Virgin Islands

and brought into the United States a sum not to exceed the total amount of other revenue collected by the Government of the Virgin Islands. Section 1879(i) of the Tax Reform Act of 1986 amended 26 U.S.C. 7652 by adding a new subsection (g). Subsection (g) provides that, in the case of medicines, medicinal preparations, food products, flavors, or flavoring extracts containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands, sections 5131-5134 of the Internal Revenue Code shall be applied as if the use and tax determination of the spirits occurred in the United States at the time the article is brought into the United States. Thus, section 7652(g) makes the provisions of sections 5131-5134, relating to drawback of tax for domestic nonbeverage products, applicable to such products brought into the United States from Puerto Rico and the Virgin Islands. The penalty provisions of section 5134(c)(2) will also be applicable to drawback claims for nonbeverage products brought into the United States from Puerto Rico and the Virgin Islands.

Accordingly, under section 7652(g), the person who brings the eligible nonbeverage products into the United States may file a claim with the Bureau of Alcohol, Tobacco and Firearms as if the use of the spirits had occurred upon entry into the United States and as if the rate of tax were no greater than \$10.50 per proof gallon. Drawback will be allowed at the rate of one dollar less than the rate prescribed by section 7652(f) (\$10.50 - \$1.00 = \$9.50).

Changes to Regulations

This temporary rule amends 27 CFR Part 250 by implementing the procedures and specific requirements needed for a person to file claims for drawback on excise taxes paid on distilled spirits contained in eligible articles brought into the United States from Puerto Rico or the Virgin Islands.

Regulations for the drawback of taxes for the manufacture of nonbeverage products in the United States are codified in Part 197 of Title 27, Code of Federal Regulations. To provide a comparable treatment for nonbeverage products manufactured in Puerto Rico or the Virgin Islands, this rule specifically incorporates by reference various provisions of Part 197 into Part 250. However, Part 197 is presently being revised and recodified as Part 17 of the same title. ATF published Notice No. 634 in the Federal Register of July 29, 1987 (52 FR 28286) and provided a comment period of 90 days, which closes on October 27, 1987. To the extent that the

proposed Part 17, if it becomes a final rule, will be incorporated into Part 250, ATF will continue to accept comments on Notice No. 634 until January 8, 1988.

Persons filing claims for drawback shall be required to pay special tax, for each location where entry of eligible articles into the United States is caused or effected, in accordance with 27 CFR Part 197, Subpart C. The special tax stamp shall be maintained at the place of business in accordance with 27 CFR Part 197, Subpart D. For each business location located within the United States, the amount of special tax liability is determined by the total proof gallons of distilled spirits used annually in the manufacture of nonbeverage products at that location plus the number of proof gallons contained in eligible articles brought into the United States under 26 U.S.C. 7652(g) from Puerto Rico and the Virgin Islands. For each business location located in Puerto Rico or the Virgin Islands, the amount of special tax liability is determined by the total proof gallons of distilled spirits contained in eligible articles brought into the United States. Claims for drawback shall be filed on a quarterly basis with the regional director (compliance) for the region in which the business premises are located. Claims must be filed within six months after the end of the calendar quarter in which the articles are brought into the United States. Supporting data to be submitted for each claim shall substantiate the tax payment and receipt in the United States of the articles. Separate claims must be filed for nonbeverage products manufactured in the United States and eligible articles brought into the United States from Puerto Rico and the Virgin Islands. Persons intending to submit claims on a monthly basis shall be required to obtain a bond covering the amount of drawback which will, during any quarterly period, constitute a charge against the bond.

Persons in Puerto Rico or the Virgin Islands who manufacture eligible articles for which drawback will be claimed shall be required to submit formulas for approval by the Bureau of Alcohol, Tobacco and Firearms laboratory in accordance with Subpart F of Part 197 prior to shipment of the articles to the United States. To the extent provided in Part 197, formulas in which alcohol is a prescribed ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia, the National Formulary, or the Homeopathic Pharmacopoeia of the United States shall be considered as approved formulas and may be used as formulas for drawback. Drawback of

taxes will not be allowed for any product not manufactured in accordance with an approved formula. A person who claims drawback for an eligible article is required to maintain records to substantiate the identity of the eligible article, its manufacturer, the taxpayment of the article, and the date of entry into the United States. No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant. Required records and approved formulas shall be retained for a period of not less than three years and shall be readily available during regular business hours for examination by ATF officers.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because it will not have a significant economic impact on a substantial number of small entities. The temporary rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The temporary rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this temporary rule is not a "major rule" since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or
- (c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information proposed in this temporary rule were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35 and were approved

under control number 1512-0494. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Public Procedure; Effective Date

There is a need for immediate guidance by the distilled spirits industry to implement certain provisions of the Tax Reform Act of 1986. The statute applies to eligible articles brought into the United States after October 22, 1986. Consequently, it is found that it would be impracticable and unnecessary within the meaning of 5 U.S.C. 553(b), to provide a notice of proposed rulemaking prior to the issuance of any regulations. For the same reason it is found that these regulations are exempt from compliance with the 30-day effective date limitation of 5 U.S.C. 553(d). Accordingly, these temporary regulations shall become effective on the date of their publication in the Federal Register.

Drafting Information

The principal authors of this document are Jackie White, Raymond Figueroa and Dick Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Issuance

Title 27 CFR Part 250 is amended as follows:

PART 250—[AMENDED]

Paragraph 1. The Authority citation for Part 250 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5205, 5207, 5232, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The Table of Sections is amended to revise the titles of §§ 250.51 and 250.221, to add Subpart I—Claims for Drawback on Eligible Articles from

Puerto Rico with §§ 250.170 through 250.174, and to add Subpart Ob—Claims for Drawback on Eligible Articles from the Virgin Islands with §§ 250.306 through 250.310 to read as follows:

* * * * *

Sec.
250.51 Formulas for articles, eligible articles, and products manufactured with denatured spirits.

Subpart I—Claims for Drawback on Eligible Articles from Puerto Rico

250.170 Drawback of tax.
250.171 Special tax.
250.172 Bonds.
250.173 Claims for drawback.
250.174 Records.

* * * * *

250.221 Formulas for articles, eligible articles, and products manufactured with denatured spirits.

Subpart Ob—Claims for Drawback on Eligible Articles from the Virgin Islands

250.306 Drawback of tax.
250.307 Special tax.
250.308 Bonds.
250.309 Claims for drawback.
250.310 Records.

Par. 3. Section 250.11 is amended by adding, in alphabetical order, the meaning of the term *Eligible article* to read as follows:

§ 250.11 Meaning of terms.

Eligible article. Any medicine, medicinal preparation, food product, flavor or flavoring extract which contains distilled spirits, is unfit for beverage purposes, and has been or will be brought into the United States from Puerto Rico or the Virgin Islands under the provisions of 26 U.S.C. 7652(g).

§ 250.35 [Amended]

Par. 4. Section 250.35(b) is amended by inserting after the word "articles", a comma and the phrase "other than eligible articles," each time it appears.

Par. 5. Section 250.51 is amended to revise the section heading and to revise paragraphs (a) and (c) to read as follows:

§ 250.51 Formulas for articles, eligible articles and products manufactured with denatured spirits.

(a) *Formulas for articles and eligible articles.* Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, and the percentage of alcohol by volume contained in the finished product.

Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine. Formulas and samples for eligible articles are required in accordance with Subpart F of Part 197 of this chapter.

(c) *Formulas required.* Formulas required by this section shall be submitted on Form 5150.19, except that formulas for eligible articles shall be submitted on Form 5530.5 (1678). Formulas shall be submitted in accordance with § 250.54. Any formula for an eligible article approved on Form 5150.19 prior to October 23, 1986 shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula.

(Approved by the Office of Management and Budget under control number 1512-0494)

Par. 6. Subpart I consisting of §§ 250.170 through 250.174 is added immediately following § 250.164a to read as follows:

Subpart I—Claims for Drawback on Eligible Articles From Puerto Rico

§ 250.170 Drawback of tax.

Any person who brings eligible articles into the United States from Puerto Rico may claim drawback of the distilled spirits excise taxes paid on such articles as provided in this subpart.

§ 250.171 Special tax.

Any person filing claim for drawback of tax on eligible articles brought into the United States from Puerto Rico shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, Subparts C and D of Part 197 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought into the United States and, each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. For each such business location within the United States, the amount of special tax liability is determined by the total proof gallons of distilled spirits used annually in the manufacture of nonbeverage products at that location plus the number of proof gallons contained in eligible articles brought into the United States under 26 U.S.C. 7652(g) from Puerto Rico or the Virgin Islands. For each such business location in Puerto Rico the amount of special tax liability is determined by the total proof gallons of distilled spirits contained in eligible articles brought into the United States.

§ 250.172 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 1730 (5530.3). When the limit of liability under a bond given in less than the maximum penal sum has been reached, no further drawback on monthly claims will be allowed unless prior charges against the bond have been decreased, or a new, or additional, bond in sufficient penal sum is furnished. For provisions relating to bonding requirements, Subpart E of Part 197 of this chapter is incorporated in this part.

(b) *Approval Required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 1730 (5530.3) has been approved by the regional director (compliance), for the region in which is located such person's business premises from which entry of eligible articles is caused or effected.

§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the regional director (compliance) of the region in which is located the person's business premises from which the entry of the articles into the United States is caused or effected. Upon finding that the claimant has satisfied the requirements of this subpart, the regional director (compliance) shall allow the drawback of taxes at a rate of \$1 less than the lesser of \$10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) *Information on claims.* The claim must set forth the following:

- (1) That the special tax has been paid;
- (2) That the eligible articles brought into the United States on which drawback is claimed are fully tax paid or tax-determined;
- (3) That the eligible articles on which drawback is claimed are nonbeverage products; and
- (4) That the eligible articles were manufactured in Puerto Rico in compliance with an approved formula in accordance with § 250.51.

(c) *Supporting data.* Each claim will be accompanied by statements of supporting data as follows:

- (1) The control number and denomination of the Special Tax Stamp and the tax year for which issued;
- (2) A description of each eligible article as follows:
 - (i) Name and type of each product;

- (ii) Name and address of the manufacturer of each product;
- (iii) Formula number;
- (iv) Alcohol content of each product;
- (v) Quantity of each product;
- (vi) Proof gallons of distilled spirits contained in each product;
- (vii) Date of entry of the eligible product into the United States; and
- (viii) The serial number of each ATF Form 497-B (5170.7) covering such articles shipped to the United States.

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the regional director (compliance) within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1512-0494)

§ 250.174 Records.

(a) *General.* Every person intending to file claim for drawback on eligible articles brought into the United States from Puerto Rico shall keep permanent records of the data elements required by this section. Such records shall be maintained at the business premises for which the claim is filed and shall be available for inspection by any ATF officer during business hours.

(b) *Details of records.* Each person intending to claim drawback on eligible articles brought into the United States shall maintain permanent records showing the following data:

- (1) The name, description, quantity, and formula number of each such article.
- (2) The alcohol content of each such article.
- (3) Name and address of the manufacturer and shipper, and date of entry into the United States.

(4) Evidence of taxpayment of distilled spirits in accordance with paragraph (c) of this section.

(c) *Evidence of taxpayment of distilled spirits.* All shipments of eligible articles from Puerto Rico to the United States shall be supported by the vendor's commercial invoice which must bear a certification as to taxpayment by the person who determined or paid the tax, and include the following information:

- (1) The name and address of vendor;

(2) The number of the applicable invoice;

(3) The serial or package identification number of the container;

(4) Name, type, and formula number of the product;

(5) The kind of spirits, proof, and proof gallons in the container; and

(6) The serial number of each Form 497-B (5170.7) covering such articles shipped to the United States.

(d) *Form of record.* No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant.

(e) *Retention of records.* Each drawback claimant shall retain for a period of not less than three years all records required by this subpart, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer of eligible articles shall be retained for not less than three years from the date he files his last claim for drawback under the formula. The records, forms, and formulas shall be readily available during regular business hours for examination by ATF officers.

(Approved by the Office of Management and Budget under control number 1512-0494)

Par. 7. Section 250.221 is amended to revise the section heading and to revise paragraphs (a) and (c) to read as follows:

§ 250.221 Formulas for articles, eligible articles and products manufactured with denatured spirits.

(a) *Formulas for articles and eligible articles.* Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, and the percentage of alcohol by volume contained in the finished product. Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine. Formulas and samples for eligible articles are required in accordance with Subpart F of Part 197 of this chapter.

(c) *Formulas required.* Formulas required by this section shall be submitted on Form 5150.19, except that formulas for eligible articles shall be submitted on Form 5530.5 (1678). Formulas shall be submitted in accordance with § 250.224. Any formula for an eligible article approved on Form 5150.19 prior to October 23, 1986, shall continue to be valid until revoked or

voluntarily surrendered. Any person holding such a formula is not required to submit a new formula.

(Approved by the Office of Management and Budget under control number 1512-0494)

Par. 8. Subpart Ob consisting of §§ 250.306 through 250.310 is added immediately following § 250.305 to read as follows:

Subpart Ob—Claims for Drawback on Eligible Articles from the Virgin Islands

§ 250.306 Drawback of tax.

Any person who brings eligible articles into the United States from the Virgin Islands may claim drawback of the distilled spirits excise taxes paid on such articles as provided in this subpart.

§ 250.307 Special tax.

Any person filing claim for drawback of tax on eligible articles brought into the United States from the Virgin Islands shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, Subparts C and D of Part 197 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought into the United States, and each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. For each such business location within the United States, the amount of special tax liability is determined by the total proof gallons of distilled spirits used annually in the manufacture of nonbeverage products at that location plus the number of proof gallons contained in eligible articles brought into the United States under 26 U.S.C. 7652(g) from Puerto Rico or the Virgin Islands. For each business location in the Virgin Islands, the amount of special tax liability is determined by the total proof gallons of distilled spirits contained in eligible articles brought into the United States.

§ 250.308 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 1730 (5530.3). When the limit of liability under a bond given in less than the maximum penal sum has been reached, no further drawback on monthly claims will be allowed unless prior charges against the bond have been decreased, or a new, or additional, bond in sufficient penal sum is furnished. For provisions relating to bonding requirements, Subpart E of Part

197 of this chapter is incorporated in this part.

(b) *Approval Required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 1730 (5530.3) has been approved by the regional director (compliance), for the region in which is located such person's business premises from which entry of eligible articles is caused or effected.

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback, Form 2635 (5620.5), with the regional director (compliance) of the region in which is located the person's business premises from which the entry of the articles into the United States is caused or effected. Upon finding that the claimant has satisfied the requirements of this subpart, the regional director (compliance) shall allow the drawback of taxes at a rate of \$1 less than the lesser of \$10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) *Information on claims.* The claim must set forth the following:

(1) That the special tax has been paid;

(2) That the eligible articles brought into the United States on which drawback is claimed are fully taxpaid or tax-determined;

(3) That the eligible articles on which drawback is claimed are nonbeverage products; and

(4) That the eligible articles were manufactured in the Virgin Islands in compliance with approved formulas in accordance with § 250.221.

(c) *Supporting data.* Each claim will be accompanied by statements of supporting data as follows:

(1) The serial number and denomination of the Special Tax Stamp and the tax year for which issued;

(2) A description of each eligible article as follows:

- (i) Name and type of each product;
- (ii) Name and address of the manufacturer of each product;
- (iii) Formula number under which each product was manufactured;
- (iv) Alcohol content of each product;
- (v) Quantity of each product;
- (vi) Proof gallons of distilled spirits contained in each product;
- (vii) Date of entry of the eligible product into the United States; and
- (viii) Evidence of taxpayment of distilled spirits in accordance with § 250.266.

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with

the regional director (compliance) within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1512-0494)

§ 250.310 Records.

(a) *General.* Every person intending to file claim for drawback on eligible articles brought into the United States from the Virgin Islands shall keep permanent records of the data elements required by this section. Such records shall be maintained at the business premises for which the claim is filed and shall be available for inspection by any ATF officer during business hours.

(b) *Details of records.* Each person intending to claim drawback on eligible articles brought into the United States shall maintain permanent records showing the following data:

(1) The name, description, quantity, and formula number of each such article.

(2) The alcohol content of each such article.

(3) Name and address of the manufacturer and shipper, and date of entry into the United States.

(4) Evidence of taxpayment of distilled spirits in accordance with paragraph (e) of this section.

(c) *Form of record.* No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant.

(d) *Evidence of taxpayment of distilled spirits.* Evidence of taxpayment of eligible articles (such as Customs Forms 7501 and 7505 receipted to indicate payment of tax) shall be maintained as evidence of taxpayment to support information required to be furnished in the supporting data filed with a claim.

(e) *Retention of records.* Each drawback claimant shall retain for a period of not less than three years all records required by this subpart, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer of eligible articles shall be retained for not less than three years from the date he files

his last claim for drawback under the formula. The records, forms, and formulas shall be readily available during regular business hours for examination by ATF officers.

(Approved by the Office of Management and Budget under control number 1512-0494)

Signed: October 21, 1987.

Stephen E. Higgins,
Director.

Approved: October 28, 1987.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 87-28017 Filed 12-8-87; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Revision of Provision Relating to Category Eight Offenses

AGENCY: United States Parole Commission, DOJ.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising a provision in its paroling policy guidelines that requires the Commission to give a special explanation whenever a prisoner who is placed in the highest possible offense category is continued for more than 48 months beyond the minimum guideline that is applicable to that category. The purpose of the revision is to make it clear that this requirement is not intended to establish a presumption in favor of parole between that guideline and the 48-month point.

EFFECTIVE DATE: December 9, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Attorney, Office of General Counsel, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The provision in question is the note to Category Eight on the Guidelines for Decision-Making at 28 CFR 2.20. The Commission is concerned that the present provision may be misinterpreted as establishing a guideline range for offenders placed in that offense severity rating. The Category Eight offense severity rating traditionally has carried a minimum guideline, but no upper limit due to the extreme variability of cases within this category. These cases include murder, espionage, treason, extremely large-scale heroin cases, and

certain other crimes. The requirement for a special explanation is intended only to ensure that a prisoner who is not paroled within 48 months of the minimum guideline be given evidence of individualized consideration for parole.

It was not the Commission's intent to create the upper limit of a guideline range at the 48-month point, so as to preclude itself from making a more severe decision in the absence of "aggravating case factors" such as would be required by 18 U.S.C. 4206(c) (1976) for decisions above the guideline ranges applicable to lesser categories of offenses. Certain Category Eight offenses may be of such inherent gravity as to warrant a continuance more than 48 months above the minimum guideline, without the presence of any other circumstance that could be identified as an "aggravating factor." To the extent that there is a range of time prescribed by the guidelines for Category Eight cases, the upper limit of the range is the expiration of the sentence imposed by the court.

Accordingly, the Commission has revised its rule to delete the requirement to state "aggravating case factors" and to specify instead that the requirement is to state "the pertinent case factors" that were considered. Because this is an interpretative revision concerning an agency procedural requirement, no public comment is being solicited, pursuant to 5 U.S.C. 553(b)(A).

The rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. Section 2.20 is amended by revising the note appearing at the end of the table entitled "Guidelines for Decision-Making" to read as follows:

"1 Note.—For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category by more than 48 months, the Commission will specify the pertinent case factors upon which it relied in