Sunshine Act Meetings

Federal Register
Vol. 55, No. 83
Monday, April 30, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, May 2, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: PPPA Protocol Revisions.

The staff will brief the Commission on a draft proposal to amend the current Poison Prevention Packaging Act protocol for testing child-resistant packaging with children and adults.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: April 25, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-10094 Filed 4-26-90; 12:41 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 3, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: April 25, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-10095 Filed 4-26-90; 12:41 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Friday, May 4, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10110 Filed 4-26-90; 2:43 pm]

BILLING CODE 6210-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: May 10, 1990:

1:00 p.m. Closed Session
1:20 p.m. Open Session

PLACE: National Science Foundation, 1800 G Street NW., Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MAY 10:

Closed Session (1:00 p.m. to 1:20 p.m.)

1. Minutes—March Meeting
2. NSB and NSF Staff Nominees
3. Election of Officers
4. Future NSF Budgets
5. Grants and Contracts—Action Item

Open Session (1:20 p.m. to 2:15 p.m.)

6. Chairman's Report
7. Minutes—March Meeting
8. NSB Calendar of Meetings for 1991
9. Director's Report
10. Annual Report of the Executive Committee
11. Other business

Thomas Ubois,

Executive Officer.

[FR Doc. 90-10111 Filed 4-26-90; 2:43 pm]

BILLING CODE 7555-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Tuesday, April 24, 1990, at 2:35 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) Certain matters relating to the resolution of thrift institutions; (2) matters regarding the Corporation's supervisory activities; and (3) matters regarding the Corporation's internal administration activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr., (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and Director T. Timothy Ryan, Jr., (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552B).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC.

Dated: April 25, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-10013 Filed 4-26-90; 8:45 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 83
Monday, April 30, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment, Amendment and Cancellation of Import Limits and Sublimits, Amendment of a Restraint Period and Amendment of Visa Requirements for Certain Cotton, Wool and Man-made Fiber Textile Products Produced or Manufactured in the United Mexican States

Correction

In notice document 90-9285 beginning on page 15259 in the issue of Monday, April 23, 1990, make the following corrections:

1. The subject heading should read as set forth above.

2. The file line and billing code were omitted and should read as set forth below:

[FR Doc. 90-9285 Filed 4-20-90; 8:45am]

BILLING CODE 3510-DR-M

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90-20-NG]

Boston Gas Co.; Application To Import Natural Gas From Canada

Correction

In notice document 90-9484 beginning on page 17299, in the issue of Tuesday, April 24, 1990, make the following corrections:

1. On page 17299, in the third column, under DATES, in the sixth line, "April 24, 1990" should read "May 24, 1990".

2. On page 17300, in the middle of the second column, in the file line, the document number should read "FR Doc. 90-9484".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4214-10; WYW 115104]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

Correction

In notice document 89-6056 beginning on page 11085 in the issue of Thursday, March 16, 1989, make the following corrections:

1. On page 11085, in the third column, in the land description, in the 19th line, "N½SE½SE¼" should read "N½SE¼ SE¼". In the 22nd line, "NE½SE¼" should read "NE¼SE¼".

Editorial Note: The correction document published at 55 FR 14156, April 16, 1990, should be disregarded.

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Revised Standards for Defining Metropolitan Areas in the 1990's

Correction

In notice document 90-7425 beginning on page 12154 in the issue of Friday, March 30, 1990, make the following corrections:

1. On page 12155, in the second column, in the eighth line, "or" should read "and".

2. On page 12159, in the second column, in the sixth paragraph, in the last line, "commuting" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90-021]

Navigation Safety Advisory Council; Meeting

Correction

In notice document 90-9152 appearing on page 15094, in the issue of Friday, April 20, 1990, make the following correction:

In the middle column, in the second complete paragraph, in the last line, the telephone number should read "(202) 267-0357".

BILLING CODE 1505-01-D

federal register

Monday
April 30, 1990

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 19, 197, 250, and 251

Tax Credit for Wine or Flavor Content of Distilled Spirits Products; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 197, 250, and 251

[T.D. ATF-297; Re: Notice No. 625]

RIN 1512-AA05

Tax Credit for Wine or Flavor Content of Distilled Spirits Products

AGENCY: Bureau of Alcohol, Tobacco, and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is issuing regulations to implement section 6 of Public Law 96–598 (94 Stat. 3488), as amended by section 5063 of Public Law 100–647 (102 Stat. 3342). This section allows a credit against the tax paid or determined on distilled spirits for alcohol derived from certain wine and flavors. This section also permits the transfer between the bonded premises of distilled spirits plants of distilled spirits bottled for industrial purposes.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dick Langford, Distilled Spirits and Tobacco Branch, (202) 566–7531.

SUPPLEMENTARY INFORMATION:

Background

In January of 1980, the Distilled Spirits Tax Revision Act of 1979 (Subtitle A of Title VIII of the Trade Agreements Act of 1979, Pub. L. 96–39 (93 Stat. 273)) instituted a new system for administering the excise tax on distilled spirits, referred to as the *all-in-bond* method. Under this method, the tax on distilled spirits is paid or determined on the basis of the alcohol content, regardless of the source of the alcohol, after completion of all distilled spirits operations. A result of the change to the *all-in-bond* method is that the alcohol content derived from the wine and flavors in a distilled spirits product is subject to the distilled spirits tax.

In December of 1980, Public Law 96–598 was enacted. Section 6 of the law added section 5010 to the Internal Revenue Code of 1954. This provision restored to wine and flavors the tax status they enjoyed prior to the institution of the *all-in-bond* method of tax determination. It did this by authorizing a credit against the excise tax liability paid or determined under the *all-in-bond* method for the wine and flavors content of distilled spirits.

The credit authorized for wine equals the difference between the distilled spirits tax and the applicable wine tax on the quantity of wine contained in distilled spirits. The credit authorized for flavors equals the distilled spirits tax on the quantity of nonbeverage flavors contained in distilled spirits to the extent that the alcohol derived from these flavors does not exceed 2½ percent of the finished product on a proof gallon basis.

In addition to providing a credit for the wine and flavors content of distilled spirits, section 6 of Public Law 96–598 amended section 5212 of the Internal Revenue Code of 1954 to allow the transfer between the bonded premises of distilled spirits plants of alcohol bottled for industrial purposes.

A. Wine and Flavors Credit

The credit for the wine and flavors content of distilled spirits poses a number of problems. Among these are the calculation of credit for wine content, the application of credit rates to the taxable removal of finished goods, and the verification of credit rates by persons other than the processor who manufactured the product. In Industry Circular 81–8, dated March 27, 1981, ATF provided various guidelines and procedures to resolve these problems. However, in retrospect, ATF believes these guidelines and procedures are unduly cumbersome. Therefore, on March 27, 1987, ATF published a notice of proposed rulemaking (Notice No. 625, 52 FR 9873) containing provisions which would simplify the calculations of net tax rates and the application of those rates to taxable removals.

In response to Notice No. 625, five comments were received from distilled spirits plant proprietors and one from a trade association. The commenters represented Heublein, Inc., Brown-Forman Corporation, Consolidated Distilled Products, Inc., Hiram Walker & Sons, Inc., James B. Beam Distilling Company, and the Distilled Spirits Council of the United States, Inc.

1. Effective Tax Rates

Notice No. 625 proposed a somewhat simplified formula for establishing an effective tax rate in lieu of a credit rate for each proof gallon of distilled spirits containing eligible wine or eligible flavors. The effective tax rate is the net tax rate, after reduction for any credit allowable for the wine and flavors content, at which the tax imposed on distilled spirits is paid or determined.

One comment pointed out that the requirement to express an effective tax rate to the nearest whole cent would deprive a proprietor of the right to take the full 2½ percent tax credit for the flavor content of a product. The effective tax rate for a product deriving 2½ percent of its alcohol content from eligible flavors would equal $12.1875, which would be expressed as $12.19. Accordingly, the final rule allows the effective tax rate to be rounded to any number of decimal places, provided such rate is expressed no less exactly than the rate rounded to the nearest whole cent and that all effective tax rates for all products are consistently expressed with the same degree of exactness.

Another comment observed that Industry Circular 81–8 had suggested calculating a credit rate rather than an effective tax rate and urged that this method be recognized in the final rule. An effective tax rate is merely the complement of the credit rate. That is, the credit rate is equal to the tax rate less the effective tax rate. Once a proprietor has calculated the effective tax rate applicable to a given product, ATF would certainly not object to the further determination of its complement, a credit rate for the product. Regulations require only that records of tax determination (27 CFR 19.761) contain sufficient information to enable ATF officers to determine proof gallons removed at each effective tax rate. For the daily summary record of tax determinations (27 CFR 19.762), the regulations provide the option of summarizing proof gallons at each effective tax rate. Such records, if maintained and summarized in terms of credit rates would satisfy these requirements.

2. Application of Effective Tax Rates

Under the suggested procedures in Industry Circular 81–8, the application of the credit rate to taxable removals necessitated the tracing of taxable removals back to the applicable batch records for each product containing wine or flavors. To alleviate the cumbersome paperwork of such tracing, three alternative procedures for application of effective tax rates to taxable removals were proposed in the notice in addition to the general procedure suggested in the Industry Circular.

a. *Actual effective tax rate.* A proprietor may tax determine spirits at an effective tax rate based on the specific batch of product from which the removal is drawn. To do so, however, requires the ability to trace the product from the record of tax determination back to the batch record. Case serial numbers provide the only means sanctioned by regulations to identify the specific containers and effect the necessary tracing. Therefore it is necessary to record the serial numbers of cases removed on the record of tax determination or other related record. Three comments opposed the requirements that case serial numbers appear on records of tax determination. The final rule revises that requirement to apply only if the proprietor is using an effective tax rate based on the specific batch from which a product was drawn and allows the data, when required, to be shown on related records rather than the record of tax determination.

b. *Standard effective tax rate.* The notice proposed that a standard effective tax rate may be established for any eligible distilled spirits product by computing an effective tax rate based on the least quantity and the lowest alcohol content of wine and flavors used in the manufacture of the product. ATF recognizes that many approved formulas on ATF F 5110.38 cover products in which the quantities, proof, and alcohol content of distilled spirits, wine and flavors vary between specified limits in arriving at the specified proof.

In such case, the basis used to establish a standard effective tax rate must be within the range shown on Form 5110.38, but it need not be the least quantity or the lowest alcohol content of wine and flavors permissible on the approved formula. However, in no case may a standard effective tax rate be less than that determined by the least quantity and the lowest alcohol content with which the product will ever be produced.

One commenter observed that the requirement to notify the regional director (compliance) of standard effective tax rates was unnecessarily burdensome. This procedure for applying effective tax rates to taxable removals was intended to be a very simple system for those proprietors who consistently manufacture a product according to an exact formula. It was not intended to be subject to frequent fluctuations, and the requirement to notify the regional director was proposed to provide a control on the consistency of the method. If standard rates, based on batches produced were allowed to fluctuate regularly, it would defeat the purpose of the method, and the standard tax rates may bear little relationship to the wine or flavor content of the taxable removals. In lieu of requiring notification of the regional director of the establishment or subsequent change of an effective tax rate, the final rule clarifies that a standard effective tax rate is to be a permanent rate. Once a standard rate has been established, a permanent record must be maintained of such rate. If any batch of the product is produced with a wine or flavor content less than that upon which the standard rate was determined, the batch must be kept segregated after bottling and must be taxpaid at the actual effective tax rate determined rather than a standard effective tax rate. If the formulation of the product is changed, the new formulation must be treated as a new product.

c. *Average effective tax rate.* The notice proposed that an average effective tax rate may be established for any eligible distilled spirits product by computing an effective tax rate based on the batches produced during the preceding 6-month period if at least three batches were produced during that period. If this procedure is used for tax determination, a proprietor must also maintain for each product a record showing the average effective tax rate computation. To reflect the wine and flavor content in current inventory accurately, the average effective tax rate computed for each product is adjusted each month so as to include only the immediately preceding 6-month period. One comment urged that the averaging method be allowed for products of which fewer than three batches were produced in the previous six months. Since the final rule clarifies that the averaging method requires a weighted average, this comment was adopted. Another commenter urged the deletion of the requirement to notify the regional director (compliance) of products being tax determined with the averaging method. This comment has also been adopted in the final rule.

Another comment questioned the requirement that average effective tax rates be based on the quantity of a product which is bottled rather than that which is produced. The requirement that average rates be calculated from goods bottled for domestic use was proposed to prevent an average rate from being affected by batches of the product which will never be taxpaid by the proprietor. Therefore, the final rule merely provides that an average rate will be determined from batches which have been bottled, in whole or in part, for domestic use.

d. *Inventory Reserve Account.* An inventory reserve account may be established for any eligible distilled spirits product. Under this procedure, each time the product is bottled or packaged, a deposit record is entered into the inventory reserve account of the product. As the product is subsequently removed from inventory, the records in the inventory reserve account are depleted, in chronological order, from the earliest entry date. All removals from inventory, including breakage and inventory losses, are chargeable against the inventory reserve account of the product. The tax rate applied to any taxable removal is determined by the effective tax rate of the record from which the removal is depleted.

3. Eligible Wine and Flavors

Credit for the wine and flavor content of distilled spirits is allowable only if the wine or flavor contained in the distilled spirits is an eligible wine or an eligible flavor. An eligible wine is a still wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Notice No. 625 proposed to define an eligible flavor as one which was of a type for which drawback of tax was allowable under 26 U.S.C. 5134 and which had not been made at a distilled spirits plant. Section 5063 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342, amended the definition of "flavors content" in section 5010 to exclude, also, alcohol derived from flavors which have been distilled at a distilled spirits plant. In explaining this limitation, the conference report states that the purpose is to make the flavor credit available only where flavors remain in the distilled spirits beverage after completion of distillation.

Accordingly, the final rule defines an eligible flavor as one which is of a type eligible for drawback of the tax under 26 U.S.C. 5134, which has not been manufactured at a distilled spirits plant, and which has not been subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product. To facilitate the manufacture of eligible flavors by a distilled spirits plant proprietor, the final rule provides that the premises of a distilled spirits plant may be alternately curtailed and extended to permit the use of the facilities for the manufacture of eligible flavors off of distilled spirits plant premises.

4. Documentation of Wine and Flavor Content

a. *Importers.* Any person who imports distilled spirits containing wine or flavors on which the tax is to be paid or determined at an effective tax rate must establish the eligibility of the wine and flavor components contained in the product and provide information for verification of the effective tax rate computation. This is accomplished by submitting to ATF a sample of each wine and flavor component to be used in the computation of the effective tax rate. In addition, each time the distilled spirits are imported, a certificate of effective tax rate computation must be filed with the district director of customs at the time of entry liquidation or, for distilled spirits transferred under the provisions of 26 U.S.C. 5232, furnished to the distilled spirits plant proprietor. In lieu of this procedure, the importer may have a standard effective tax rate established for the product or use a standard effective tax rate previously approved for the product.

One commenter stated that the current criteria for imports in determining eligible flavors is sufficient and that the formulation of a product is proprietary information not necessarily available to the importer. ATF recognizes that much of the required information may be proprietary. For this reason, the rule allows such information to be submitted by the supplier, directly to ATF on behalf of the importer, and the supplier may be assured that the information will be treated as confidential under the provisions of 26 U.S.C. 6103. The samples and descriptive information are essential for ATF to determine that a flavor is eligible and to verify the wine or flavor content of the finished product. Two commenters urged that, if these requirements are adopted, an adequate "lead" time be provided for importers to submit the necessary information. Accordingly, the final rule delays the effective date of these requirements for an additional six months.

b. *Transfers in bond.* Distilled spirits plant proprietors who transfer in bond distilled spirits containing wine or flavors are required to record on the transfer record the eligible wine and the eligible flavors content of the distilled spirits so that the consignee proprietor may properly document the effective tax rate.

Three comments addressed the proposed amendment to the transfer records prescribed by 27 CFR 19.770. The proposed requirement would have required such additional information, for products containing wine or flavor, as would reflect the quantity of alcohol derived from the base spirits, the wines, and the flavors contained in the product and the identity of any such flavor. One comment urged that the effective tax rate would be sufficient information on the transfer record. We do not agree. If a transferee proprietor further rectifies a product, he must know both the wine content and the flavor content of the product received in order to properly determine an effective tax rate of the final product. However, we agree that the identity of the flavor is not essential data when spirits are transferred between the bonded premises of DSP's, and that requirement has been deleted from the final rule.

c. *Returns to bond.* To establish the effective tax rate at which tax was paid or determined, claims on distilled spirits containing eligible wine or eligible flavors returned to bond must set out the effective tax rate of each product and identify the applicable record of tax determination. The notice proposed that, when the date of tax determination could not be determined, such claims may be based on the lowest effective rate applied to the product. Two comments urged that this procedure be allowed whenever spirits are returned to bond, and the final rule so provides.

d. *Distilled spirits brought into the United States from Puerto Rico.* So that distilled spirits plant proprietors in the United States may properly document the eligible wine and the eligible flavors content of distilled spirits shipped from Puerto Rico to the United States without payment of tax for transfer from customs custody to ATF bond, the shipper shall provide the proprietor with a certificate of effective tax rate computation. Persons in Puerto Rico who ship distilled spirits to the United States on tax determination will be required to maintain a certificate of effective tax rate computation.

e. *Distilled spirits brought into the United States from the Virgin Islands.* Persons bringing distilled spirits containing wine or flavors into the United States from the Virgin Islands shall show the eligible wine and the eligible flavors content of the distilled spirits on the certificate obtained from the manufacturer under current regulations.

5. Conforming Amendments

Additionally, the regulations governing nonbeverage drawback are amended to provide for the necessary records and supporting data for claims when drawback is claimed on spirits which have been taxpaid at an effective tax rate less than the rate prescribed by 26 U.S.C. 5001.

B. Transfer of Bottled Distilled Spirits

The regulations governing the transfer of bulk distilled spirits between the bonded premises of distilled spirits plants have been amended to provide for similar transfers of alcohol bottled for industrial purposes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it 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.

Executive Order 12291

In compliance with Executive Order 12291 of Febraury 17, 1981, ATF has determined that this final 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 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.

Paperwork Reduction Act

This final rule imposes requirements to collect additional data elements in six existing collection of information requirements. These collection of information requirements and the additional data elements required hereby have been reviewed by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Additional data elements related to distilled spirits plants' processing records and reports are estimated to impose a statistically negligible burden and have been approved under OMB control number 1512–0198. Similarly, amendments being made to the applications, miscellaneous requests and notices for distilled spirits plants will have a statistically negligible effect on the burden imposed and have been approved under OMB control number 1512–0206.

It is estimated that the additional requirements for distilled spirits plants' excise tax records will impose an average annual recordkeeping burden of 26 hours on each respondent to whom they apply. These requirements have been approved under OMB control number 1512–0203.

Amendments made to the requirements for distilled spirits plants' transaction and supporting records are estimated to impose an average annual burden of eight hours on each respondent and have been approved under OMB control number 1512–0250.

Additional requirements for importers' records and reports will impose an estimated annual burden of ten hours on each respondent to whom they are applicable and have been approved under OMB control number 1512–0352.

It is believed that the additional information required to support claims for drawback of tax by manufacturers of nonbeverage products will impose a statistically negligible burden and have been approved under OMB control number 1512–0379.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 and to the Office of Management and Budget, paperwork Reduction Project (1512–0198, 1512–0203, 1512–0206, 1512–0250, 1512–0352, or 1512–0379, as applicable), Washington, DC 20503, attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms.

Drafting Information

The principal author of this document is Dick Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds.

27 CFR Part 250

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

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Spices and flavorings, Transportation, Wine.

Issuance

Title 27 Chapter I of the Code of Federal Regulations is amended as follows:

Section A. Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1–2. The authority citation for part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–51313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 3. Section 19.11 is amended by revising the definition of *Alcoholic flavoring materials,* and by adding definitions of *Effective tax rate, Eligible flavor,* and *Eligible wine,* to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Alcoholic flavoring materials. Any nonbeverage product on which drawback has been or will be claimed under 26 U.S.C. 5131–5134 or flavors imported free of tax which are unfit for beverage purposes. The term includes eligible flavors but does not include flavorings or flavoring extracts manufactured on the bonded premises of distilled spirits plant as an intermediate product.

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

* * * * *

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Para. 4. The undesignated center heading preceding § 19.21 and § 19.21 are revised to read as follows:

Gallonage Taxes

§ 19.21 Tax.

(a) A tax is imposed by 26 U.S.C. 5001 and 7652 on all spirits produced in, imported into or brought into the United States at the rate prescribed in section 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. Wines containing more than 24 percent of alcohol by volume are taxed as spirits. All products of distillation, by whatever name known, which contain spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as spirits.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 19.34. The effective tax rate established will be applied to each withdrawal or other taxable disposition of the distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010); Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652)).

Para. 5. The undesignated center heading preceding § 19.36 is removed and § 19.36 is redesignated as § 19.26 and revised to read as follows:

Gallonage Taxes

§ 19.26 Tax on wine.

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 of 7652 on wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported or brought into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5362(b)(3) in connection with wine transferred in bond to a distilled spirits plant. Wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, will continue until the wines is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5362))

Para. 6. New § 19.34, with the undesignated center heading immediately preceding it, §§ 19.35, 19.36, 19.37 and 19.38 are added to read as follows:

Effective Tax Rates

§ 19.34 Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6\ (\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]}=$$

$$\frac{\$28{,}113.75+[\$385.05+\$683.40]+\$207.50}{2{,}350.0+[634.2+387.6]}=$$

$$\frac{\$29{,}389.70}{3{,}371.8}=\$8.72\text{, the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½%)×3,371.8=16.6).

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 19.35 Application of effective tax rate (Actual).

Any proprietor who does not apply effective tax rates to taxable removals in accordance with § 19.36, 19.37 or 19.38 shall establish an effective tax rate for each batch of distilled spirits in the processing account on which credit against tax is desired for alcohol derived from eligible wine or eligible flavors. The effective tax rate will be computed in accordance with § 19.34 and will be recorded on the dump or batch record for the product, as required by § 19.748. The serial numbers of the cases removed at such rate shall be recorded on the record of tax determination prescribed in § 19.761 or other related record available for examination by any ATF officer.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 19.36 Standard effective tax rate.

(a) The proprietor may establish a permanent standard effective tax rate for any eligible distilled spirits product based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product. The permanent standard effective tax rate must equal the highest tax rate applicable to the product. The proprietor shall maintain a permanent record of the standard effective tax rate established for each product in accordance with § 19.765. Whenever the proprietor manufactures a batch of the product with a lesser quantity or lower alcohol content of eligible wine or eligible flavor, he shall keep the cased goods segregated from other completed cases of the same product and shall tax determine the product in accordance with § 19.35.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of the procedure.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 19.37 Average effective tax rate.

(a) The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition which have been produced during the preceding 6-month period and which have been or will be bottled or packaged, in whole or in part, for domestic consumption. At the beginning of each month, the proprietor shall recompute the average effective tax rate so as to include only the immediately preceding 6-month period. The average effective tax rate established for a product will be shown in the record of average effective tax rates prescribed in § 19.763.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 19.38 Inventory reserve account.

(a) The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by 19.764. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted.

(b) If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 7. § 19.42 is amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 19.42 Claims on spirits returned to bonded premises.

* * * * *

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

* * * * *

Para. 8. In § 19.92, paragraph (a) is revised to read as follows:

§ 19.92 When gauges are required.

(a) *Initial proof.* Except for a gauge required by § 19.383 or § 19.517 or in any case where the proof changes as a result of a storage or processing operation, the initial determination of proof for distilled spirits, wine, or eligible flavors may be used whenever a subsequent gauge is required by this part to be made at the same plant.

* * * * *

Para. 9. § 19.206 is added immediately following § 19.205 to read as follows:

§ 19.206 Curtailment and extension of plant premises for the manufacture of eligible flavors.

(a) *General.* The premises of a distilled spirits plant may be alternately curtailed and extended, as provided in this section, to permit the use of the facilities for the manufacture of eligible flavors.

(b) *Qualifying documents.* When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional director (compliance)—

(1) An application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, and

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence.

(c) *Proprietor's responsibility.* Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits, denatured spirits, articles, and wines from the premises or equipment which are to be curtailed from bonded premises or are to be included by extension of bonded premises prior to the effective date and hour of the notice, except that—

(1) Bonded spirits on portions of bonded premises that are to be curtailed need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and

(2) Taxpaid spirits which are on portions of premises to be included by extension of bonded premises and which have not been used in the manufacture of a nonbeverage product need not be removed if the spirits are to be dumped immediately and returned to bond under the provisions of Subpart U of this part.

(d) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Para. 10. § 19.374 is revised to read as follows:

§ 19.374 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131-5134, may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises. For purposes of computing an effective tax rate, flavors manufactured on either the bonded or general premises of a distilled spirits plant are not eligible flavors.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Para. 11. In § 19.505, paragraph (c) is added to read as follows:

§ 19.505 Authorized transfers.

* * * * *

(c) *Alcohol for industrial purposes.* Alcohol bottled for industrial purposes, as provided in § 19.398, may be transferred between the bonded premises of distilled spirits plants in accordance with the procedures prescribed in §§ 19.506 through 19.510 for bulk distilled spirits.

* * * * *

Para. 12. § 19.682 is amended by revising paragraph (c) to read as follows:

§ 19.682 Receipt and gauge of returned taxpaid spirits.

* * * * *

(c) *Supporting documents.* (1) Proprietors must have on file at the plant where spirits are returned to bond such documentation as is necessary to establish the amount of tax for which a claim for credit or refund may be allowed. Proprietors shall maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(2) If the spirits contain eligible wine or eligible flavors, the proprietor shall also have on file a copy of the record of tax determination prescribed by § 19.761, or other documentation which establishes the amount of tax for which a claim for credit or refund may be allowed. In lieu of establishing the actual effective tax rate of a product, the proprietor may claim refund or credit based on the lowest effective tax rate applied to the product.

(Sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215); Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 13. § 19.748 is amended by revising paragraphs (a)(16) and (a)(17), and adding (a)(18) to read as follows:

§ 19.748 Dump/batch records.

(a) * * *

(16) Total quantity in proof gallons of product transferred;

(17) Gain or loss; and

(18) For each batch to be tax determined in accordance with § 19.35, the effective tax rate.

* * * * *

Para. 14. Under the undesignated center heading, TAX RECORDS of Subpart W, §§ 19.761 and 19.762 are revised to read as follows:

§ 19.761 Record of tax determination.

A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Although neither the proof gallons nor effective tax rates need be shown on the record of tax determination, there shall be shown on each invoice or shipping document sufficient information to enable ATF officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. For purposes of this part, the total proof gallons calculated from each invoice or shipping document constitutes a single withdrawal.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.762 Daily summary record of tax determinations.

Each proprietor of a distilled spirits plant who withdraws distilled spirits on determination of tax, but before payment of tax, shall maintain a daily summary record of tax determinations. The summary record will show, for each day on which tax determinations occur:

(a) The serial numbers of the records of tax determination, the total proof gallons, rounded to the nearest tenth proof gallon on which tax was determined at each effective tax rate, and the total tax; or

(b) The serial numbers of the records of tax determination, the total tax for each record of tax determination and the total tax.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Para. 15. §§ 19.763, 19.764 and 19.765 are added immediately following § 19.762 to read as follows:

§ 19.763 Record of average effective tax rates.

(a) For each distilled spirits product to be tax determined in accordance with § 19.37, the proprietor shall prepare a daily summary record showing the—

(1) Serial number of the batch record of each batch of the product which will be bottled or packaged, in whole or in part, for domestic consumption;

(2) Proof gallons in each such batch derived from distilled spirits, eligible wine, and eligible flavors; and

(3) Tax liabilities of each such batch determined as follows:

(i) Proof gallons of all distilled spirits (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed in 26 U.S.C. 5001;

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b)(1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors to the extent that such distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) At the end of each month during which the product is manufactured, the proprietor shall determine the—

(1) Total proof gallons and total tax liabilities for each summary record prescribed by paragraph (a) of this section;

(2) Add the sums from paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.764 Inventory reserve records.

(a) *General.* The proprietor shall establish an inventory reserve account, as provided in this section, for each eligible distilled spirits product to be tax determined in accordance with § 19.38.

(b) *Deposit records.* For each batch of the product bottled or packaged, the proprietor shall enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.749 showing the:

(1) Name of the product;

(2) Bottling and packaging record serial number;

(3) Date the bottling or packaging was completed;

(4) Total proof gallons bottled and packaged; and

(5) Effective tax rate of the product computed in accordance with § 19.34.

(c) *Depletions.* The inventory reserve account for each product will be depleted in the same order in which the deposit records were entered into such account. A depletion will be recorded for each disposition (e.g., a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record the:

(1) Transaction date,

(2) Transaction record serial number,

(3) Proof gallons disposed of, and

(4) Proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the remaining quantity will be depleted, the deposit record closed, and the remainder of the transaction depleted from the next deposit record.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.765 Standard effective tax rates.

For each product to be tax determined using a standard effective tax rate in accordance with § 19.36, the proprietor shall prepare a record of the standard effective tax rate computation showing, for one proof gallon of the finished product, the following information:

(a) The name of the product;

(b) The least quantity of each eligible flavor which will be used in the product, in proof gallons, or 0.025 proof gallon, whichever is less;

(c) The least quantity of each eligible wine which will be used in the product, in proof gallons;

(d) The greatest effective tax rate applicable to the product, calculated in accordance with § 19.34 with the values indicated in paragraphs (a) and (b) of this section; and

(e) The date on which the use of the standard effective tax rate commenced.

Para. 15. § 19.770 is amended by revising paragraphs (a)(6)(iv), (a)(6)(vi), (a)(6)(vii), and adding (a)(6)(viii) to read as follows:

§ 19.770 Transfer record.

(a) * * *

(6) * * *

(iv) Number of packages or cases with their lot identification numbers of serial numbers and date of fill;

* * * * *

(vi) Proof gallons for distilled spirits, or wine gallons for denatured spirits or wine;

(vii) Conveyance identification; and

(viii) For distilled spirits products which contain eligible wine or eligible flavors, the elements necessary to compute the effective tax rate as follows:

(A) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(B) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(C) Proof gallons of distilled spirits derived from eligible flavors.

* * * * *

Para. 17. § 19.780 is added immediately following § 19.779 to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

(a) *General.* Where distilled spirits are shipped to a manufacturer of nonbeverage products, the proprietor shall prepare a record of shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record.* The record of tax determination prescribed by § 19.761, or any other document issued by the proprietor and containing the necessary information, may be used as the record of shipment.

(c) *Required information.* In addition to any other information on the document, the document used as the record of shipment must contain the following information:

(1) Name, address and registry number of the proprietor;

(2) Date of shipment;

(3) Name and address of the consignee;

(4) Kind, proof, and quantity of the distilled spirits;

(5) Number and size of containers;

(6) Package identification numbers or serial numbers of containers;

(7) Serial number of the applicable record of tax determination; and

(8) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 201 Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.1010 [Amended]

Para. 18. In § 19.1010, the table in paragraph (b) is amended by revising the citation for § 19.505 and by adding, in numerical order, citations for §§ 19.21, 19.34, 19.35, 19.36, 19.37, 19.38, 19.206, 19.763, 19.764, 19.765 and 19.780, to read as follows:

§ 19.1010 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Sections where identified	Current OMB control No.
19.21	1512–0203
19.34	1512–0203
19.35	1512–0198 1512–0203
19.36	1512–0203
19.37	1512–0203
19.38	1512–0203
* * * *	*
19.206	1512–0206
* * * *	*
19.505	1512–0191 1512–0250
* * * *	*
19.763	1512–0203
19.764	1512–0203
19.765	1512–0203
* * * *	*
19.780	1512–0250
* * * *	*

Section B. Part 197 is amended as follows:

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Paragraph 1. The authority citation for part 197 is revised to read as follows:

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 197.5 [Amended]

Para. 2. § 197.5 is amended by adding, in alphabetical order, the definition of the following term:

§ 197.5 Meaning of terms.

* * * * *

Effective tax rate. The next tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

* * * * *

Para. 3. Section 197.105 is revised to read as follows:

§ 197.105 Drawback.

(a) Upon the filing of a claim as provided in this subpart, drawback will be allowed to any person who meets the requirements of this part. Drawback will be allowed on each proof gallon of distilled spirits on which the tax has been paid or determined, and which has been used in the manufacture of a nonbeverage product.

(b) Drawback will be allowed at a rate of $1 less than the tax rate at which the distilled spirits tax was paid or determined. Special tax as a manufacturer of nonbeverage products must be paid before drawback is allowed.

(c) Drawback will be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regionial director (compliance), the actual quantity of distilled spirits used in the manufacture of a nonbeverage product and the tax paid or determined on such distilled spirits.

(Approved by the Office of Management and Budget under control number 1512–0379)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1345, as amended (26 U.S.C. 5132))

Para. 4. Section 197.109 is amended by revising paragraph (b) and by adding a parenthetical paragraph referencing the OMB control number to read as follows:

§ 197.109 Information to be shown by the claim.

* * * * *

(b) That the distilled spirits on which drawback is claimed are fully taxpaid or tax-determined at the distilled spirits rate applicable to the distilled spirits.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0379)

§ 197.115 [Amended]

Para. 5. In § 197.115, a sentence and a parenthetical paragraph referencing the OMB control number are added, immediately after the last sentence, reading as follows:

§ 197.115 Use of distilled spirits.

* * * The statement accompanying each claim will separately identify distilled spirits taxpaid with an effective tax rate and show the effective tax rate of each.

(Approved by the Office of Management and Budget under control number 1512–0379)

Para. 6. Section 197.130 is amended by revising paragraph (e) to read as follows:

§ 197.130 Nature of records.

* * * * *

(e) Number of proof gallons and kind of distilled spirits used in the manufacture of each product, the date of use and, if the distilled spirits contain wine or flavors, the effective tax rate.

* * * * *

Para. 7. Section 197.130b is amended by revising paragraphs (a)(5) and (a)(6), by adding paragraph (a)(7) and by revising paragraph (b) to read as follows:

§ 197.130b Evidence of taxpayment of distilled spirits.

(a) * * *

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

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

(7) For distilled spirits which contain wine or flavors, the effective tax rate.

(b) *Imported distilled spirits.* Evidence of tax payment of imported distilled spirits (such as Customs Forms 7501 and 7505A receipted to indicate payment of tax and the certificate of effective tax rate computation (if applicable)) will be obtained from the importer and maintained by the manufacturer for inspection by ATF officers.

* * * * *

Section C. Part 250 is amended as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Para. 12. The authority citation for part 250 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.11 [Amended]

Para. 3. Section 250.11 is amended by adding, in alphabetical order, the definitions of the following terms:

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

* * * * *

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Para. 4. Section 250.50a is added to read as follows:

§ 250.50a Verification of eligible flavors.

(a) Any person who, after December 1, 1990, ships to the United States any distilled spirits on which the tax has been or is to be paid or determined at an effective tax rate based in part on the alcohol content derived from any eligible flavor not previously approved on ATF Form 5530.5 (1678) or 5150.19 shall, before the first tax determination at that rate, request and receive a statement of eligibility for each flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person shipping the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample; and

(2) A statement of composition listing the—

(i) Name and percentage of alcohol by volume of the flavor; and

(ii) Name and quantity of each ingredient used in the manufacture of the flavor.

(Approved by Office of Management and Budget under control number 1512–0203)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 5. Section 250.77 is revised to read as follows:

§ 250.77 Subject to tax.

(a) Distilled spirits of Puerto Rican manufacture, and any products containing such distilled spirits, brought into the United States and withdrawn for consumption or sale are subject to a tax equal to the tax imposed in the United States by 26 U.S.C. 5001.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.79a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits for consumption or sale within the United States.

(Approved by Office of Management and Budget under control number 1512–0203)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 6. Section 250.79a is added to read as follows:

§ 250.79a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) the numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(1) The proof gallons of all distilled spirits used in the product, including

distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6\,\text{[1]}\,(\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]}=$$

$$\frac{\$28{,}113.75+[\$385.05+\$683.40]+\$207.50}{2{,}350.0+[634.2+387.6]}=$$

$$\frac{\$29{,}389.70}{3{,}371.8}=\$8.72,\text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½%)×3.371.8=16.6).

(Approved by Office of Management and Budget under control number 1512–0203)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 250.98 [Removed]

Para. 7. Section 250.98 is removed.

Para. 8. Section 250.165 is added to read as follows:

§ 250.165 Certificate of effective tax rate computation.

(a) Where distilled spirits of Puerto Rican manufacture which contain eligible wine or eligible flavors are to be tax determined for shipment to the United States or are to be shipped to the United States without payment of tax for transfer from customs custody to ATF bond, the consignor shall prepare a certificate of effective tax rate computation showing the:

(1) The serial number of ATF Form 5110.31 or 5110.51;

(2) Elements necessary to compute the effective tax rate in accordance with § 250.79a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from each eligible flavor;

(3) Date of the statement of eligibility for each eligible flavor (see § 250.50a).

(4) Effective tax rate applied to the product.

(5) Signature and title of the consignor.

(b) If the spirits are tax determined for shipment to the United States, the proprietor shall retain the certificate for a period of not less than three years after the last tax determination to which the certificate is applicable. If the spirits are shipped to the United States for transfer from Customs custody to the bonded premises of a distilled spirits plant, the proprietor shall forward the original to the consignee distilled spirits plant in the United States and retain a copy for his files.

(Approved by Office of Management and Budget under control number 1512—0203)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 9. Section 250.204a is added to read as follows:

§ 250.204a Verification of eligible wines and eligible flavors.

(a) Any person who, after December 1, 1990, brings into the United States from the Virgin Islands any distilled spirits on which the tax is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors or eligible wines shall, before the first tax determinaton at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person bringing in the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor used in the product;

(2) A statement of composition of each flavor, listing—

(i) The name and percentage of alcohol by volume of the flavor; and

(ii) The name and quantity of each ingredient used in the manufacture of the flavor; and

(3) A statement of the kind and alcoholic content of each wine.

(Approved by Office of Management and Budget under control number 1512–0352)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 10. Section 250.205 is revised to read as follows:

§ 250.205 Certificate.

(a) Every person bringing liquors or articles under this part into the United States from the Virgin Islands, except tourists, shall obtain a certificate in the

English language from the manufacturer for each shipment showing the following information:

(1) The name and address of the consignee.

(2) The kind and brand name.

(3) The quantity thereof as follows—

(i) If distilled spirits, the proof gallons or liters and degree of proof;

(ii) If wine, the taxable grade and wine gallons;

(iii) If beer, the gallons (liquid measure) and the percentage of alcohol by volume; and

(iv) If articles, the kind, quantity, and proof of the liquors used therein.

(4) For liquors manufactured under a formula—

(i) The number and date of the approved formula;

(ii) A declaration that the liquors have been manufactured in accordance with the approved formula; and

(iii) The name and address of the person filing the formula.

(5) The name and address of the producer.

(6) For liquors and articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor.

(7) For distilled spirits, a certification by the insular gauger as to whether they were regauged when withdrawn from the insular bonded warehouse and, if regauged, whether they were at the time of withdrawal at the proof indicated on the attached record of gauge.

(8) For distilled spirits which contain eligible wine or eligible flavors, the effective tax rate applied to the product and the elements necessary to compute the effective tax rate in accordance with § 250.262a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(iii) Proof gallons of distilled spirits derived from eligible flavors; and

(iv) On or after December 1, 1990, the name of the manufacturer, formula number from ATF F 5530.5 (1678) or 5150.19 and date of approval or the date of the statement of eligibility for each eligible flavor (See § 250.204a); and

(v) After December 1, 1990, the date of the statement of eligibility for each eligible wine.

(b) The person bringing the liquors or articles into the United States shall file the certificate and record of gauge with the district director of customs at the port of entry, at the time of entry summary, as provided in §§ 250.260 and 250.302.

(Approved by the Office of Management and Budget under control number 1512–0352.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Par. 11. Section 250.262 is revised and § 250.262a is added to read as follows:

250.262 Determination of tax on distilled spirits.

(a) If the certificate required by § 250.205 covers distilled spirits, and the distilled spirits are not being transferred under Subparts 0 or Oa of this part, the tax imposed by 26 U.S.C. 7652 which provides for a tax equal to the tax imposed by 26 U.S.C. 5001 will be collected on each proof gallon, and fractional part thereof, contained in the shipment.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.262a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits within the United States.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010), Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652))

§ 250.262a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multipled by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6^{1}(\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]}=$$

$$\frac{\$28{,}113.75+[\$385.05+\$683.40]+\$207.50}{2{,}350.0+[634.2+387.6]}=$$

$$\frac{\$29{,}389.70}{3{,}371.8}=\$8.72, \text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½%)×3.371.8=16.6).

(Approved by the Office of Management and Budget under control number 1512–0352.)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Section D. part 251 is amended as follows:

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Paragraph 1. The authority citation for part 251 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

Para. 2. The table of contents is amended by adding § 251.40a, § 251.76 with the undesignated center heading preceding it, and § 251.77, to read as follows:

Sec.

* * * * *

* * * * *

Wine and Flavors Content of Distilled Spirits

* * * * *

§ 251.11 [Amended]

Para. 3. Section 251.11 is amended by adding, in alphabetical order, the definitions of the following terms:

§ 251.11 Meaning of terms.

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

* * * * *

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Para. 4. Section 251.40 is revised and § 251.40a is added to read as follows:

§ 251.40 Distilled spirits.

(a) A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of each proof gallon. All products of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 251.40a. The effective tax rate established will be applied to each entry.

(Approved by the Office of Management and Budget under control number 1512–0352.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 251.40a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6^{1}(\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]}=$$

$$\frac{\$28{,}113.75+[\$385.05+\$683.40]+\$207.50}{2{,}350.0+[634.2+387.6]}=$$

$$\frac{\$29{,}389.70}{3{,}371.8}=\$8.72\text{, the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½%)×3.371.8=16.6).

(Approved by the Office of Management and Budget under control number 1512-0352.)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Para. 5. Immediately after § 251.75, an undesignated center heading and §§ 251.76 and 251.77 are added to read as follows:

Wine and Flavors Content of Distilled Spirits

§ 251.76 Approval and certification of wine and flavors content.

(a) Any person who, after December 1, 1990, imports into the United States distilled spirits on which the tax is to be paid or determined at an effective tax rate based in whole, or in part, on the alcohol content derived from eligible wine or eligible flavors which have not been previously approved on ATF Form 5530.5 (1678) shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor contained in the product; and

(2) A statement of composition listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume; and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

(c) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States, the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 251.40a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(4) After December 1, 1990, the date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(d) The importer shall file the certificate of effective tax rate computation with the district director of customs at the port of entry, at the time of entry summary, or, for distilled spirits to be withdrawn from customs custody under the provisions of subpart L of this part, furnish a copy to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1512-0352)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 251.77 Standard effective tax rate.

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 251.76(c), an importer may have a standard effective tax rate established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples prescribed in § 251.76(b)(1) and an 8-ounce sample of the finished product;

(2) The statement of composition prescribed in § 251.76(b)(2);

(3) A statement of composition for the finished product listing the

(i) Name of the product

(ii) Quantity, alcohol content (percentage of alcohol by volume), and the kind (class and type) of each eligible wine or the name of each eligible flavor used in the manufacture of the product; and

(iii) Standard effective tax rate for the product computed in accordance with § 251.40a.

(c) Where a standard effective tax rate has been previously approved for a product, an importer, in lieu of having a standard effective tax rate established, may use that rate. An importer desiring to use a previously approved standard effective tax rate shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration:

I declare under the penalties of perjury that this approval has been examined by me and, to best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like products contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the ATF National Laboratory. The importer shall file or furnish a copy of the standard effective tax rate approval in the manner prescribed in § 251.76(d). The use of a standard effective tax rate shall to relieve an importer from the payment of any tax found to be due. The Director may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control Number 1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

Signed: February 14, 1990.

Daniel R. Black,

Acting Director.

Approved: March 13, 1990.

Peter K. Nunez,

Assistant Secretary, Enforcement.

[FR Doc. 90–9804 Filed 4–27–90; 8:45 am]

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