

regulations are published in today's Federal Register.

DATES: The public hearings will be held between 9 a.m. and 5 p.m. (local time) at the following dates and locations:

October 14, 1992—Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024

October 16, 1992—Hyatt Regency Dallas at Reunion, 300 Reunion Boulevard, Dallas, Texas, 75207

October 19, 1992—San Francisco Marriott Hotel, 55 4th Street, San Francisco, California, 94103

October 21, 1992—Hyatt Regency O'Hare, West Bryn Mawr Street, near the Kennedy Expressway and River Road, Rosemont, Illinois, 60018

FOR FURTHER INFORMATION CONTACT:

Mr. Henry W. Sandhusen, Traffic Control Division (HHS-32), Office of Highway Safety, (202) 366-2218; Mr. Raymond Cuprill or Mr. Eric Kuwana, Office of the Chief Counsel (HCC-20), (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: The proposed regulations would implement sections 4 (b) and (c) of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615) which relates to the highway transportation of hazardous materials. The regulations would include Federal standards which States and Indian tribes must follow if they establish, maintain or enforce routing designations

that: (1) Specify highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported by motor vehicles within their jurisdictions, and/or (2) impose limitations or requirements affecting highway routing of such hazardous materials. Also included are procedures relating to Federal preemption, waivers of preemption and resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes would be required to furnish updated routing information for publication annually by FHWA. Existing Federal motor carrier regulations relating to highway routing of hazardous materials would be incorporated into the new regulation, but revised to require compliance with routing designations of States and Indian tribes.

Hearing Procedures

The following procedures have been established to facilitate the hearings:

1. Each public hearing will begin with a discussion panel to summarize the proposed rule.

2. The hearing officer will then provide the audience the opportunity to submit formal oral or written comments for the remainder of the public hearing time. All speakers will be limited to a five minute formal statement in order to provide an opportunity for a wide variety of individuals and representatives to make statements at the hearings.

3. Any statements made by the hearing officer or any member of the discussion panel to clarify issues during the hearing should not be construed as the position of the FHWA with respect to the rulemaking proceeding.

4. The hearing will be recorded. A transcript of the hearings and any material accepted during the hearings will be included in FHWA Docket No. MC-92-6.

5. The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual or representative will not be subject to cross-examination by any other participant. The discussion panel and the hearing officer may ask questions to clarify any statement made during the discussion period. Persons wishing to appear are not required to pre-register. Those wishing to notify the FHWA in advance may contact Mr. Henry W. Sandhusen, Traffic Control Division (HHS-32), Office of Highway Safety, (202) 366-2218, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. A table will be set up at the rear of the meeting room for on-site registration. All persons making an appearance are required to register.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 21, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-20804 Filed 8-28-92; 8:15 am]

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Monday
August 31 1992

Part V

**Department of the
Treasury**

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 17, et al.

**Taxpaid Distilled Spirits Used in
Manufacturing Products Unfit for
Beverage Use and Public Information
Collection Requirements; Proposed Rule
and Notice**

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, 250

[Notice No. 748; Re Notice Nos. 634, 649]

RIN 1512-AA20

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendment and recodification of the regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products) are proposed to be recodified as a new part, designated 27 CFR part 17. In conjunction with the recodification, a number of changes to the drawback regulations are proposed. The regulations in 27 CFR part 170, subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) are proposed to be distributed between 27 CFR part 19 and the new part 17. Conforming amendments are proposed in 27 CFR parts 19, 70, 194, and 250. Significant changes from current regulations are discussed below under "SUPPLEMENTARY INFORMATION."

DATES: Comments must be submitted by September 30, 1992.

ADDRESSES: Submit all comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

Copies of the proposed regulations and the public comments will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon or Cliff Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On July 29, 1987, ATF published Notice No. 634 in the *Federal Register* (52 FR 28286). That notice proposed a

revision of regulations concerning nonbeverage drawback, including certain changes to the current regulations.

Public comment was requested concerning the proposed changes. A 90-day comment period was provided, which ended on October 27, 1987. During the comment period for Notice No. 634, ATF received four written public comments.

On December 8, 1987, ATF published Notice No. 649 (52 FR 46628). That notice requested comments relating to Treasury Decision (T.D.) ATF-263, published the same day (52 FR 46592). T.D. ATF-263 prescribed temporary regulations concerning drawback on nonbeverage products brought into the U.S. from Puerto Rico or the Virgin Islands. The comment period for Notice No. 649 ended on January 8, 1988. Since T.D. ATF-263 incorporated provisions from 27 CFR part 197 by reference, the comment period for Notice No. 634 (recodifying Part 197) was concurrently extended until January 8, 1988. No additional comments concerning Notice No. 634 were received pursuant to that extension.

At the present time, ATF has decided to solicit further public comments concerning the amendment and recodification of 27 CFR part 197. Because more than 4 years have elapsed since the previous comment periods, the proposed regulations are being republished in their entirety, so that anyone else who may wish to comment on them will have an opportunity to do so.

Public Comments

In response to Notice No. 634, comments were received from four correspondents. Their comments and ATF's responses are explained below.

1. One commenter disagreed with the requirement in proposed § 17.183, that an approved substance to prevent recovery of potable alcohol be added to certain byproducts before their removal from the nonbeverage manufacturer's premises. However, this requirement is necessary, because potable alcohol recovered from a nonbeverage manufacturer's byproduct would have been previously subject to drawback; thus less than 10% of the tax would remain paid. The possible recovery of such potable alcohol by unknown persons would present an unacceptable jeopardy to the revenue.

The commenter referred particularly to § 17.183(b), which provides that spent vanilla beans may be removed from the manufacturer's premises after they have been treated with sufficient kerosene, mineral spirits, rubber hydrocarbon

solvent, or gasoline to prevent the recovery of residual alcohol. The commenter sought a liberalization of § 17.183 so as not to require those poisonous substances, in order that "spent" vanilla beans might be treated with other solvents such as isopropanol and ethyl acetate to yield useful "by-products" for food applications.

It has been the experience of ATF that efficient producers of acceptable extracts from vanilla beans leave very little useful residual material, other than alcohol, in the spent beans. Subject to formula approval, all of the proposals of the commenter for improving the yield of "useful by-products" for food products applications can be used by a nonbeverage manufacturer under the current regulations and may be employed under the proposed new regulations. Proposed § 17.3, Alternate methods or procedures, may also be available in an appropriate case. Contrary to the unsupported inference of the correspondent, we know of no manufacturer who suffers economic hardship because he is unable to produce vanilla extract or any other nonbeverage product due to unreasonable compliance costs.

2. Another commenter expressed support for a number of the proposed changes, including the revised retention period for records, the use of one formula at multiple locations, the ability to make a claim for credit when the drawback claimant also operates a distilled spirits plant, simplified recordkeeping requirements, and the option to petition for a variance from prescribed procedures. However, this commenter also expressed reservations about some other proposals. He requested that ATF review the "historical compliance track record" before imposing new recordkeeping requirements concerning usage of finished products (§ 17.166(b)); he questioned the proposed new definition of "distilled spirits" in § 17.11, as being different from the definition of the same term in 27 CFR part 5; and he sought a "transition period" for the implementation of new language in § 17.161 (dealing with general requirements for records).

ATF has considered the compliance record of the nonbeverage manufacturing industry and has determined that the new records in § 17.166(b) concerning usage of nonbeverage products are needed to verify that such products were manufactured in the amount claimed. Although these records will be new to the regulations, ATF regards them as included in the more general

recordkeeping requirements of 26 U.S.C. 5132, as discussed in Industry Circular 79-5.

Under current regulations (§ 197.130), records of disposition are required, except for nonbeverage products disposed of other than by sale. This is a gap in the recordkeeping system that needs to be corrected. Since most nonbeverage products are disposed of by sale, the added burden is not expected to be very significant.

The most common disposition of nonbeverage products, other than by sale, is usage in other products. Theoretically, such usage could be verified by reference to the batch records for those other products. However, in some recent cases, when doubt arose as to whether the claimed amounts of products had been manufactured, inspectors found that verification by examination of other products' batch records was an unreasonably time-consuming task. A large plant may have thousands of formulas, and an inspector has no way of knowing which of them may call for use of the product being audited. Further, some manufacturers alleged that they used nonbeverage products for purposes such as cleaning equipment, without keeping records to verify this (because such records are not required by current regulations).

To facilitate verification of claims, it is necessary that required records reflect all possible uses. For this reason, the regulations proposed by this document include the new requirement to keep records of nonbeverage products disposed of other than by sale. The requirement is minimal: The manufacturer need only record the type of disposition, the date, and the quantity disposed of.

The revised definition of "distilled spirits" was also questioned by this commenter, due to its difference from the definition of that term in 27 CFR part 5. However, Part 5 is issued under the Federal Alcohol Administration Act, while the proposed regulations in part 17 will be issued under the Internal Revenue Code. Accordingly, it is appropriate that the definition of "distilled spirits" in § 17.11 be consistent with the definition of that term in the Internal Revenue Code (26 U.S.C. 5002(a)(8)). Other regulations under the Internal Revenue Code use similar or identical definitions of "distilled spirits." (See, for example, 27 CFR Part 19, Distilled Spirits Plants.)

Current regulations in § 197.5 define "distilled spirits" to include only such spirits as have been "fully taxpaid or tax determined at the distilled spirits rate." The revised definition in § 17.11 is

the same as the current one except for removal of that qualifying phrase. When taxpaid or tax determined distilled spirits are specifically intended in part 17, the terms "taxpaid spirits" or "taxpaid distilled spirits" are used. (See also the new definition of "taxpaid" in § 17.11.)

Finally, with respect to the new language in § 17.161 that was questioned by this commenter, ATF sees no need for a transition period before its implementation, because the only substantive change brought about by the new language is liberalizing. That substantive change makes it clear that ordinary business records are adequate for regulatory purposes if they contain the required information. Other new language in § 17.161 does not impose a substantive requirement, but simply spells out the purposes of records ("to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim").

3. A third commenter pointed out what appeared to him to be contradictions in the proposed regulations. However, the apparent contradictions were actually the result of misunderstanding. In one instance, the commenter confused the terms "eligible for drawback" and "subject to drawback." These terms are closely related but are by no means synonymous. The first refers to spirits that have not yet been used in nonbeverage products, while the second refers to spirits that have been so used. In order to prevent further confusion of this sort in the future, a definition of "subject to drawback" is added in § 17.11 of this proposed rule. (Notice No. 634 already contained a definition of "eligible for drawback.")

Another point of confusion concerned the difference between spirits contained in an intermediate product and spirits consumed in the manufacture of such a product. Spirits contained in an intermediate product are eligible for drawback, and become subject to drawback when the intermediate product is used in the manufacture of a nonbeverage product. However, spirits consumed in the manufacture of an intermediate product (which are not contained in that product when completed) never become subject to drawback. Drawback cannot be claimed on such spirits, for two reasons—one legal and the other practical. The legal reason is that such spirits were never used in the manufacture of a nonbeverage product, as required by 26 U.S.C. 5134. The practical reason is that the latitude given to manufacturers with respect to intermediate products would

make keeping records of such consumed spirits exceedingly difficult or impossible. (However, if a manufacturer chooses to give up some of that latitude, by treating the intermediate product as an unfinished nonbeverage product, then the consumed spirits may be included in a drawback claim; see the discussion later in this preamble concerning "Self manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products.")

4. A fourth commenter took issue with the standard used by ATF to determine whether to grant drawback of tax on spirits used in nonbeverage products. He questioned the standard that products produced with spirits must be "unfit for beverage use." The commenter asked that this standard be changed to "sale and use for [non]beverage purposes."

This commenter's requested change cannot be adopted in regulations, because the standard that must be met in order to receive drawback is expressly stated in the law. Drawback may be granted only for "distilled spirits on which the tax has been determined, [used] in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes" (emphasis added). See 26 U.S.C. 5131(a).

Differences From Notice No. 634

For the most part, the proposed regulations set forth in this document are identical with those that were published in Notice No. 634. However, there are some differences. Those differences are described and explained below.

1. Incorporation By Reference

Current regulations contain § 197.3, which incorporates several pharmaceutical publications by reference. (The publications are the National Formulary (N.F.), the United States Pharmacopoeia (U.S.P.), and the Homeopathic Pharmacopoeia of the United States (H.P.U.S.)) This incorporation was thought to be necessary because of the mention of those publications in §§ 197.5, 197.6 and 197.109. However, informal consultation with the Office of the Federal Register has led to the conclusion that the mention of those publications in this proposed rule (§ 17.132) is not of such a nature as to require a formal incorporation by reference. Although § 17.132 makes a "reference" to the N.F., U.S.P., and H.P.U.S., there is no "incorporation" of them into the regulations. There is merely an

authorization, for manufacturers who so choose, to utilize formulas from those publications as approved formulas without the necessity of submitting ATF Form 5530.5. Accordingly, § 17.3 as proposed in Notice No. 634 (which corresponded to current § 197.3) has been deleted.

2. Signature Authority

Proposed new § 17.6, generalized from the last sentences of current §§ 197.30 and 197.67(a), states the rule as to when evidence of signature authority is required.

3. Time for Payment of Special Tax

A sentence has been added to proposed § 17.24 in order to clarify when a payment of special tax is considered to be late. Under 26 U.S.C. 5131, special tax is a prerequisite for drawback eligibility. Therefore, no penalty will be imposed as long as special tax is paid before completion of final action on the claim.

4. Reincorporation

A new proposed § 17.77 has been added, stating that when an existing corporation or corporations are reorganized into a new corporation, a new special tax must be paid. This new section is similar to regulations for liquor dealers in § 194.163. Although § 17.77 states the general rule, there may be exceptions. For instance, ATF has ruled that a reorganization under 26 U.S.C. 368(a)(1)(F), consisting of a mere change in identity, a form, or place of organization of one corporation, however effected, does not require a new special tax. If there is any question as to whether a new special tax is required, the regional director (compliance) should be consulted.

5. Adoption of Predecessor's Formulas

The proposed method for adoption of a predecessor's formulas (for continued use at the same plant, when its ownership changes) has been slightly modified in § 17.125. As proposed in Notice No. 634, the adoption in such circumstances would have been accomplished by filing a notice of adoption listing only the serial numbers of the adopted formulas. (Current regulations in § 197.99 require the notice to list the serial numbers, names, and dates of approval.) Since the name of the formula is necessary for verification and to detect unauthorized alteration, this proposed rule would require the notice of adoption to list the adopted formulas by name and serial number. This would still be less burdensome than current regulations. Further, since copies of the articles of incorporation or

other documents are necessary to prove the change of ownership, a sentence has been added to § 17.125(a) to mention this general requirement.

6. Adoption of Manufacturer's Own Formulas From Another Plant

Adoption of a company's own formulas for use at another of its plants (including adoption by a parent company of formulas of its wholly owned subsidiary, and vice versa) was proposed in Notice No. 634 and is also proposed in this notice. However, Notice No. 634 proposed that the procedure for this type of adoption be the submission of a copy of the adopted formula to the regional director (compliance) of the region(s) in which the additional plant(s) where the formulas would be used are located. Such a procedure would present problems, because that ATF official would not have access to the original formula for comparison, and the procedure also did not provide for submission of an additional copy for the ATF Laboratory. Therefore, this proposed rule provides that the adoption procedure, when a formula is adopted at a plant other than the one where it was originally approved, shall be the submission of a letterhead notice to the ATF Laboratory, accompanied by two photocopies of the formula to be adopted and some evidence of the relationship between the plants. After verifying the formulas, the ATF Laboratory will forward the notice to the regional director (compliance). As a precaution, the adopting plant is required to reference the notice in its first claim relating to the adopted formula(s). (See § 17.125(b).)

7. Liquor-Filled Candies

A paragraph has been added in proposed § 17.133, stating ATF's standing policy that candies with alcoholic fillings may be regarded as nonbeverage products only if the fillings meet the requirements for alcoholic sauces, as stated in § 17.133(a). Since some States may prohibit or restrict the manufacture or sale of liquor-filled candies, a sentence has been added in the introductory text of § 17.133, cautioning applicants that formula approval does not authorize violation of State law.

8. Supporting Data

Notice No. 634 proposed a simplification of the supporting data required to accompany claims. Information not necessary to the processing of drawback claims was proposed to be eliminated. For the most part, ATF still intends to implement this proposal. However, informal

consultation with the Office of Management and Budget indicated that it would be better to prescribe an ATF form than to publish a recommended format for the required supporting data in regulations, as proposed in Notice No. 634. In accordance with the proposals in that notice, the new ATF form will simplify the distilled spirits account and eliminate detailed information on receipt of spirits, production and use of intermediate products, and use of finished products. The new form will be numbered "ATF F 5530.8" and titled "Supporting Data for Nonbeverage Drawback Claims."

As a result of comments from ATF personnel, the new ATF form will reflect the following changes from the supporting data format proposed in Notice No. 634:

(a) Information about the place of origin of Puerto Rican and Virgin Islands spirits and other imported rum will be required, because ATF needs this information in order to implement the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II).

(b) A separate reporting of spirits "on hand" and "in process" will be required (as under current regulations), because it would not be practicable to take inventory of spirits "in process."

(c) The alcohol content of finished products will be required (as under current regulations), in order to provide assurance against unauthorized formula changes, in view of the fact that usage of ineligible alcohol will not be shown (except for recovered alcohol). This change will also make the new form usable by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico and the Virgin Islands (under 27 CFR part 250).

(d) The kind of spirits used in each nonbeverage product will be required (as under current regulations), as a means of detecting the use of spirits that may be subject to a reduced effective tax rate, and verify formula compliance.

(e) Finally, since some manufacturers use spirits of more than one kind (e.g. alcohol and rum), they may prefer to submit separate accounts for each kind. The new ATF form will specifically permit that (but not require it).

Proposed regulations pertaining to the new form are in § 17.147. The form itself is printed for public comment at another place in this issue of the *Federal Register*, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

Instructions to the new form will reflect the different requirements for

domestic manufacturers and for claimants bringing nonbeverage products into the U.S. from Puerto Rico and the Virgin Islands under 27 CFR part 250. Another change relating to claimants under part 250 will require all of them to file claims with the Chief, Puerto Rico Operations, rather than with the regional director (compliance) of the region where the products are landed. This will centralize the operation and prevent inadvertent filing of duplicate claims. It is understood that all such claimants are, in fact, currently filing their claims with the Chief, Puerto Rico Operations. (See the proposed amendments to 27 CFR 250.173 and 250.309.)

9. Evidence of Effective Tax Rate

A proposed new provision in § 17.163 would require manufacturers purchasing distilled spirits from wholesale or retail liquor dealers to obtain evidence of the effective tax rate paid on spirits other than alcohol, grain spirits, neutral spirits, distilled gin, and straight whisky. (Notice No. 634 already proposed that evidence of effective tax rate be obtained by manufacturers purchasing distilled spirits from distilled spirits plants.) The added burden of the new requirement will be small, since the great preponderance of nonbeverage drawback is claimed on alcohol, grain spirits, or neutral spirits. The new requirement is necessary, because spirits to which the requirement applies may contain wine and/or flavoring material that brings the effective tax rate below the normal distilled spirits rate (currently \$13.50 per proof gallon). If so, the manufacturer and ATF need to know it, since the drawback rate is \$1 less than the effective tax rate. (See discussion below concerning Pub. L. 96-598). If the required evidence is not obtained, drawback will only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

10. Batch Records: Usage of Spirits

Notice No. 634 would have required that proof gallon of spirits used be recorded for each production batch of nonbeverage and intermediate product. This could be an unnecessary burden on a manufacturer who keeps records in pounds. Therefore, this proposed rule (§ 17.164) would require batch records to show only the quantity of spirits used, measured by either weight or volume. The proof or alcohol percentage by volume of the spirits must also be shown. A similar liberalization is proposed for records of recovered alcohol (see § 17.168).

11. Batch Records: Tests of Alcohol Content

Notice No. 634 proposed, in § 17.164(b), that the alcohol content be recorded for each batch of product produced. It was not clear whether this would have entailed an analytical test of alcohol content for each batch. Such a requirement would have been quite burdensome and generally unnecessary. Therefore, this proposed rule would only require the manufacturer to test the alcohol content of nonbeverage products "at representative intervals." This requirement is left deliberately vague, because the appropriate interval will vary to a great degree depending on the type of product and the frequency with which it is manufactured. The purpose of testing alcohol content is to verify the accuracy of the formula and monitor compliance with it. If a manufacturer feels unsure of how frequently alcohol content should be tested to accomplish this purpose for a particular product, advice may be requested from ATF. Whenever the manufacturer does make a test, the results must be recorded.

12. Batch Records: Ingredient Names

To enable an ATF officer to compare the ingredients used in a batch with the ingredients listed in the product's formula, this document proposes to require that batch records refer to ingredients by the same names as are used for them in the product's formula. Synonymous names may additionally be shown (§ 17.164(c)).

13. Discontinuance of Business

A proposed requirement has been added in § 17.187, that ATF be notified when a manufacturer permanently discontinues business. This will enable ATF to manage its files, and is reasonable in view of the conditional exemption from basic permit and special (occupational) tax requirements for the sale of alcohol remaining on hand.

14. Changes Made By Recent Treasury Decisions

Notice No. 634 reflected the changes made by T.D. ATF-251 (52 FR 19311), relating to the transfer of certain administrative functions from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. This proposed rule adds conforming changes to the following sections in 27 CFR part 70, which were added by that Treasury decision: §§ 70.321, 70.411, and 70.414. (The renumbering of these sections by T.D. ATF-301, 55 FR 47604, is also reflected.)

In addition, this document reflects the changes made by T.D. ATF-271, relating

to the increase in the special tax rate. Sections affected by these changes are: §§ 17.21, 17.22, 17.24, 17.31, 17.32, and 17.41-17.43. Conforming changes are made in certain sections of 27 CFR part 250 that were amended or added by T.D. ATF-263, relating to drawback for nonbeverage products from Puerto Rico or the Virgin Islands. Sections affected by these conforming changes are: §§ 250.51, 250.171, 250.172, 250.307, and 250.308.

T.D. ATF-297 implemented section 6 of Public Law 96-598, effective January 1, 1980, which added 26 U.S.C. 5010. This section of law allows distilled spirits tax credit for certain wines and flavors contained in a distilled spirits product. Manufacturers of nonbeverage products may be affected by this credit, because drawback is allowed at \$1 less than the rate at which tax was paid. The wine and flavors credit, by reducing the rate at which tax was paid, also reduces the rate at which drawback is allowed. The following sections in part 17 are affected by this change: §§ 17.11 (definition of "effective tax rate" and revised definition of "distilled spirits"), 17.141, 17.146(b), 17.147, 17.162-17.164, and 17.167.

In part 19, T.D. ATF-297 added § 19.780, which requires a record of shipment to accompany spirits shipped from a distilled spirits plant to a manufacturer of nonbeverage products. So that the manufacturer may use this record to meet the requirements of §§ 17.162 and 17.163, this document proposes to amend § 19.780 to require the record to specify the contents of each container in the shipment.

Other Changes from Previous Regulations

Many changes from current regulations, which were proposed in Notice No. 634, are also proposed in this final rule without substantial modification. Such proposed changes are described below:

1. Adoption of Rulings

The holdings of certain Revenue Rulings and ATF Rulings are reflected in the proposed regulations, as follows: Rev. Rul. 55-689, 1955-2 CB 729 (§ 17.187); Rev. Rul. 56-239, 1956-1 CB 715 (§ 17.135); Rev. Rul. 56-314, 1956-2 CB 1023 (§ 17.137); Rev. Rul. 56-335, 1956-2 CB 1024 (§ 17.181); Rev. Rul. 56-338, 1956-2 CB 1023 (§ 17.182); Rev. Rul. 56-367, 1956-2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56-394, 1956-2 CB 1021 (§ 17.152(c)); Rev. Rul. 56-395, 1956-2 CB 1025 (§ 17.186); Rev. Rul. 58-350, 1958-2 CB 974 (§ 17.136); Rev. Rul. 63-87, 1963-1 CB 384 (§ 17.11: definition of "food

products," and 17.133(d)); Rev. Rul. 69-138, 1969-1 CB 327 (§§ 17.126(b) and 17.152(a), (c), and (d)); ATF Rul. 73-1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74-2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76-17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76-19, 1976 ATF CB 86 (§§ 17.169 and 17.185); ATF Rul. 77-27, 1977 ATF CB 165 (§ 17.122); and ATF Rul. 82-7, 1982-2 QB 46 (§ 17.11: definition of "medicines").

Rev. Rul. 57-369, 1957-2 CB 948, will be adopted in the instructions to the revised ATF Form 5530.5 (formerly Form 1678; see discussion below). Rev. Rul. 58-317, 1958-1 CB 586, is not reflected in the regulations; it is obsolete since iso-alcoholic elixir has been removed from the National Formulary. Rev. Rul. 58-428, 1958-2 CB 975, is also not reflected in the regulations, because the repeal of 26 U.S.C. 5082 has removed its authority. The holding of ATF Rul. 81-8, 1981-4 QB 24, has been modified in § 17.183 (see discussion below). Revenue Procedure 64-32 (1964-2 CB 951) will be replaced by the new supporting data form (ATF Form 5530.8), per § 17.147.

2. Form Number Changes

The prescribed form entitled "Formula and Process for Nonbeverage Products" is being revised and renumbered from 1678 to 5530.5. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the "Bond for Drawback Under 26 U.S.C. 5131" is being changed from 1730 to 5530.3, but this will not require resubmission of any bonds previously approved.

3. Alternate Methods or Procedures

A new section (§ 17.3) has been added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of good cause.

4. Delegations of Authority

Authority to perform certain functions under part 17 may be delegated from time to time by the Director, through delegation orders, to subordinate officials. This possibility is reflected in the definition of "Director" in § 17.11 by addition of the words "or his or her delegate." For reasons of efficiency the ATF Alcohol and Tobacco Laboratory is specified as the recipient of certain documents, such as formulas, in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136. Accordingly, a new definition of "Alcohol and Tobacco Laboratory," giving its address, is provided in § 17.11. The existing delegation, to the regional director (compliance), of authority to approve or

disapprove claims is also codified in the proposed regulations (§ 17.142).

5. New Definitions

For clarity, some new definitions are added in § 17.11. Besides those mentioned elsewhere in this preamble, there are new definitions of "approved," "CFR," "eligible," "month," "person," "proof gallon," "quarter," "recovered spirits," and "this chapter." With respect to the definitions of "month" and "quarter," claimants desiring to use slightly different time periods would be allowed to apply under § 17.3. (Existing approvals would remain in effect.) Certain definitions in previous regulations have been deleted as unnecessary, and the definitions of "used" and "time distilled spirits are used" are in regulations §§ 18.151 and 17.152.

6. Retention of Special Tax Stamps

Current regulations in § 197.47a do not specify a time period for retention of special tax stamps. These proposed regulations (§ 17.55) make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which is 2 years under the current regulations in § 197.28, is proposed to be made the same as for other documents (§ 17.31).

7. Amount of Bond for Monthly Claims

Current § 197.107 was issued in 1955, when ATF practice was to conduct frequent inspections of drawback claimants. The bond requirement was worded in such a way that if a monthly claimant were inspected more frequently than quarterly, the bond needed only to be sufficient to cover the drawback claimed between inspections. At present, on-site inspections are conducted much less frequently. No claimant is regularly inspected as frequently as quarterly. Therefore, the concept that the amount charged against a bond might be reduced within a quarter, due to frequent inspections, has become obsolete. These proposed regulations reflect this in § 17.102. Bonds for monthly claims must be sufficient to cover the total amount of drawback that will be claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

8. Time for Filing Formulas

Language currently in § 197.95, respecting time for filing formulas, is proposed to be revised in § 17.121 to express more clearly the statutory requirement of 26 U.S.C. 5131-5134. Both formula and claim are required to be

filed within the statutory period of "6 months next succeeding the quarter in which the distilled spirits covered by the claim were used" (26 U.S.C. 5134(b)). However, if there is any doubt about the eligibility of a product for drawback, it is preferable that the formula be filed and approved before commencement of manufacture.

9. Formulas For Use at Multiple Plants

As proposed in Notice No. 634, the revised formula form (ATF F 5530.5) will permit a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula is to be used are listed on the form. See § 17.121(a). The proposed revisions to the form are pictured at another place in this issue of the *Federal Register*, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

10. Formulas for Intermediate Products

Current regulations do not explicitly require the submission of intermediate product formulas, though generally they have been submitted anyway. Since ATF needs to know all ingredients that will enter into the finished nonbeverage product, these proposed regulations (§ 17.126) require the submission of formulas on ATF Form 5530.5 (formerly 1678) for intermediate products, unless the formula for an intermediate product is written as part of the approved formula for the nonbeverage product(s) in which the intermediate product will be used.

11. Self-Manufactured Ingredients Optionally Treated Either as Intermediate Products or as Unfinished Nonbeverage Products

An intermediate product may freely be used in any nonbeverage product whose formula calls for its use, and may be accumulated and kept "on hand" indefinitely. Consequently, it is common for several batches of an intermediate product to be combined in one storage receptacle, and for less (or more) than a full batch of such a product to be used to produce a batch of a finished nonbeverage product. These common practices are for the convenience of manufacturers. However, as a result of these practices, if spirits are consumed or recovered in the manufacture of the intermediate product, it would be difficult or impossible to calculate the correct proportion of such spirits attributable to a given batch of finished nonbeverage product. For this reason, the current regulations (§§ 197.118 and 197.119) generally do not permit

drawback to be claimed on spirits consumed or recovered in the manufacture of intermediate products. (In the case of such recovered spirits, drawback may be claimed, but only if and when the spirits are subsequently reused in the manufacture of a nonbeverage product.) These restrictions are necessary for protection of the revenue, and in most cases they present no difficulty to manufacturers.

However, in some instances, the manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product, and the inability to claim drawback on such spirits has posed a hardship to the manufacturers. Therefore, such manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former "intermediate product" is henceforth regarded as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture are regarded as consumed (or recovered) in the manufacture of a nonbeverage product and are subject to drawback.

This procedure avoids the hardship to manufacturers previously described. It also protects the Federal revenue, because, under the procedure, each batch of the unfinished product is restricted to use in a specific batch of a predetermined nonbeverage product and must be so used within the time period specified in the approved nonbeverage formula.

In order to make the availability of this procedure known to manufacturers who necessarily consume (or who recover) spirits in the manufacture of intermediate products, the procedure is described in §§ 17.127 and 17.185 of these proposed regulations. The regulations offer manufacturers the option of designating their self-manufactured alcoholic ingredients as either "intermediate products" or "unfinished nonbeverage products." There are advantages and disadvantages that would go with either choice.

The advantage of designating an ingredient as an "unfinished nonbeverage product" is that spirits recovered or consumed in the manufacture of the ingredient are subject to drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation are:

(1) Each batch of the ingredient must be used within a limited time in a

specific batch of a predetermined nonbeverage product. (The production of the ingredient and of the finished nonbeverage product are recorded in a single, unified batch record.)

(2) The ingredient cannot be transferred as an intermediate product under proposed § 17.185(b). (This latter restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an "intermediate product" are:

(1) Several batches may be accumulated, stored indefinitely, and used indiscriminately in the manufacture of any nonbeverage product whose formula calls for their use.

(2) Ingredients designated as "intermediate products" may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185.

(3) For manufacturers who already have intermediate product formulas on file, another advantage of choosing the "intermediate product" designation is that no new formula or procedural changes would be required.

The disadvantage of that designation is that spirits consumed or recovered in production of the intermediate product may not be claimed for drawback.

12. Subpart U of 27 CFR Part 170

Subpart U of part 170 provides exemptions from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use. Subpart U predates nonbeverage drawback and was promulgated when the requirements relating to processing of distilled spirits were quite different from what they are today. Consequently, subpart U of part 170 has been thoroughly redrafted. Some material is proposed to be eliminated, either as unnecessary or as covered by other regulations. Material related exclusively to drawback manufacturers has been incorporated in the new part 17. The remaining material has been relocated into subpart D of part 19. Conforming amendments have been made in subpart C of part 194. Former § 170.613(a)(6) ("Salted wines") has already been incorporated into 27 CFR part 24 by T.D. ATF-299 (55 FR 24974). Sections in part 17 containing language from subpart U of part 170 are: §§ 17.132, 17.133, and 17.168.

13. Submission of Quantitative Formulas

The purpose of this proposed change is to strengthen requirements respecting submission of formulas for nonbeverage drawback products. Current regulations allow the use of formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. At present, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas are not adequate for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of distilled spirits tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, the proposed regulations are worded so that ATF may require submission of quantitative formulas on ATF Form 5530.5 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. It is expected that the list of preparations for which approval of quantitative formulas will be required under this proposal (if it is adopted) will be published as an ATF ruling in the ATF Bulletin. The section affected by this change is § 17.132. Current requirements are found or referred to in §§ 197.5 (definition of "time distilled spirits are used"), 197.95, 197.96, 197.109(d), and 197.115.

14. U.S.P., N.F., and H.P.U.S. Preparations; Drawback Approval

Current regulations do not state that preparations listed in the U.S.P., N.F., and H.P.U.S. are automatically approved for drawback, though some industry members have assumed so due to the exemption of such products from the formula filing requirement in § 197.96. To clarify this issue so that manufacturers may properly plan, these

proposed regulations state that formulas listed in the U.S.P., N.F. and H.P.U.S. are approved for drawback, except as otherwise provided by regulation or ATF ruling. However, alcohol, U.S.P. (including dehydrated alcohol and jenyarated alcohol injection); alcohol and dextrose injection, U.S.P.; tincture of ginger, H.P.U.S.; and all H.P.U.S. preparations made at dilutions higher than "4X" (one part in 10,000) are declared fit for beverage use. (See § 17.132.)

15. H.P.U.S. Preparations

Current regulations exempt preparations listed in the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) from the requirement for filing of formulas (§ 197.96), but this exemption does not entail automatic approval for drawback. The statutory standard of "unfit for beverage purposes" remains and must be enforced (26 U.S.C. 5131(a)). Manufacturers of H.P.U.S. products, in accordance with homeopathic practice, often dilute the active ingredients in large quantities of alcohol and water, so that the resulting product is fit for beverage purposes. Such products cannot be approved for drawback. The ATF Laboratory has determined that even for H.P.U.S. products containing certain poisonous materials, dilutions of greater than "4x" (i.e. one part in 10,000) would be fit for beverage use. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than "4x." These proposed regulations reflect this position in § 17.132(b). At the same time, the proposed regulations would also permit manufacturers of dilute H.P.U.S. products to contest the presumption of beverage fitness by submitting appropriate evidence that the product is unfit for beverage use.

16. Determination of Beverage Unfitness

Proposed new § 17.134 clarifies the procedure used by ATF to determine whether any product, for which a formula is submitted for approval, is fit or unfit for beverage use. It is hoped that manufacturers will utilize this procedure themselves to identify products that are clearly fit for beverage use. The last sentence of § 17.134 (adapted from current §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

17. Manufacturers Who Are Also Users of Denatured Alcohol

Pursuant to § 5214(a)(1) of the Internal Revenue Code of 1986, no tax is paid on denatured spirits. Therefore, it would be

conductive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol on which drawback may be claimed. Proposed new § 17.135(a) prohibits this practice.

18. Compliance With Food and Drug Administration Requirements

Proposed new § 17.136 specifies that products shall not be considered to be medicines, medicinal preparations, food products, flavors, or flavoring extracts if they would violate the bans or restrictions of the U.S. Food and Drug Administration applicable to such products. This reflects a longstanding ATF policy. See Rev. Rul. 58-350, 1958-2 C.B. 974, and the following Industry Circulars: 61-2, 62-33, 65-4, 70-12, 72-8, 72-28, 72-29, 73-6, and 76-17. ATF will not consider a product approved for drawback if FDA has banned the product or any of its ingredients. Authority for this regulation comes from 26 U.S.C. 5131, which limits drawback to products which are medicines, medicinal preparations, food products, flavors, or flavoring extracts, and from 26 U.S.C. 5132, which authorizes ATF to prescribe reasonable regulations for the enforcement of that limitation.

19. Claims for Credit by Manufacturers of Nonbeverage Products

There are some business entities that are both manufacturers of nonbeverage products and proprietors of distilled spirits plants. For such entities, it may be more convenient to claim nonbeverage drawback in the form of a credit which may be used to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, proposed § 17.142(b) would permit such a procedure.

20. Gains in Spirits Received or On Hand

If a manufacturer's gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by more than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received (current regulations § 197.130a(a); proposed regulations § 17.162(d)). This rule is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. However, the current regulations do not explicitly require that if the amount of spirits received exceeds the amount taxpaid, the difference must be deducted from the manufacturer's claim. Nevertheless, such deduction has been required by ATF inspectors, who have similarly required deduction for any gain disclosed by physical inventory of

distilled spirits. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (nontaxpaid) spirits or an excessive claim in a previous period. Therefore, the proposed regulations state that manufacturers shall deduct, from the drawback claimed for the applicable period, an amount reflecting any inventory gain of eligible spirits and any excess of spirits received over the amount that was taxpaid (See §§ 17.147(d), 17.162(d), and 17.167(a).)

21. Public Law 98-369

This document reflects certain changes made by Public Law 98-369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d) (relating to obliteration of marks) and (2) imposition of a \$1,000 penalty for nonfraudulent violations of drawback law and regulations, unless the manufacturer establishes reasonable cause for a violation. Sections affected are: §§ 17.148 and 17.184.

With respect to the \$1,000 penalty, the statute requires that the penalty be imposed "for each failure to comply" with law or regulations. For products listed on a claim, this means that a separate penalty could be imposed for each product with respect to which there was noncompliance. For example, if products were not manufactured according to formula, but were still unfit for beverage use, a \$1,000 penalty could be imposed for each nonconforming product. If the amount claimed on any such product is less than \$1,000, the penalty is limited to the amount claimed.

Recordkeeping violations can also result in imposition of a penalty for each separate product. However, if the violations are so serious that they prevent the manufacturer from establishing that a product was unfit for beverage use, or the quantity of the product that was made, then the penalty provision would not apply. Each claim must be handled on its own merits, and the burden of proving entitlement to drawback is always on the manufacturer. If this burden is not met with respect to any product, the claim for drawback relating to that product would be denied.

The preceding comments also apply to products manufactured without submission of a formula. If the manufacturer can sustain the burden of proof, the claim would be approved subject to the penalty. However, without a formula, it is unlikely that the burden could be sustained, other than by examination of batch records. ATF is not obliged to send an inspector to examine batch records when a

manufacturer refuses to comply with the requirement to submit a formula.

With respect to timely filing, a late-filed claim or formula counts as just one "failure to comply." So if the only noncompliance is lateness in filing a claim, the maximum penalty would be \$1,000. Late-filed formulas result in a separate penalty for each late formula. Special tax paid subsequent to final action on a claim also results in a \$1,000 penalty. (It should be noted that in no case will a claim be paid more than 6 years after the quarter in which the products were manufactured, due to the statute of limitations of 28 U.S.C. 2401.)

Finally, the penalty provision does not apply in the case of fraud. Fraud is considered to be a deliberate violation with intent to deceive. If there is fraud, the entire claim may be denied, and the manufacturer may be subject to other civil and criminal penalties as well.

22. Changes in Recordkeeping Requirements

Certain items that are proposed to be deleted from the supporting data have been incorporated into the records required by subpart H to be maintained at each nonbeverage premises. Certain currently required records which are duplicative of the information provided by the supporting data have been deleted from the proposed subpart H. The holding of Industry Circular 79-5 with respect to records of raw materials and finished products has been clarified and incorporated in the proposed regulations (see §§ 17.164 and 17.165). Recordkeeping requirements for recovered alcohol, currently in § 170.617(c), are incorporated in new § 17.168. New language is added in § 17.161 to emphasize the important point that a manufacturer's normal business records (including invoices and cost accounting records) are acceptable for ATF purposes if they contain the required information. ATF anticipates that, in most situations, no records besides these normal business records need be maintained for purposes of compliance with the proposed regulations.

23. Physical Inventories

Current regulations do not clearly specify the frequency of physical inventories, although arguably §§ 197.116-119 require such inventories every claim period for distilled spirits, recovered spirits, and intermediate products. These proposed regulations specify that the "on hand" figures in the supporting data must be verified by physical inventories at the end of each period for which a claim is filed. The proposed regulations would also

authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever such inventories are deemed necessary to ensure compliance with regulations. (See § 17.167.)

24. Records Retention

Proposed § 17.170 (corresponding to current § 197.133) would extend the records retention period from 2 years to 3 years, for consistency with other ATF regulations. This change will ensure the availability of records to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, the proposed regulations contain a provision that would permit the regional director (compliance) to require a manufacturer to retain his records for a longer period, not to exceed an additional 3 years.

25. Inspection of Records

In addition to the records specifically required by regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary) to inspect any records "bearing upon the matters required to be alleged" in drawback claims. This authority is reiterated in the proposed regulations in § 17.171.

In carrying out this authority, ATF will continue to protect proprietary information. For example, the production records in proposed § 17.164 do not require greater detail as to ingredients than is shown on ATF Form 5530.5. If some secret ingredients of a product are referred to in general terms, such as "essential oils," on Form 5530.5, then the required production record for that product would only need to show the quantity of "essential oils" used in the production of each batch. The production record would not have to specify the secret ingredients. If unusual circumstances should require an ATF officer to examine other records, such as master formulas that do specify the secret ingredients, § 17.171 does not provide authority for copies of such formulas to be made without the consent of the proprietor. (However, such copies could be required by the Director or a regional director (compliance) under § 17.123.)

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information obtained in the

course of his or her employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. "Returns" and "return information" in that section includes drawback claims and the records and reports which support them.

26. Disposition of Material From Which Alcohol Can Be Recovered

ATF Ruling 81-8 provided a liberalized procedure for the disposition of spent vanilla beans, under which they may be treated with any material that the manufacturer finds suitable to make recovery of potable alcohol impractical. The manufacturer is not required to obtain prior approval from ATF. In broadening this rule by these proposed regulations, to make it applicable to the disposition of any material from which alcohol can be recovered, ATF has concluded that prior approval should be obtained for the use of materials not previously approved.

Consequently, proposed § 17.183 lists materials that have already been authorized to be added to spent vanilla beans. No further authorization is needed for the use of these materials, when disposing of spent vanilla beans. However, approval of a written application is required (1) if other materials are proposed to be added to such beans, or (2) if other substances from which alcohol can be recovered are proposed to be disposed of. Manufacturers who may have received approval for the use of other methods of disposal not listed in § 17.183 may continue to operate under such approval.

DISTRIBUTION TABLE FOR PART 197

Former section	New section
Subpart A	
§ 197.1	§ 17.1
§ 197.2	§ 17.2
§ 197.3	Deleted.
Subpart B	
§ 197.5: (generally)	§ 17.11
§ 197.5: "Director of the Service Center"	Deleted.
"District Director"	Deleted.
"Time distilled spirits used"	§ 17.152(a)
Total annual use"	Deleted.
"Used"	§ 17.151
"Year"	Deleted.
Subpart C	
§ 197.25	§ 17.21 & § 17.22
§ 197.25a	§ 17.22
§ 197.26	§ 17.23
§ 197.27	§ 17.24
§ 197.28	§ 17.31

DISTRIBUTION TABLE FOR PART 197—
Continued

Former section	New section
§ 197.29.....	§ 17.32
§ 197.29(a).....	§ 17.41
§ 197.29(a)(b).....	§ 17.42
§ 197.29(a)(c).....	§ 17.43
§ 197.30 (except last sentence).....	§ 17.33
§ 197.30 (last sentence).....	Covered by § 17.6.
§ 197.31.....	§ 17.34

Subpart D

§ 197.40.....	§ 17.51
§ 197.40a.....	§ 17.52
§ 197.41.....	§ 17.54
§ 197.42.....	§ 17.53
§ 197.43.....	§ 17.61
§ 197.46.....	§ 17.62
§ 197.47.....	§ 17.63
§ 197.47a.....	§ 17.55
§ 197.48.....	§ 17.71
§ 197.49.....	§ 17.72
§ 197.50.....	§ 17.73
§ 197.51.....	§ 17.74
§ 197.52.....	§ 17.81
§ 197.53.....	§ 17.82
§ 197.54.....	§ 17.83
§ 197.57.....	§ 17.91
§ 197.58.....	§ 17.92
§ 197.59.....	§ 17.93

Subpart E

§ 197.65.....	§ 17.101 (up to last sentence).
§ 197.66.....	§ 17.103
§ 197.67.....	§§ 17.105, 17.6
§ 197.68.....	§ 17.104
§ 197.69.....	§ 17.106
§ 197.70.....	§ 17.144 (2nd sentence).
§ 197.71.....	§ 17.101 (last sentence).
§ 197.72.....	§ 17.107
§ 197.73.....	§ 17.108
§ 197.75.....	§ 17.111
§ 197.76.....	§ 17.112
§ 197.77 (except last sentence).....	§ 17.113
§ 197.77 (last sentence).....	Covered by § 17.108 (last sentence).
§ 197.79.....	Covered by § 17.111.
§ 197.80.....	§ 17.114

Subpart F

§ 197.95 (sentences 1-2, 6, 8-9).....	§ 17.121
§ 197.95 (sentences 3 & 4).....	§ 17.131
§ 197.95 (5th sentence).....	§ 17.137
§ 197.95 (7th sentence).....	§ 17.122
§ 197.95 (last sentence).....	Will be covered by revised ATF Form 5530.5.
§ 197.96.....	§ 17.132(a)
§ 197.97.....	§ 17.123
§ 197.98.....	§ 17.124
§ 197.99.....	§ 17.125(a)

Subpart G

§ 197.105.....	§ 17.141
§ 197.106 (up to proviso).....	§ 17.142(a)
§ 197.106 (proviso, except next-to-last sentence).....	§ 17.143
§ 197.106 (next-to-last sentence).....	§ 17.146(b)

DISTRIBUTION TABLE FOR PART 197—
Continued

Former section	New section
§ 197.107 (except first & last sentences).....	§ 17.102
§ 197.107 (first & last sentences).....	§ 17.144 (first & last sentences).
§ 197.108.....	§ 17.145
§ 197.109.....	§ 17.146(a)
§ 197.110.....	§ 17.147
§ 197.111.....	New supporting data form.
§ 197.111-113.....	§ 17.162(a)
§ 197.114.....	§ 17.162(b)
§ 197.115.....	§ 17.147 & new supporting data form.
§ 197.116 (except last sentence).....	New supporting data form.
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), & § 197.119 (2nd sentence).....	§ 17.176(a)
§ 197.117 (first sentence).....	New supporting data form.
§ 197.117 (3rd & 4th sentences).....	§ 17.153(b)
§ 197.117 (last sentence).....	§ 17.153(c)
§ 197.118 (first sentence).....	New supporting data form.
§ 197.118 (last sentence).....	§ 17.153(a)
§ 197.119 (first sentence).....	Deleted; covered by new supporting data form and § 17.164(b).
§ 197.119 (last sentence).....	§ 17.155

Subpart H

§ 197.130 (introduction).....	§ 17.161 (first sentence).
§ 197.130(a)-(d).....	Covered by § 17.162(a)-(c).
§ 197.130(e)-(g).....	§ 17.164(b)
§ 197.130(h)-(j).....	§ 17.166(a)
§ 197.130a(a).....	§ 17.162(d)
§ 197.130a(b).....	§ 17.164(d)
§ 197.130b.....	§ 17.163(a) & (c)
§ 197.131.....	§ 17.166(c)
§ 197.132 (except last clause).....	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause).....	Covered by § 17.171.
§ 197.133 (except last sentence).....	§ 17.170
§ 197.133 (last sentence).....	§ 17.171

DERIVATION TABLE FOR PART 17

New section	Source
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Subpart A

§ 17.1.....	§ 197.1.
§ 17.2.....	§ 197.2.
§ 17.3.....	New.
§ 17.4.....	New.
§ 17.5.....	New.
§ 17.6.....	New (cf. last sentences of §§ 197.30 and 197.67(a)).

Subpart B

§ 17.11: (generally).....	§ 197.5.
"Alcohol & Tobacco Laboratory".....	New.
"Approved".....	New.
"CFR".....	New.
"Effective tax rate".....	New.

DERIVATION TABLE FOR PART 17—
Continued

New section	Source
"Eligible".....	New.
"Food products".....	Rev. Rul. 63-87.
"Medicines".....	ATF Rul. 82-7.
"Month".....	New.
"Proof gallon".....	New.
"Quarter".....	New.
"Subject to drawback".....	New.
"Taxpaid".....	New.

Subpart C

§ 17.21.....	§ 197.25.
§ 17.22.....	§ 197.25a.
§ 17.23.....	§ 197.26.
§ 17.24.....	§ 197.27.
§ 17.31.....	§ 197.28.
§ 17.32.....	§ 197.29.
§ 17.33.....	§ 197.30.
§ 17.34.....	§ 197.31.
§ 17.41.....	§ 197.29a(a).
§ 17.42.....	§ 197.29a(b).
§ 17.43.....	§ 197.29a(c).

Subpart D

§ 17.51.....	§ 197.40.
§ 17.52.....	§ 197.40a.
§ 17.53.....	§ 197.42.
§ 17.54.....	§ 197.41.
§ 17.55.....	§ 197.47a.
§ 17.61.....	§ 197.43.
§ 17.62.....	§ 197.46.
§ 17.63.....	§ 197.47.
§ 17.71.....	§ 197.48.
§ 17.72.....	§ 197.49.
§ 17.73.....	§ 197.50.
§ 17.74.....	§ 197.51.
§ 17.75.....	New.
§ 17.76.....	ATF Rul. 74-2.
§ 17.77.....	New.
§ 17.81.....	§ 197.52.
§ 17.82.....	§ 197.53.
§ 17.83.....	§ 197.54.
§ 17.91.....	§ 197.57.
§ 17.92.....	§ 197.58.
§ 17.93.....	§ 197.59.

Subpart E

§ 17.101.....	§§ 197.65 & 197.71.
§ 17.102.....	§ 197.107 (except first & last sentences).
§ 17.103.....	§ 197.66.
§ 17.104.....	§ 197.68.
§ 17.105.....	§ 197.67.
§ 17.106.....	§ 197.69.
§ 17.107.....	§ 197.72.
§ 17.108.....	§ 197.73.
§ 17.111.....	§§ 197.75 & 197.79.
§ 17.112.....	§ 197.76.
§ 17.113.....	§ 197.77.
§ 17.114.....	§ 197.80.

Subpart F

§ 17.121.....	§ 197.95 (sentences 1-2, 6, 8-9).
§ 17.122.....	§ 197.95 (7th sentence) & ATF Rul. 77-27.
§ 17.123.....	§ 197.97.
§ 17.124.....	§ 197.98.
§ 17.125(a).....	§ 197.99.
§ 17.125(b).....	New.
§ 17.126(a).....	New.
§ 17.126(b).....	Rev. Rul. 69-138.
§ 17.127.....	New.
§ 17.131.....	§ 197.95 (3rd & 4th sentences).

DERIVATION TABLE FOR PART 17—
Continued

New section	Source
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a)(7)-(9), Rev Rul. 63-87 & ATF Rul. 73-1.
§ 17.134	New.
§ 17.135	Rev. Ruls. 56-239 & 56- 367.
§ 17.136	Rev. Rul. 58-350.
§ 17.137	§ 197.95 (5th sentence) & Rev. Rul. 56-314.

Subpart G

§ 17.141	§ 197.105.
§ 17.142(a)	§ 197.106 (up to proviso) & ATF Order 1100.95A.
§ 17.142(b)	New.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence).
§ 17.144	§§ 197.70 & 197.107 (first & last sentence).
§ 17.145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) & 197.109.
§ 17.147(a)	§ 197.110.
§ 17.147(b)	§ 197.115 (last sentence).
§ 17.147 (c) & (d)	New.
§ 17.148	New.
§ 17.151	§ 197.11 ("Used").
§ 17.152(a)	§ 197.11 ("Time distilled spirits are used").
§ 17.152(b)	ATF Rul. 76-17.
§ 17.152(c)	Rev. Ruls. 56-394 & 69- 138.
§ 17.152(d)	Rev. Rul. 69-138.
§ 17.153	§§ 197.117 (last three sentences) & 197.118 (last sentence).
§ 17.154	§ 197.11 ("Intermediate products").
§ 17.155	§ 197.119 (last sentence).

Subpart H

§ 17.161	§§ 197.130 (Introduction) & § 197.132 (except last clause).
§ 17.162(a)	§§ 197.112-113 & 197.130(a)-(d).
§ 17.162(b)	§§ 197.114 & 197.130(a)- (d).
§ 17.162(c)	New.
§ 17.162(d)	§ 197.130(a).
§ 17.163 (a) & (c)	§ 197.130b.
§ 17.163(b)	New.
§ 17.164	§§ 197.130(e)-(g) & 197.130(b).
§ 17.165	Industry Circular 79-5.
§ 17.166(a)	§ 197.130(h)-(j).
§ 17.166(b)	New.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116-119.
§ 17.167(b)	Industry Circular 79-5.
§ 17.168	§ 170.617(c).
§ 17.169	New.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197.133 (last sentence) & Industry Circular 79-5.

Subpart I

§ 17.181	Rev. Rul. 56-335.
§ 17.182	Rev. Rul. 56-336.
§ 17.183	ATF Rul. 81-8 (modified).

DERIVATION TABLE FOR PART 17—
Continued

New section	Source
§ 17.184	New.
§ 17.185 (a) & (c)	New.
§ 17.185(b)	ATF Rul. 76-19.
§ 17.186	Rev. Rul. 56-395.
§ 17.187	Rev. Rul. 55-689.

Opportunity for Public Comment

Interested persons who wish to participate in the rulemaking process are invited to address written comments or suggestions to the Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, within 30 days after the date of publication of this notice in the **Federal Register**. Comments are particularly sought concerning records or other proposed requirements that go beyond what would normally be kept in the course of good business practice (except if such additional requirements are necessary for revenue protection).

For example, some information may be required by these regulations, or by forms prescribed under them, to be stated in proof gallons or other units of volume. These requirements are based on the law (26 U.S.C. 5001), which imposes distilled spirits tax on the basis of volumetric units in the English system. Manufacturers who keep records in pounds or other units may be able to apply for use of an alternate procedure under proposed § 17.3. ATF would appreciate any comments from such manufacturers regarding ways that these regulations could be made less burdensome for them.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, within the 30-day period. The request should include reasons why the commenter feels that a

public hearing is necessary. However, the Bureau reserves the right to determine, in the light of all the circumstances, whether a public hearing should be held. Copies of the proposed changes and all public comments received are available for public inspection from 8:30 a.m. to 5 p.m. in Room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal 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, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control numbers 1512-0078, 1512-0079, 1512-0095, 1512-0141, 1512-0186, 1512-0378, 1512-0379, 1512-0472, 1512-0492, and 1512-0500. The likely respondents and recordkeepers are businesses or other for-profit institutions, including small businesses or organizations.

The collection of information under control number 1512-0078 is in § 17.106. This information is required by ATF to obtain the surety's agreement to any changes in the terms of bonds. The collections of information under control number 1512-0079 are in §§ 17.6 and 17.105. This information is required when agents obtain authority to sign official documents on behalf of the principal.

The collections of information under control number 1512-0095 are in §§ 17.121, 17.126, 17.127, 17.132, and 17.136. This information is required by ATF to describe the formulas for nonbeverage and intermediate products. The information is used to ensure that drawback products meet the statutory requirements for approval as being medicines, medicinal preparations, food products, flavors, or flavoring extracts that are unfit for beverage use.

The collections of information under control number 1512-0141 are in §§ 17.92, 17.93, 17.142, 17.145, and 17.146. The information on this claim form must be submitted to ATF by manufacturers claiming nonbeverage drawback or refund of special (occupational) tax. The information is used to determine whether the claim is valid.

The collection of information under control number 1512-0188 is in § 17.6. The information on this form provides ATF with notification of corporate officials authorized to sign documents on behalf of the corporation.

The collections of information under control number 1512-0378 are in §§ 17.3, 17.54, 17.111, 17.112, 17.122-17.125, 17.143, 17.168(a), 17.183, and 17.187. This control number covers miscellaneous information required by ATF on an irregular basis to ensure compliance with law and regulations or to grant permission for the use of optional procedures.

The collections of information under control number 1512-0379 are in §§ 17.147, 17.161-17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186. This information is required to support claims for drawback. The supporting data submitted to ATF is used to make a preliminary verification of claims before they are paid. The records kept by manufacturers at their plants are used by ATF inspectors conducting on-site inspections.

The collections of information under control number 1512-0472 are in §§ 17.31-17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74. The information on this special tax return is required when paying special (occupational) tax. The collections of information under control number 1512-0492 are in §§ 17.42-43, 17.52, and 17.55. This control number pertains to records associated with the preparation and filing of the special tax return. The collections of information under control number 1512-0500 are in §§ 17.31-34, 17.41, and 17.53. This requirement is the same special tax return covered by control number 1512-0472, except that the form is modified (simplified) for use by renewal taxpayers.

The estimated total number of respondents and recordkeepers affected by these collections of information is 611. The estimated average annual burden is approximately 36 hours per respondent or recordkeeper. (This figure represents the additional time that would be required, beyond what a manufacturer would customarily spend on recordkeeping in the ordinary course of his business.) Comments on these collections of information, including comments relating to the accuracy of the

burden estimate and suggestions for reducing this burden, should be submitted to the Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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 applicable to this notice of proposed rulemaking. An initial regulatory flexibility analysis has been prepared and reads as follows.

I. Rationale for Agency Action

The law (26 U.S.C. 5131-5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (A) Was actually used, (B) was used in the manufacture of the particular products for which drawback is authorized, and (C) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: To require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF), only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

II. Objective and Legal Basis for the Proposed Rule

A. Objective Basis

The objective basis of these regulations is that a dual control system is used to verify the propriety of claims:

Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report is checked every time; however, a sufficient number are checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. Legal Basis

The legal basis of these regulations is found in 26 U.S.C. 5131-5134 and 7805. These laws give the Secretary of the Treasury broad discretion to promulgate regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120-01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. Estimate of Number of Small Entities Affected and Types

It is estimated that this document will affect about 600 small entities which use taxpaid alcohol to manufacture nonbeverage products.

III. Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements

A. Reporting Requirements

The most significant reporting requirements of this document pertain to the supporting data that is required to accompany each claim. The supporting data must include information regarding: The amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the product in which used, the amount of alcohol recovered (if any), the amount of tax claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies

disclosed by physical inventory. Other reports which are required less frequently include: Statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (as required by law in 26 U.S.C. 5131-5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry is helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping is needed to maintain the required accounts for submission.

B. Recordkeeping Requirements

The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; otherwise, a claimant under investigation might falsely deny keeping the records, and if there were no requirement that the records be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: Copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and batch records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An

elementary knowledge of bookkeeping is needed to prepare and record the prescribed accounts.

C. Compliance Requirements

The compliance requirements of this regulation are: To retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restrictions for filing of claims (six months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered, except as provided by regulation. All classes of nonbeverage drawback manufacturers are affected by these requirements. No special skills are needed for compliance.

IV. Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service (IRS). The reason for this is that the IRS requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There would be no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration (FDA) may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records would also satisfy the ATF requirement, due to the fact that these regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

V. Alternatives

A. Multitiering

This concept is not used, because the large majority of manufacturers of nonbeverage products are small entities. Consequently, the regulatory requirements have been specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. Simplification of Requirements

The requirements as they are established are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5132.

C. Performance Standards

This concept was utilized as much as possible. For example, an ATF form for "supporting data" reports will be provided—but the format presented on that form will not be required. (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and tax payments, mandate prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. Exemption of Small Entities

The law does not authorize exemption of any entity from the requirements.

Drafting Information

The principal drafters of this document are Steven C. Simon and C. A. Mullen of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Parts 17 and 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs,

Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements, Research, Spices and flavorings, Surety bonds, Security measures, Stills, Transportation, U.S. possessions, Vinegar, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Liquors, Penalties, Perfume, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

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

Accordingly, it is proposed that title 27 of the Code of Federal Regulations be amended as follows:

Paragraph A. Title 27 CFR part 17 is added to read as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Subpart A—General Provisions

Sec.

- 17.1 Scope of regulations.
- 17.2 Forms prescribed.
- 17.3 Alternate methods or procedures.
- 17.4 OMB control numbers assigned under the Paperwork Reduction Act.
- 17.5 Products manufactured in Puerto Rico or the Virgin Islands.
- 17.6 Signature authority.

Subpart B—Definitions

- 17.11 Meaning of terms.

Subpart C—Special Tax

- 17.21 Payment of special tax.
- 17.22 Rates of special tax.
- 17.23 Special tax for each place of business.
- 17.24 Time for payment of special tax.

Special Tax Returns

- 17.31 Filing of return and payment of special tax.
- 17.32 Completion of ATF Form 5630.5.
- 17.33 Signature on returns, ATF Form 5630.5.
- 17.34 Verification of returns.

Employer Identification Number

- 17.41 Requirement for employer identification number.
- 17.42 Application for employer identification number.
- 17.43 Preparation and filing of Form SS-4.

Subpart D—Special Tax Stamps

- 17.51 Issuance of stamps.
- 17.52 Distribution of stamps for multiple locations.
- 17.53 Correction of errors on stamps.
- 17.54 Lost or destroyed stamps.
- 17.55 Retention of special tax stamps.

Change in Location

- 17.61 General.
- 17.62 Failure to register.
- 17.63 Certificates in lieu of lost stamps.

Change in Control

- 17.71 General.
- 17.72 Right of succession.
- 17.73 Failure to register.
- 17.74 Certificates in lieu of lost stamps.
- 17.75 Formation of partnership or corporation.
- 17.76 Addition or withdrawal of partners.
- 17.77 Reincorporation.

Change in Name or Style

- 17.81 General.
- 17.82 Change in capital stock.
- 17.83 Sale of stock.

Refund of Special Tax

- 17.91 Absence of liability, refund of special tax.
- 17.92 Filing of refund claim.
- 17.93 Time limit for filing refund claim.

Subpart E—Bonds and Consents of Sureties

- 17.101 General.
- 17.102 Amount of bond.
- 17.103 Bonds obtained from surety companies.
- 17.104 Deposit of collateral.
- 17.105 Filing of powers of attorney.
- 17.106 Consents of surety.
- 17.107 Strengthening bonds.
- 17.108 Superseding bonds.

Termination of Bonds

- 17.111 General.
- 17.112 Notice by surety of termination of bond.
- 17.113 Extent of release of surety from liability under bond.
- 17.114 Release of collateral.

Subpart F—Formulas and Samples

- 17.121 Product formulas.
- 17.122 Amended or revised formulas.
- 17.123 Statement of process.
- 17.124 Samples.
- 17.125 Adoption of formulas and processes.
- 17.126 Formulas for intermediate products.
- 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

Approval of Formulas

- 17.131 Formulas on ATF Form 5530.5.
- 17.132 U.S.P., N.F., and H.P.U.S. preparations.
- 17.133 Food product formulas.
- 17.134 Determination of unfitness for beverage purposes.
- 17.135 Use of specially denatured alcohol (S.D.A.).
- 17.136 Compliance with Food and Drug Administration requirements.
- 17.137 Formulas disapproved for drawback.

Subpart G—Claims for Drawback

- 17.141 Drawback.
- 17.142 Claims.
- 17.143 Notice for monthly claims.
- 17.144 Bond for monthly claims.
- 17.145 Date of filing claim.
- 17.146 Information to be shown by the claim.
- 17.147 Supporting data.
- 17.148 Allowance of claims.

Spirits Subject to Drawback

- 17.151 Use of distilled spirits.
- 17.152 Time of use of spirits.
- 17.153 Recovered spirits.
- 17.154 Spirits contained in intermediate products.
- 17.155 Spirits consumed in manufacturing intermediate products.

Subpart H—Records

- 17.161 General.
- 17.162 Receipt of distilled spirits.
- 17.163 Evidence of taxpayment of distilled spirits.
- 17.164 Production record.
- 17.165 Receipt of raw ingredients.
- 17.166 Disposition of nonbeverage products.
- 17.167 Inventories.
- 17.168 Recovered spirits.
- 17.169 Transfer of intermediate products.
- 17.170 Retention of records.

17.171 Inspection of records.

Subpart I—Miscellaneous Provisions

- 17.181 Exportation of medicinal preparations and flavoring extracts.
- 17.182 Drawback claims by druggists.
- 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.
- 17.184 Distilled spirits container marks.
- 17.185 Requirements for intermediate products and unfinished nonbeverage products.
- 17.186 Transfer of distilled spirits to other containers.
- 17.187 Discontinuance of business.

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 6676, 7011, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, and flavoring extracts that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: Obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 17.3 Alternate methods or procedures.

(a) *General.* The Director may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96-511.

(b) *OMB control number 1512-0078.* OMB control number is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512-0079.* OMB control number 1512-0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512-0095.* OMB control number 1512-0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512-0141.* OMB control number 1512-0141 is

assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512-0188.* OMB control number 1512-0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512-0378.* OMB control number 1512-0378 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.

(h) *OMB control number 1512-0379.* OMB control number 1512-0379 is assigned to the following sections in this part: §§ 17.147, 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512-0472.* OMB control number 1512-0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512-0492.* OMB control number 1512-0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512-0500.* OMB control number 1512-0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see Part 250 of this chapter.

§ 17.6 Signature authority.

No claim, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office with which the required document must be filed. Except as otherwise provided by this part, powers of attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, AFT Form 5100.1, Signing Authority for Corporate Officials, may

be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or approved for drawback. When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his or her delegate.

Distilled spirits, or spirits. That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

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. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or eligible for drawback. When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been "filed" when it is received by the office of the proper Government official; but if an item is mailed timely, then the United

States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products which (1) are made with taxpaid distilled spirits, (2) have been disapproved for drawback, and (3) are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. Ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become "subject to drawback" when they are used in the manufacture of a nonbeverage product. When spirits have become "subject to drawback," they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by

26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.21 Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rates of special tax.

(a) **Previous rates.** Prior to January 1, 1988, the rates of special tax were based on usage of distilled spirits during the tax year, as follows: \$25 per tax year for total annual use not exceeding 25 proof gallons, \$50 per tax year for total annual use not exceeding 50 proof gallons, and \$100 per tax year for total annual use exceeding 50 proof gallons.

(b) **Current rate.** Effective January 1, 1988, the rate of special tax is \$500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

(c) **Transition rule.** Manufacturers engaged in drawback operations on January 1, 1988, who paid special tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax, which shall not exceed one-half the excess (if any) of the rate of special tax in effect January 1, 1988, over the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty at any time prior to completion of final action on the claim.

Special Tax Returns**§ 17.31 Filing of return and payment of special tax.**

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 6091, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General.* All of the information called for on Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see §§ 17.41-43).
- (4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (5) The class of special tax to which the taxpayer is subject.

(6) *Ownership and control information:* The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name,

address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

§ 17.34 Verification of returns.

ATF Form 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 U.S.C. 6065)

Employer Identification Number**§ 17.41 Requirement for employer identification number.**

The employer identification number (defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS-4, Application for Employer Identification Number, filed by the taxpayer. Form SS-4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS-4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS-4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS-4.

The taxpayer shall prepare and file the application on IRS Form SS-4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps**§ 17.51 Issuance of stamps.**

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by § 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the

business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available

for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71-73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase

in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Refund of Special Tax

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the regional director (compliance) for the region in which the place of manufacture is located. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5530.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total

drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed \$200,000 nor be less than \$1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the Federal Register annually on the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR Part 225.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power

of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. The regional director (compliance) who is authorized to approve the bond may, when he or she considers it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, and consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the

bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

Bonds on ATF Form 5530.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(a) Pursuant to a notice by the surety as provided in § 17.112.

(b) Following approval of a superseding bond, as provided in § 17.108.

(c) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis. However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The

surety shall also file with the regional director (compliance) an acknowledgement or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in §§ 17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing.* Formulas shall be filed with the Alcohol and Tobacco Laboratory on ATF Form 5530.5, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering.* The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were

skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas.* One copy of each approved Form 5530.5 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Amended or revised formulas are generally considered to be new formulas and shall be numbered accordingly. However, minor changes may be made to a current formula on ATF Form 5530.5 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5530.5 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

The Director, or the regional director (compliance), may at any time require any person claiming drawback under the regulations in this part to file a statement of process, in addition to that required by ATF Form 5530.5, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

The Director, or the regional director (compliance), may at any time require any person claiming drawback or submitting a formula for approval under the regulations in this part to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the

mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the regional director (compliance). The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5530.8) filed with the first claim relating to the adopted formula(s).

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula

for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5530.5 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5530.5. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5530.5.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5530.5 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by regulation or ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative

ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5530.5.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4X") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5530.5 in accordance with this subpart. The formula shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5530.5 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives,

emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5530.5, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5530.5 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479-A or Form 5150.19, Formula for Article Made with Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, so long as—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; spirits recovered under this paragraph shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

ATF will not consider a product to be a medicine, medicinal preparation, food product, flavor, or flavoring extract if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of the product in accordance with that formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of Parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is \$1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those

spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place of business. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall

file with the regional director (compliance) an executed bond on ATF Form 5530.3, conforming to the provisions of Subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be delayed until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

- (a) Whether the special tax has been paid.
- (b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.
- (c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.
- (d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under Subpart F of this part. (If not, attach explanation.)
- (e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5530.8, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5530.8 may be used without prior authorization, if the modified format shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the regional director (compliance) may require additional supporting data when needed

to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains in any category of spirits shall not be offset by losses in other categories.

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131-5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131-5134 or of this part subjects the claimant to a civil penalty of \$1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of \$1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause will be accepted as a defense to a civil penalty where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case must be individually evaluated.

(Sec. 452, Pub. L. 98-369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(B) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under the principle in paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records**§ 17.161 General.**

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these

records, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

- (1) The date of receipt;
- (2) The name and address of the person from whom received;
- (3) The serial number or other identification mark (if any) of the tank car, tank truck, barrel, or drum;
- (4) The name of the producer or warehouseman who paid or determined the tax;
- (5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and
- (6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) *Distilled spirits received in bottles.* For distilled spirits received in bottles, the manufacturer shall record—

- (1) The date of receipt;
- (2) The name and address of the seller;
- (3) The serial number of each case, if the bottles are received in cases;
- (4) The name of the bottler;
- (5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and
- (6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

- (1) The date of receipt;
- (2) The name of the producer or warehouseman who paid or determined the tax;
- (3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and
- (4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained as evidence of taxpayment of the spirits. Each such record shall show the effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whiskey (as defined in the standards or identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume

of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* If the product was manufactured in compliance with a formula submitted to ATF or exempt from such submission under § 17.132, the production record shall refer to ingredients by the same names as are used for them in the product's formula. (Other names may be added in the production record, if necessary for the manufacturer's operations.) Usage of spirits may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See subpart E of part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

- (a) The date of receipt;
- (b) The quantity received; and
- (c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

- (1) The formula number of the product;
- (2) The date of shipment;
- (3) The quantity shipped; and
- (4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

- (1) The type of disposition (if used in another product, its formula number shall be shown);
- (2) The date of disposition; and
- (3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either (1) contains less than 3 percent of distilled spirits by volume, or (2) is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The "on hand" figures reported in Part II of ATF Form 5530.8 shall be verified by physical inventories taken as of the end of each claim period for which a claim is filed. Spirits taxpaid at different effective tax rates shall be inventoried separately. Details of the inventories (when taken, by whom taken, subtotals for each product inventoried) shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5530.8) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by losses in other categories. If no claim is filed, then no physical inventory is required for that claim period.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the regional director (compliance). Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

- (1) The date of recovery;
- (2) The commodity or process from which the spirits were recovered;
- (3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;
- (4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;
- (5) The commodity in which the recovered distilled spirits were reused; and
- (6) The date of reuse.

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5530.5 shall be

retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 823 (26 U.S.C. 5133); sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be

shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous quarter, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *General.* Manufacturers of nonbeverage products shall not sell or transfer recovered alcohol to any other premises. If recovered alcohol is stored pending reuse, storage facilities shall be adequate to protect the revenue. By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (b) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(b) *Spent vanilla beans.* Specific approval from the regional director (compliance) is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98-369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits

may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5530.5. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as part of the production records for the applicable nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which

distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 19—[AMENDED]

Par. B. The regulations in 27 CFR part 19 are amended as follows:

1. The authority citation for part 19 continues 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, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5553, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Part 19, subpart D, is amended to add §§ 19.57–19.58 grouped under an undesignated center heading, to read as follows:

* * *

Subpart D—Administrative and Miscellaneous Provisions

Sec.

Activities Not Subject To This Part

- 19.57 Recovery and reuse of denatured spirits in manufacturing processes.
19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.
* * *

Activities Not Subject To This Part

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a

process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended [26 U.S.C. 5273])

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, and flavoring extracts, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Products classed as liquors.* Products specified under Part 17 of this chapter as being fit for beverage use are held to be liquors. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as liquors. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit

to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under this section as an unfit product is being used for beverage purposes, or for mixing with beverage liquors other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. However, the provisions of this paragraph shall not prohibit the use of unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsuitable of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

3. Section 19.69 is removed.

4. Section 19.780(c)(4) is revised to read as follows:

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

* * *

(c) * * *

(4) Kind, proof, and quantity of each container of distilled spirits.

* * *

PART 70—[AMENDED]

Par. C. The regulations in 27 CFR part 70 are amended as follows:

1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656-6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

2. The concluding text of § 70.321(a) is revised to read as follows:

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register.* * * *

* * *

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 (Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

§ 70.411 [Amended]

3. Section 70.411(c)(2) is amended by removing paragraphs (c)(2)(v) and (c)(2)(vii), by renumbering existing paragraph (c)(2)(vi) as paragraph (c)(2)(v), and by adding a new paragraph (c)(2)(vi) to read as follows:

(c) * * *

(2) * * *

(vi) Floor stocks tax on alcoholic beverages and imported perfumes held for sale on January 1, 1991.

* * *

4. Section 70.411(c)(17) is amended by replacing the words "part 197" with the words "part 17".

§ 70.414 [Amended]

5. Section 70.414(j) is amended by replacing the words "part 197" with the words "part 17".

PART 170—[AMENDED]

Par. D. The regulations in 27 CFR part 170 are amended as follows:

1. The authority citation for part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5101, 5102, 5179, 5291, 5301, 5362, 5601, 5615, 5687, 7805; 31 U.S.C. 9304, 9306.

Subpart U—[Removed and Reserved]

2. Subpart U is removed and reserved.

PART 194—[AMENDED]

Par. E. The regulations in 27 CFR part 194 are amended as follows:

1. The authority citation for part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111-5117, 5121-5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 6676, 7011, 7805.

2. Section 194.33(b) is revised to read as follows:

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

* * *

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the

provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 194.191 [Amended]

3. Section 194.191(a) is amended by replacing the words "part 170" with the words "§ 19.58".

PART 197—[REMOVED]

Par. F. Title 27 CFR part 197 is removed.

PART 250—[AMENDED]

Par. G. The regulations in 27 CFR part 250 are amended as follows:

1. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5205, 5207, 5232, 5271, 5276, 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.

§ 250.51 [Amended]

2. Paragraph (c) of § 250.51 is amended by removing the word "(1678)".

§ 250.171 [Amended]

3. The second sentence of § 250.171 is amended by replacing the words "part 197" with the words "part 17".

4. Section 250.172 is revised to read as follows:

§ 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 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 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 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

5. In § 250.173, the first sentence of paragraph (a), the introductory text of paragraph (c), and the first sentence of

paragraph (d) are revised to read as follows:

§ 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 Chief, Puerto Rico Operations. * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information: * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

§ 250.307 [Amended]

6. The second sentence of § 250.307 is amended by replacing the words "part 197" wherever they occur with the words "part 17".

7. Section 250.308 is revised to read as follows:

§ 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 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 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 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

8. In § 250.309, the first sentence of paragraph (a), the introductory text of paragraph (c), paragraph (c)(1) in its entirety, and the first sentence of paragraph (d) are revised to read as follows:

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued: * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. * * *

Signed: June 5, 1992.
Stephen E. Higgins,
Director.

Approved: August 22, 1992.
Peter K. Nunez,
Assistant Secretary (Enforcement).
[FR Doc. 92-20622 Filed 8-28-92; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY**Public Information Collection Requirements Submitted to OMB for Review**

Date: August 24, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.

Form Number: AFT F 5530.8.

Type of Review: New collection.

Title: Supporting Data for Nonbeverage Drawback Claims.

Description: Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue.

Maintains accountability; allows office (initial) verification of claims.
Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 611.

Estimated Burden Hours Per

Respondent: 1 hour.

Frequency of Response: Monthly, Quarterly.

Estimated Total Reporting Burden: 3,666 hours.

OMB Number: 1512-0095.

Form Number: ATF F 5530.5.

Type of Review: Revision.

Title: Formula and Process for Nonbeverage Products.

Description: Businesses which use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF Form 5530.5 that the spirits were used in the manufacture of products unfit for beverage purposes. This determination is based on the formula for the product.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 625.

Estimated Burden Hours Per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512-0378.

Form Number: AFT REC 5530/1.

Type of Review: Revision.

Title: Application and Notices—Manufacturers of Nonbeverage Products.

Description: Reports (letterhead applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 640.

Estimated Burden Hours Per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 640 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

BILLING CODE 4810-31-M

Form Approved: OMB No. 1512-0095 ()

Department of the Treasury -- Bureau of Alcohol, Tobacco and Firearms
FORMULA AND PROCESS FOR NONBEVERAGE PRODUCT
 (See instructions on back -- prepare in triplicate, except as indicated.)

3. Name of Product.		4. Check if Sample Will Be Submitted. ☐	5. No. of Days to Complete Process.	1. Formula No.
6. Check Kind of Product: ☐ Medicine/Medicinal Prep. ☐ Food Product ☐ Flavor/Flavoring Extract		7. Formulas Superseded.	2. Kind (e.g. Alcohol, Rum) & Proof of Spirits on Which Drawback Will Be Claimed.	
9. Ratio of Eligible Spirits Used (in proof gals.) to Product Made (wine gals.).		8. Name of Manufacturer & Principal Address Where Product Will Be Produced (Space for More Addresses on Reverse).		
12. If Made With Recovered Spirits: Ratio of Eligible Plus Recovered Spirits Used (in proof gals.) to Product Made (wine gals.).		10. Alcohol Content by Volume of Finished Product. 8		
11. If Finished Product Is to Be Used in Alcoholic Beverages: A. Does Product Contain Natural Flavoring? (Yes or No) _____ B. Does Product Contain Greater Than 0.1% Artificial Flavoring (Excluding Vanillin, Ethyl Vanillin, Maltol, and Ethyl Maltol)? (Yes or No) _____ C. State Parts Per Million in Product of: Synthetic Vanillin _____ Ethyl Vanillin _____ Synthetic Maltol _____ Ethyl Maltol _____ D. Does Product Contain Any Color Additive? _____ If Yes, Which? _____ E. Are All Ingredients Approved by FDA for Use Without Limitation or Restriction? _____				
13. Formula and Process (Use Additional Space on Reverse if Necessary).				
DRAFT				
14. Person to Contact Regarding Submission (Include Area Code & Phone No.)		15. Signature & Title of Applicant or Authorized Agent.		16. Date.
APPLICANT: PLEASE MAKE NO ENTRY BELOW THIS LINE.				
17. Laboratory Sample Number.		18. Action.		
19. Alcohol by Volume. 8				
20. Analyst.				
21. Date.				

INSTRUCTIONS

A. Before filling out this form, read carefully Subpart F of Part 17, title 27, Code of Federal Regulations. Submit a separate formula for each nonbeverage product made with taxpaid distilled spirits on which drawback is claimed (except current U.S.P., N.F., and H.P.U.S. preparations for which quantitative formulas are not required).

B. This form must be filed within 6 months after the end of the quarter in which distilled spirits were used in the manufacture of nonbeverage products. Submit to: Alcohol & Tobacco Laboratory (Attn: Drawback), 1401 Research Blvd., Rockville, MD 20850. Submit in triplicate; however, if the product will be manufactured at more than one location, submit two additional copies for each additional location.

C. Item 1. Formula numbers begin with number "1" for the first submission and progress sequentially with future submissions. For numbering when formulas will be used at more than one plant, see 27 CFR 17.121(c).

D. Item 3. The name must reflect the type of product. For example, a "natural peach flavor" should contain all natural ingredients as well as real peach. If it does not contain peach, it could be called "natural peach type flavor."

E. Item 4. Submission of samples is voluntary, unless specifically required under 27 CFR 17.124. If it is known that a sample will be submitted, either with the formula or under separate cover, please check the box.

F. Item 5. State the number of days it takes to manufacture the product. If it takes only a few hours to mix it, but takes an additional day to filter it, that should be noted.

G. Item 6. Indicate the type of product. Cough syrups and cold relief products are considered medicines/medicinal preparations. Cakes and similar products are considered to be food products, while products such as lemon extracts are considered flavors. Submit commercial labels or facsimiles and any available supporting data for bitters (flavoring or medicinal) and for any other product that cannot be readily classified in the product types listed.

H. Item 7. State the number(s) of any formulas to be replaced by the current submission. If formula(s) being superseded have been approved for use at plant(s) other than the one given in item 8, specify such other plant(s).

I. Item 9. Divide the number of proof gallons of eligible alcohol used in manufacturing and standardizing the product by the yield of finished product (in wine gallons). Enter as a decimal. For example, if 32 proof gallons are used to make 100 gallons of product, "0.32 p.g./w.g." would be the ratio. Eligible alcohol includes alcohol contained in intermediate products (as defined in 27 CFR 17.11) but not alcohol contained in nonbeverage products, being used as ingredients, on which drawback may be claimed separately. If a range is stated, include the reason(s) for variation (item 22 may be used for this purpose).

J. Item 10. State the actual percentage of absolute alcohol by volume in the finished product. Include all alcohol, both eligible and ineligible. This is the percentage of alcohol that would be found by analysis. If the product is not a liquid, state the proof gals. of alcohol remaining

in a given quantity (by weight) of finished product.

K. Item 11. Answer only if product is for use in alcoholic beverages. Definitions of "natural" and "artificial" are found in FDA regulations, 21 CFR 101.22. "Color additive" is defined in FDA regulations, 21 CFR 70.3. If the answer to question E is "No," limited or restricted ingredients must be noted as such in item 13, including quantity used.

L. Item 12. Answer only if recovered alcohol will be used. Enter as a decimal. Include eligible spirits and all recovered alcohol (both eligible and ineligible). A range may be stated.

M. Item 13. List the name, quantity, and alcohol content, if any (by volume), of each ingredient used. Either metric or English measure may be used. Usage of ingredients containing alcohol and the yield of liquid products must be expressed in wine gals. Include proof gallons of eligible spirits and recovered spirits used. Give the product name and ATF formula no. (from ATF Form 5530.5 or 1678) of alcoholic ingredients if self-manufactured. If purchased, give the manufacturer's name, the name of the product, and the ATF formula number, if known. Example:

Natural and Artificial Vanilla Flavor:

Vanilla Extract 10 Fold (35% alcohol, purchased from X Company, Formula No. 102)	473 ml (.125 wine gal.)
Vanilla Flavor 2 Fold (30% alcohol, our drawback Formula No. 422)	1892 ml (.5 wine gal.)
Vanillin	30 g.
Alcohol - 190 proof (Eligible for drawback)	946 ml (.25 wine gal.) (.475 proof gal.)
Water Q.S. to	3785 ml (1 wine gal.)

If additional spirits may need to be added for standardization after all the ingredients called for by the formula have been mixed together, please so state. Identify any colors by their official FDA designations (e.g. caramel, FD&C Yellow No. 5). Describe the manufacturing process (i.e. simple mixture, maceration, percolation, etc.). Show the approximate loss of spirits, if any, during processing (i.e. filtration, evaporation, etc.), and indicate what quantity of alcohol, if any, is recovered. If the manufacturing process involves separate stages, fully describe them and indicate the alcohol content (as a percent by volume) at the end of each stage. For food products, such as preserved fruits, cakes, soups, etc., the formula need only show the number of proof gallons of distilled spirits used to make a given quantity of finished product. A sample will be required for such products.

N. Item 15. The applicant or his authorized agent must sign in the space provided and indicate the capacity in which he is signing (e.g. sole proprietor, attorney-in-fact, etc.).

O. Supplies of ATF Form 5530.5 may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Telephone number: (703) 455-7801.

PAPERWORK REDUCTION ACT NOTICE. This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to determine if the product is nonbeverage in character so that the manufacturer may file for drawback of taxes. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 0.5 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

SUPPORTING DATA FOR NONBEVERAGE DRAWBACK CLAIMS

(Page ____ of ____)

PART I -- Identification Data

1. Name of Claimant: _____	2. Period covered (Check one) ____ Quarter ____ Month	3. Control Number on Special Tax Stamp _____
Address: _____	Ending: _____	4. Tax Year Covered by Special Tax Stamp _____

PART II - Distilled Spirits Account (in proof gallons, except lines 1-2)

Was a physical inventory taken as required by 27 CFR 17.167(a)? (Check one.) ____ Yes. ____ No. (Explain "No" in Part IV.)	New Spirits (eligible, not previously used in intermediate or nonbeverage products) (a)	SPIRITS RECOVERED		Eligible Spirits Content of Intermediate Products (d)
		In the Manufacture of Intermediate Products (eligible spirits) (b)	In the Manufacture of Nonbeverage Products (ineligible spirits) (c)	
1. Kind (optional, except for Puerto Rican or U.S. Virgin Islands spirits, and imported rum)				
2. Effective Tax Rate Per Proof Gallon	\$ \$	\$ \$	XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX	\$ \$
3. On Hand, Start of Period				
4. In Process, Start of Period				
DURING PERIOD: 5. Received	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. Recovered	XXXXXXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXX
7. Produced	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	
8. Gain Recorded by Closing Physical Inventory				
9. Total to Account for (Add lines 3-8)				
DURING PERIOD: 10. Used in Nonbeverage Products			XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX	
11. Used in Intermediate Products			XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXX	
12. Otherwise Used (not subject to drawback)			XXXXXXXXXXXXXXXXXX	
13. Loss Recorded by Closing Physical Inventory				
14. On Hand, End of Period				
15. In Process, End of Period				
16. Total Accounted for (Add lines 10-15)				

ATF F 5530.8 ()

PART III - Production of Nonbeverage Products

(Page ____ of ____)

INFORMATION FROM ATF FORM 1678 OR 5530.5		Ineligible Recovered Spirits Used (proof gals.) (c)	ELIGIBLE SPIRITS USED			FINISHED PRODUCT PRODUCED	
Name of Product (a)	Formula No. (or "NF," "USP" or "HPUS") (b)		Kind (P.R. or V.I. spirits, imported rum, other kinds) (d)	Drawback Rate (= \$1.00 less than effec- tive tax rate) (e)	Amount Used (proof gals.) (f)	Amt. Produced (wine gals., except dry products) (g)	Alcohol Content by Volume (h)
1.				\$			%
2.				\$			%
3.				\$			%
4.				\$			%
5.				\$			%
6.				\$			%
7.				\$			%
8.				\$			%
9.				\$			%
10.				\$			%
11.				\$			%
12.				\$			%
13.				\$			%
14.				\$			%
15.				\$			%

PART IV - Additional and Explanatory Information

I certify, under the penalties of perjury, that the data submitted on this form are correct, to the best of my knowledge.

Signature
& Title:

Date:

INSTRUCTIONS

(a) General. (1) Each claim for drawback shall be accompanied by supporting data containing the information presented by this form. Regulations pertaining to this form are found in 27 CFR 17.147. All quantities of spirits shown shall be in proof gallons.

(2) Modifications of this form may be used without prior authorization, as long as all required information pertinent to the manufacturing operation is shown. If certain lines or columns do not apply to an operation, then such lines or columns may be omitted. In omitting lines or columns, the letter or numerical designations of the remaining lines and columns shall not be changed. A continuation sheet for persons claiming on more than 15 products in Part III is on the reverse of these instructions.

(3) This form may be used by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico or the U.S. Virgin Islands under the provisions of 27 CFR Part 250, as well as by domestic manufacturers claiming drawback under 27 CFR Part 17. Certain instructions that only pertain to one of these types of claimants are so indicated. Such instructions are not to be confused with instructions pertaining to use, by domestic manufacturers, of Puerto Rican or Virgin Islands spirits.

(4) Supplies of this form may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, VA 22153; tel. (703) 455-7801.

(b) Part II. (1) Persons filing claims under 27 CFR Part 250 for Puerto Rican or Virgin Islands products are not required to complete Part II.

(2) Separate accounts shall be kept under Part II for spirits taxpaid at different effective tax rates. Separate accounts shall also be kept for: (A) spirits from Puerto Rico containing at least 92% rum, (B) spirits from the U.S. Virgin Islands containing at least 92% rum, and (C) imported rum. These separate accounts shall be maintained in columns (a), (b) and (d). Only a single account is needed in column (c), since spirits reported there are ineligible for drawback. If desired, additional separate accounts may be kept for other "kinds" (e.g. alcohol of various proofs in column (a), different products in column (d), etc.).

(3) In line 4, spirits "in process" are spirits contained in unfinished intermediate products or unfinished nonbeverage products prior to the time of use of the spirits as determined under the principles of § 17.152. Spirits in process are distinguished by their source; thus, for example, spirits "in process" in an unfinished intermediate product would appear in column (a) if the spirits had not been previously used, but they would appear in column (d) if they had come from other intermediate products.

(4) Any gain reported in columns (a), (b), or (d) of line 8 shall be reflected by an equivalent deduction from the amount of drawback claimed. Such a gain shall not be offset by losses in other columns.

(5) Note that column (d) only calls for the eligible spirits content of intermediate products, not the full volume of such products.

(c) Part III. (1) For claimants under 27 CFR Part 250: Columns (c) and (d) are not required; column (e) is not required, but if completed should read "\$9.50"; column (f) should be used to state the proof gallons

contained in each product (which may be less than the amount used).

(2) In column (b), if a formula was adopted from another plant under § 17.125(b), the plant from which the formula was adopted shall be indicated in addition to the formula number. This may be done by a letter or other symbol if the meaning is explained in Part IV.

(3) In column (c), show only spirits recovered in the manufacture of nonbeverage products (i.e. spirits from the account in column (c) of Part II). Note that usage of other ineligible spirits (e.g. spirits derived from other nonbeverage products) is not reported in Part III. Domestic U.S. manufacturers must record such usage in batch records.

(4) If spirits of more than one kind, or taxpaid at more than one effective tax rate, were used during the claim period in any nonbeverage product, then the number of proof gallons for each kind and for each drawback rate shall be shown separately in columns (d) and (e).

(5) In column (d), imported rum shall be distinguished from other rum; spirits from Puerto Rico or the Virgin Islands shall be distinguished by their place of origin if (and only if) they contain at least 92% rum.

(6) Yield of finished product (column (g)) shall be shown in wine gallons. For dry products, yield shall be shown in the same units used to express yield in the approved formula, ATF Form 1678 or 5530.5.

(7) If distilled spirits were added, as described in § 17.152(c), to a batch of nonbeverage product that was recorded as completed during a previous claim period, such addition shall be recorded on a separate line in Part III. The amount shown in column (f) in such a case shall be only the additional volume of finished product created by addition of the spirits, and words such as "addition after assay" shall be added in column (a).

(d) Part IV. (1) Part IV shall contain an explanation of any discrepancies (gains or losses) in the distilled spirits account (Part II) recorded by the physical inventory required in § 17.167(a).

(2) For domestic U.S. claimants under 27 CFR Part 17 only: If imported rum, or spirits from Puerto Rico or the U.S. Virgin Islands containing at least 92% rum, were used subject to drawback in nonbeverage products, Part IV shall state the total number of proof gallons so used during the claim period for each of those three categories. Such amounts shall include eligible spirits or rum from intermediate products and eligible recovered spirits. Ineligible spirits shall not be included.

(3) For domestic U.S. manufacturers: If a deduction was taken from the amount of drawback claimed, due to a gain in a shipment of spirits received (as required by § 17.162(d)) or to a gain in spirits on hand (as required by § 17.147(b)), this shall be noted in Part IV.

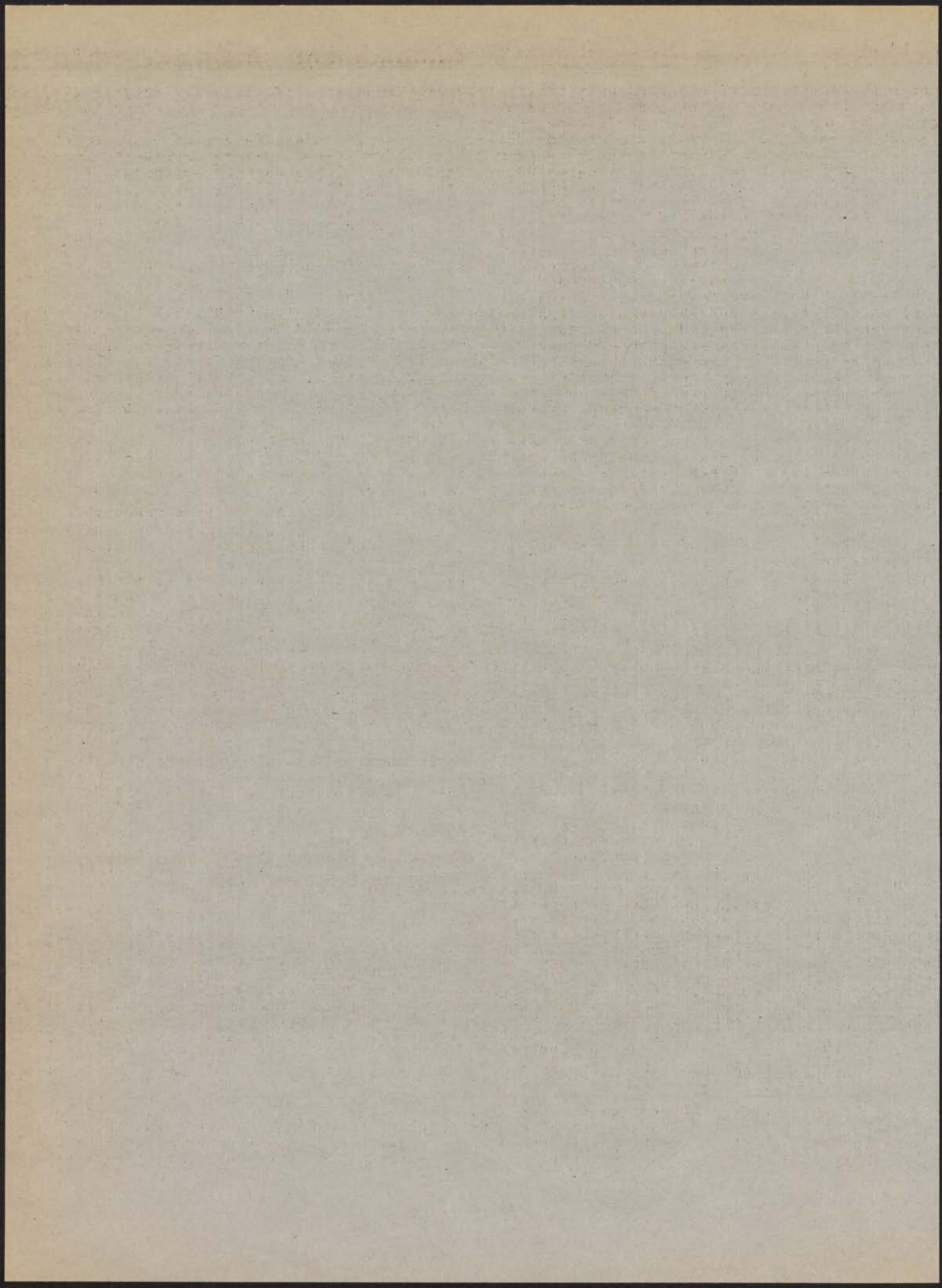
(4) For claimants under 27 CFR Part 250 only: Part IV shall state the name and address of the manufacturer of each product (if different from the claimant), the date of entry into the U.S., and the evidence of tax-payment as required by § 250.173(c)(2)(viii) or § 250.309(c)(2)(viii).

PAPERWORK REDUCTION ACT NOTICE.

This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to verify that products on which drawback is claimed were made according to approved nonbeverage formulas, and that regulatory requirements have been met. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 1 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

ATF F 5530.8 ()



1992-08-31

Monday
August 31, 1992

Part VI

**Department of
Transportation**

**Research and Special Programs
Administration**

49 CFR Part 192

**Regulatory Review; Gas Pipeline Safety
Standards; Proposed Rule**

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 192

[Docket PS-124; Notice 1]

RIN 2137-AC25

Regulatory Review; Gas Pipeline
Safety Standards

Dated: July 15, 1992.

AGENCY: Research and Special Programs
Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from the regulatory review RSPA carried out in response to the President's directive on reducing the burden of government regulation. The proposed changes would reduce costs in the gas pipeline industry without compromising safety.

DATES: RSPA invites interested persons to submit comments by September 30, 1992. Late filed comments will be considered as far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: A. Garnett, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, regarding copies of this notice or other material that is referenced in this notice.

SUPPLEMENTARY INFORMATION:**Background**

In a January 28, 1992, memorandum, President Bush wrote to Department and agency heads about the need to reduce the burden of government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. He recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

The memorandum called for a 90-day moratorium on issuing certain proposed or final regulations. The President asked agencies to use that period to review their existing regulations to identify those that are not cost-effective and to determine which could be more goal-oriented, could include market mechanisms, and could be clearer to avoid needless litigation. Each agency was asked to propose, as soon as possible, administrative changes to correct any problems the review found.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or Federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from 39 persons and organizations about the pipeline safety regulations in part 192. Most of the comments came from regulated pipeline companies, pipeline trade associations, and state pipeline safety agencies. RSPA has carefully considered all the comments in its review of the regulations. Some comments will be considered in future rulemakings. Additionally, RSPA is preparing a separate rulemaking "Update of Standards Incorporated by Reference" which updates the editions of the industry standards that are set out in part 192.

One suggested change to part 192 that requires further study involves small gas distribution systems, such as master meter systems and petroleum gas systems serving mobile home or apartment complexes. The National Association of Pipeline Safety Representatives has recommended that RSPA develop separate, more appropriate safety standards for these systems in a new part to title 49 of the Code of Federal Regulations. RSPA invites persons interested in this topic to comment on whether such standards should be published.

Of the various pipeline regulations, the review showed that changes to the gas regulations in part 192 would result in the largest single cost savings. Therefore, changes to part 192 have the highest priority.

By memorandum of April 29, 1992, the President continued the moratorium on certain proposed and final regulations for 4 more months. With regard to the review of existing regulations, he requested that agencies publish

proposed changes that require public comment as soon as possible.

Proposed Changes to Part 192 Safety Standards

The following discussion explains the changes RSPA proposes to various standards in part 192:

Section 192.1(b)(1) Scope of part. This section currently states that part 192 does not apply to the offshore gathering of gas upstream from the outlet flange of each facility on the outer continental shelf (OCS) where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. RSPA proposes to delete the phrase "on the outer continental shelf", and to apply to the same exception to similar pipelines in state offshore waters.

The current regulations are not clear where the applicability of part 192 begins on offshore gathering lines in state waters. Shell Offshore, Inc. proposed a similar change in comments to an NPRM proposing to better define gathering lines (56 FR 48505; September 25, 1991; Docket PS-122).

This revision will clarify that part 192 does not apply to field production lines, i.e., flow lines, in state offshore waters, similar to the present exception on the OCS. Part 192 regulations are currently being applied to some production lines in state offshore waters where such regulations were not intended to apply. The drug testing requirements in part 199 are also being applied to workers on some production platforms in state offshore waters where such regulations were not intended to apply. The proposed revision would make federal and state offshore rules consistent and should reduce operating expenses for the operator.

Section 192.3 Definitions (transmission line). In part 192, the term "transmission line" means "a pipeline, other than a gathering line, that (a) transports gas from a gathering line or storage facility to a distribution center or storage facility; (b) operates at a hoop stress of 20 percent or more of SMYS; or (c) transports gas within a storage field." This definition was based on the definition of "transmission line" in the 1968 edition of the *USAS B31.8 Code*. Although DOT intended the part 192 definition to have the same meaning as the B31.8 Code definition, the part 192 definition omits the term "large volume customer," which marked an end of a transmission line in the B31.8 Code definition. Despite the omission, RSPA has interpreted the part 129 definition of

transmission line to include pipelines that transport gas from gathering lines or transmission lines to large volume customers, such as a power plant or factory. RSPA proposes to clarify this application of part 192 by adding the term "large volume customer" to the transmission line definition in § 192.3.

The definition of Secretary would be amended to eliminate the connotation of gender.

Section 192.5 Class locations. Section 192.5 classifies the location of onshore pipelines on a scale that increases from 1 to 4 according to the number of buildings in an area. The area extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline. However, if the area contains a cluster of buildings that by itself would qualify the area as Class 2 or 3, § 192.5(f) provides that the classification ends 220 yards from the nearest building in the cluster.

Comments from Enron Corporation, Northern Illinois Gas, and the RSPA internal regulatory review, indicated that some operators may not understand this cluster exception and add all the buildings in a 1-mile area to those in any cluster, determining a higher than required classification for the area. Because part 192 regulates pipelines more stringently as class location increases, any over-classification results in needless expenditures. RSPA proposes to clarify § 192.5 to minimize the possibility of over-classification of pipeline locations.

Section 192.7 Incorporation by reference. Section 192.7 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of gas pipelines. Paragraph 192.7(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. RSPA proposes to revise § 192.7(a) to clarify that an entire standard is not incorporated when the document is incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

Section 192.9 Gathering lines. This section requires operators of gathering lines to comply with part 192 standards applicable to transmission lines. The requirements do not apply, however, to certain rural gathering lines that part 192 does not cover, as provided in § 192.1(b). Section 192.9 would be revised to highlight this limit on applicability. With a clear understanding of which

gathering lines must meet transmission line requirements, operators should improve the efficiency of their compliance efforts. The proposed change would not reduce safety because it does not alter the scope of the existing regulation.

Section 192.11 Petroleum Gas Systems. (Also includes changes to §§ 192.1 and 192.3): Section 192.11 requires petroleum gas systems covered by part 192 to comply with National Fire Protection Association (NFPA) Standards No. 58 and No. 59 and other part 192 standards. Petroleum gas systems are pipeline distribution systems comprised of a liquefied petroleum gas (LPG) storage tank (or cylinder), piping, and other facilities to distribute petroleum gas (instead of natural gas) to customers who consume the gas. The systems covered are those that serve 10 or more customers, or fewer than 10 if any portion of the system is in a public place. However, RSPA has interpreted § 192.11 not to apply to systems where a single tank serves a single customer on the customer's premises even if part of the system is in a public place.

Petroleum gas is defined in § 192.11(c) as "propane, butane, or mixtures of these gases, other than a gas air mixture that is used to supplement supplies in a natural gas distribution system." Because of the petroleum "gas air mixture" exclusion, which was intended to exclude from § 192.11 natural gas distribution systems that transport such mixtures, RSPA has not enforced NFPA Standards No. 58 and No. 59 against LPG peak shaving plants. Operators of natural gas systems use LPG peak shaving plants in cold weather to augment natural gas supplies with mixtures of petroleum gas and air. Nevertheless, we have said these plants are pipeline facilities subject to all other requirements of part 192; there is no doubt NFPA intended Standards No. 58 and 59 to cover such plants.

NFPA petitioned RSPA to clarify the coverage of NFPA Standards No. 58 and No. 59 under § 192.11 (P-44; November 30, 1989). NFPA also requested that the definition of petroleum gas be amended to be more consistent with the definitions used in the NFPA standards. The Florida LP Gas Pipeline Advisory Committee (see Hillsboro Gas Company comments in Docket RR-1), an industry group that advises the Florida Division of Liquefied Petroleum Gas, the state regulatory agency on LPG matters, supported the petition. Because both pipeline industry and state safety officials have had difficulty understanding the existing rule, RSPA agrees that revisions are needed.

RSPA proposes to revise § 192.11(a) to provide that LPG peak shaving plants must comply with NFPA Standards No. 58 and No. 59 and the applicable part 192 standards. NFPA Standards No. 58 and No. 59 would not apply to natural gas distribution systems downstream from the point where petroleum gas/air mixtures are combined with natural gas. Section 192.11(b) would be revised to clarify that all regulated petroleum gas systems, including systems that carry petroleum gas and air mixtures, must meet NFPA Standards No. 58 and No. 59 and other applicable part 192 standards. The current rule that part 192 prevails if a conflict exists with an NFPA requirement would be revised under a proposed revision of § 192.11(c) to provide that the NFPA requirement would prevail. RSPA's experience shows the NFPA rules are updated regularly to include state of the art technology and should be given priority. However, if the NFPA standards are silent or nonspecific (such as for corrosion protection of the system), the operator would be required to comply with part 192 requirements.

In addition, this notice proposes to redefine "petroleum gas" to be consistent with current commercial usage. The changes should reduce confusion in knowing which standard to follow, and should result in increased operator efficiency in designing, operating and maintaining petroleum gas systems. The revised definition would appear in § 192.3 instead of § 192.11. Also, those petroleum gas systems that are not subject to part 192 would be stated in § 192.1, "Scope of part," instead of § 192.11.

RSPA currently incorporates by reference the 1979 editions of NFPA Standards No. 58 and 59, as shown in appendix A of part 192. The 1979 edition of NFPA Standard No. 58 does not permit the use of mechanical fittings for making polyethylene joints. In a concurrent rulemaking (referenced above), RSPA is updating appendix A to incorporate the 1992 edition of NFPA Standard 58, which allows the use of mechanical fittings for certain pipe. RSPA will not enforce the prohibition against mechanical fittings on these pipe in the interim should this rulemaking be concluded before the appendix is updated.

Section 192.14 Conversion to service subject to this part. (Also includes changes to § 192.553 General requirements.): Section 192.14 establishes various criteria for qualifying a pipeline previously used in service not subject to part 192 for use under part 192. Section 192.14(a)(1)

requires that the design of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation. Section 192.14(a)(4) requires that the pipe must be hydrostatically tested in accordance with subpart J to substantiate the maximum allowable operating pressure (MAOP) permitted by subpart L.

Section 192.553 establishes general requirements for increasing the MAOP (uprating) a pipeline. Section 192.553(d) limits a new MAOP established under part 192 to the maximum that would be allowed under part 192 for a new segment of pipeline constructed of the same materials in the same location. Neither section provides for verifying design calculations or limiting MAOP when one or more of the steel pipe variables necessary for the determination of design strength or MAOP are unknown.

ANR Pipeline Company suggested using a hydrostatic test to establish the yield strength of pipelines for which yield strength is not known. The ASME B31.8 Code does not directly provide for hydrostatic testing to determine the yield strength of pipe (ASME B31.8 Code for Pressure Piping for Gas Transmission and Distribution Systems), paragraph 845.214, Qualification of a Steel Pipeline or Main to Establish the MAOP). However, the Code provides for establishing MAOP on the basis of hydrostatic testing of existing natural gas pipelines or of pipelines being converted to natural gas service where one or more of the factors in the design formula are unknown. The test pressure used in the referenced Code MAOP calculation is limited to the test pressure obtained at the high elevation point of the minimum strength test segment and to the pressure required to produce a stress equal to the yield strength as determined by hydrostatic testing. The procedure for determining yield strength by hydrostatic testing is included in B31.8 appendix N, Recommended Practice for Hydrostatic Testing Pipelines in Place.

RSPA proposes to change §§ 192.14(a)(1) and 192.553(d) to permit verifying the design pressure and establishing a new MAOP for steel pipelines when one or more of the variables necessary for determining those pressures are unknown by (1) testing the pipeline in accordance with ASME B31.8, appendix N, to produce a pressure equal to yield strength, and (2) applying to not more than 80 percent of the first pressure that produces yielding

the appropriate factors in § 192.619(a)(2)(ii) and proposed § 192.619(a)(2)(iii).

The proposed change will enable the conversion or uprating of certain pipelines, or reduce the cost of conversion or uprating of certain pipelines, and will enable the operation of the lines at their fullest potential.

The proposed change should not have an adverse effect on pipeline safety. To determine the MAOP at a stress equivalent to the yield strength of the pipe in the affected pipelines, testing the lines to hydrostatic pressures greater than otherwise required for the determination of the MAOP under § 192.619 will be necessary. The result will be a greater margin of safety between hydrostatic test pressure and MAOP. Any defects present in the pipeline will likely fail during hydrostatic testing and be removed from the line.

Section 192.107 Yield strength (S) for steel pipe. Paragraph 192.107(b) provides that, for pipe that is manufactured in accordance with a specification not listed in section I of part 192's appendix B or whose specification or tensile properties are unknown, the yield strength (S) to be used in the design formula in § 192.105 is the lower of the following criteria if the pipe is tensile tested in accordance with section II-D of appendix B:

- (i) 80 percent of the average yield strength determined by the tensile tests.
- (ii) The lowest yield strength determined by the tensile tests, but not more than 52,000 p.s.i.

ANR Pipeline Company (ANR) suggested that the yield strength limitation in § 192.107(b)(1)(ii) to a maximum of 52,000 p.s.i. is out-dated. The 52,000 p.s.i. yield strength limit was developed and published in the ASME B31.8 Code for Pressure Piping, Gas Transmission and Distribution Piping Systems when the highest strength pipe commercially available had a specified minimum yield strength (SMYS) of 52,000 p.s.i. ANR argued that since then, pipe materials with higher yield strengths of 60,000, 65,000 and 70,000 p.s.i. have become commercially available and due to the current limitation, good, conditioned pipe lacking tensile property documentation is being under-utilized. ANR suggested that the maximum of 52,000 p.s.i. be increased to a value reflecting current pipe usage.

Instead, RSPA is proposing to remove the 52,000 p.s.i. SMYS limitation. By permitting an increase in the maximum value of the minimum yield strength determined by tensile test, utilizing a

higher "S" value that is more representative of the true properties of the material as the basis for design will be possible. An increase will permit the use of some pipe lacking original tensile property documentation in higher design pressure applications where the only current alternative is the purchase of new pipe at market prices.

This change will have no impact on pipeline safety. If the maximum value of 52,000 p.s.i. were deleted as proposed, the two remaining § 192.107(b)(1) alternative criteria for the design value would provide adequate limitation of the yield strength used for design. The normal statistical distribution of yield strength for a uniform lot of steel pipe is such that a value equal to 80 percent of the average yield strength determined by tensile test usually will be less than the specified minimum yield strength. For example, unidentified pipe originally made as Grade X65 (65,000 p.s.i. SMYS) with an average mill test yield strength of 78,000 p.s.i., an exceptionally high average, could be used in the design formula as 62,400 p.s.i. A lower average yield strength determined by tensile test would result in a design yield strength less than 62,400 p.s.i. The alternative criterion, based on the lowest actual yield strength determined by test, is unlikely to be less than 80 percent of the average yield strength, except in the case of a lot of pipe with exceptionally high scatter in the test results, in which case the alternative protects against an average based on a skewed statistical distribution. Under either criteria, the yield strength value determined by test for use in the design formula will provide a reasonable conservative design pressure.

Section 192.121 Design of plastic pipe. This regulation establishes the design pressure for plastic pipe in accordance with the design formula, specified in § 192.121, and design limitations specified in § 192.123. RSPA recommends that an alternative formula, commonly used by industry, be added to provide greater flexibility and consistency with industry practices. The following formula would be added to § 192.121 to provide an alternative method of determining the design pressure for plastic pipe based on the Standard Dimension Ratio (SDR), often marked on the exterior surface of plastic pipe:

$$P = \frac{2S}{(SDR - 1)} \quad 0.32$$

The SDR, a common industry parameter, is the ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

This proposed alternative formula would not compromise pipeline safety because it produces identical results to the existing formula. This formula differs only in its use of the SDR which avoids having to determine the outside diameter and wall thickness of the pipe.

Section 192.123 Design limitations for plastic pipe. This regulation establishes design limitations for the use of plastic pipe in natural gas pipelines. Several operators recommended that § 192.123(b)(1) be amended to reflect advancements in plastic pipe technology proven to provide safe transportation of natural gas by pipeline at temperatures below the current limit of -20°F. RSPA proposes to lower the existing operating temperature limit from -20°F to -40°F, to give operators greater liberty in selecting plastic pipe for use in natural gas pipelines. In November 1979, RSPA granted a waiver to this regulation. Additionally, RSPA proposes to clarify § 192.123(b)(2). This section sets the maximum operating temperature for thermoplastic and reinforced plastic pipe to the temperature at which the long-term hydrostatic strength was determined. For pipelines manufactured before May 18, 1978, this section permits operation at temperatures up to 100°F even if the long-term hydrostatic strength was not determined at that temperature. RSPA proposes to amend § 192.123(b)(2) to clarify the upper operating temperature limit for thermoplastic pipe. The proposed change will not affect pipeline safety; rather, it clarifies the regulation in order to reduce misinterpretation.

Section 192.179 Transmission line valves. This rule establishes standards for spacing of transmission line sectionalizing block valves according to population density in the vicinity of the pipeline. ANR Pipeline Company stated that the current requirement for fixed valve spacing does not make sense and imposes needless costs. ANR proposed that the regulation be changed to permit the operator to determine the valve spacing. ANR said that initial damage is done within a very short time after a pipeline failure and that the spacing of valves will not limit the initial damage. ANR further stated that there is no danger to the public since natural gas is lighter than air, and the gas flowing from the pipeline will normally travel up (directly into the atmosphere) from the failure site.

RSPA recognizes that transmission line sectionalizing block valves are

expensive; however, RSPA believes they are necessary to ensure pipeline safety. Therefore, to reconcile these competing interests, RSPA proposes to revise § 192.179(a) to allow the Administrator to approve other spacing of the sectionalizing block valves in those segments of a transmission line where the operator demonstrates a resulting equivalent level of pipeline safety. This revision accelerates the approval process and may reduce pipeline installation costs.

Section 192.203 Instrument, control, and sampling pipe and components.

Section 192.203(b)(2) requires the installation of a shutoff valve in each takeoff line of a regulator station. The regulator controls line pressure downstream from the regulator. Mooney Controls, a manufacturer of pre-piped regulators and valves, petitioned that the requirement to install control valves on pre-piped regulators and valves be changed. Mooney's petition followed a Missouri Public Service Commission grant of waiver exempting the City of Perryville, Missouri from installing such valves on their system. Perryville's regulators are not pre-piped. RSPA proposes to revise the regulation to require shutoff valves only in those regulator stations, pre-piped or otherwise, where necessary to isolate the regulator from gas line pressure. The main purpose of the shutoff valve is for testing the regulator to insure its functions properly; therefore, RSPA expects no loss of safety if the station can be isolated between inlet and outlet valves.

Section 192.227 Qualification of welders and § 192.229 Limitations on welders. Welders qualified under § 192.227(a) are required under § 192.229 to requalify every 6 months, and welders qualified under § 192.227(b) are required to requalify every 15 months. Moreover, § 192.227(b) qualification is less comprehensive than qualification under § 192.227(a) because welders who qualify under § 192.227(b) may only weld on pipe that will be subjected to a hoop stress of less than 20 percent of SMYS. The Minnesota Office of Pipeline Safety (MnOPS) stated that many Minnesota operators would like to qualify welders under § 192.227(a) because those qualification requirements provide a better indication of the quality of the test weld. MnOPS also stated that operators would like the option to requalify under § 192.227(b) those who weld only on lines operating at less than 20 percent of SMYS. MnOPS believes that requalification requirements should be more appropriately based on the stress level

of the pipe being welded rather than on the initial qualification.

Thus, RSPA proposes to revise §§ 192.227 and 192.229 to allow those who weld on lines operating at less than 20 percent of SMYS to qualify initially under either § 192.227(a) or § 192.227(b) and requalify under § 192.227(b). Those who weld under § 192.227(a) requirements would still be required to requalify under § 192.227(a). Pipeline safety would not be compromised, the rules would be more flexible, and compliance costs would be reduced.

Section 192.241 Inspection and test of welds. Section 192.241 establishes the requirements for inspection and test of welds made on steel materials in pipelines except welds that occur during the manufacture of pipe and pipeline components. Under paragraph (c), the acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. In response to a petition by the American Petroleum Institute (API), the Seventeenth Edition of API Standard 1104, except the appendix, was incorporated by reference in parts 192, 193, and 195 by notice in the Federal Register (54 FR 27881; July 3, 1989). The appendix provides more liberal acceptance standards for certain weld flaws based on widely accepted fracture mechanics principles. In its notice, RSPA stated that the fracture mechanics model contained in the appendix could not be adopted as a Federal weld acceptance standard without the opportunity for public comment.

The American Gas Association, Midcon Corporation, and the internal regulatory review suggest that incorporation by reference should include the appendix, as requested in API's petition. API's petition was supported by research that confirmed the conservatism of the fundamental approach for flaw assessment in the appendix.

Accordingly, RSPA proposes to modify § 192.241(c) to permit the use of the appendix in API Standard 1104 as an alternative acceptance standard for flaws, except cracks, in girth welds. RSPA proposes to except cracks from evaluation under the Appendix because a crack is a flaw that results from a localized stress that is greater than the strength of the steel and that has the potential to increase in size when subjected to additional stress. Also, accurate measurement of the depth of a crack, a measurement needed for evaluation, is difficult.

By allowing the operator to elect to use the Appendix for certain pipelines,

the proposed change will reduce construction costs by eliminating the need to make weld repairs or replacements otherwise required under API section 6. The proposed change affects only acceptance criteria for girth welds. Historically, defects in girth welds are an infrequent contributor to pipeline accidents. Furthermore, considering the conservatism attributed to the approach to flaw assessment in the appendix, the proposed change should have no detrimental effect on pipeline safety or the environment.

Section 192.243 Nondestructive testing. Paragraph (d)(4) requires the 100 percent nondestructive testing at pipeline tie-ins of the field butt welds covered under paragraph (d). RSPA proposes to amend paragraph (d)(4) to add the phrase "including tie-ins of replacement sections." The proposed revision would improve clarity and understanding of the interpretation of "tie-ins." However, the proposed revision would not compromise safety because the change merely improves understanding of the intent of the regulation.

Section 192.281 Plastic pipe. This rule establishes minimum requirements for joining plastic pipe. Section 192.281(c) would be revised to include electrofusion as an accepted method of heat-fusion for joining polyethylene pipe. The proposed change would reduce regulatory burden by expanding the options available to operators for joining polyethylene pipe. Pipeline safety would not be compromised by adopting electrofusion because it is already widely used in the pipeline industry and has proven to work safely and reliably to join polyethylene pipe.

Section 192.283 Plastic pipe; qualifying joining procedures. This section establishes criteria for qualification of joining procedures for plastic pipe. RSPA proposes adopting the ASTM F1055-87 standards for joining polyethylene plastic pipe by electrofusion, and adding ASTM Standard F1055-87 to appendix A.II.B. Adoption of this standard would provide operators greater flexibility in selecting methods for joining polyethylene pipe. However, the proposal would not compromise pipeline safety because electrofusion is already in widespread use and its history of application has not revealed any risk to the safe transportation of natural gas.

Section 192.317(a) Protection from hazards. This section requires that gas transmission lines and mains be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads.

Additionally, offshore pipelines must be protected from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. RSPA recognizes that some gas pipelines are in locations where complete protection of the pipe from the cited hazards is not feasible and proposes to change the regulation to recognize that reality. Therefore, this notice proposes to amend the section to require the operator to take all practicable steps to protect gas pipelines from the cited hazards. The proposed revision would not compromise safety but would avoid needless discussion over the interpretation of the phrase "must be protected," when applied to certain locations.

Sections 192.319(c) and 192.327(e) Burial of offshore pipe. Under § 192.319(c), all offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. For offshore pipe installed under water less than 12 feet deep, as measured from mean low tide, § 192.327(e) requires a minimum cover of 36 inches in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom, unless an underground structure prevents installation with the minimum cover, and the pipe is additionally protected to withstand anticipated external loads.

At the same time, a recently adopted rule, § 192.612(b)(3), requires operators to provide similar cover, without exception for underground structures, over pipelines in the Gulf of Mexico and its inlets under water less than 15 feet deep, if the pipelines are exposed or a hazard to navigation (Amendment 192-67; 56 FR 63764; Dec. 5, 1991). Section 192.3 defines "hazard to navigation" as "a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water." The term "Gulf of Mexico and its inlets" is defined to include only areas under 15 feet of water.

We see that § 192.319(c) is inconsistent with § 192.612(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 15 feet deep but at least 12 feet deep, because § 192.319(c) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 192.3, and must have the minimum cover that § 192.612(b)(3) requires. In addition, § 192.327(e) is inconsistent with § 192.612(b)(3) for pipe

in the Gulf of Mexico and its inlets under water less than 12 feet deep. In certain instances, § 192.327(e) allows that pipe to be without cover or less than 12 inches below the seabed, and neither condition is allowed under § 192.612(b)(3). In light of these inconsistencies, RSPA proposes to amend §§ 192.319(c) and 192.327(e) to correct the problem.

Section 192.321 Installation of plastic pipe. Paragraph (a) requires that plastic pipe be installed below ground level. RSPA proposes to allow, for a temporary period not exceeding 30 days, use of plastic pipe above ground level. The proposed revision would limit the use of the pipe to locations where it is unlikely to be damaged (or is protected from damage) by external forces. Moreover, the properties of the pipe must be suitable for its exposure to ultra violet light and temperature extremes. The proposed revision would provide the operator an option that may result in lower material and installation costs. However, safety would not be compromised because the temporary use of the pipe is limited to installations where the properties of the pipe are suitable for or protected from exposure and external forces.

Section 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971. Paragraph (a)(2) requires a pipeline to have a cathodic protection system designed to protect the pipeline in its entirety. RSPA recognizes that the phrase "in its entirety" is redundant and misleading, and proposes its removal. It is redundant because the term "pipeline" as used in part 192, means all facilities through which gas flows, unless otherwise specified. It is misleading because some operators understand the phrase to include metallic casings. But under the "pipeline" definition in § 192.3, a casing is not part of the pipeline. The proposed change would avoid confusion. However, the proposed revision would not compromise safety because it would merely express the intent of the regulation with greater clarity and certainty.

Paragraph (f)(1) states that the external corrosion control requirements do not apply to electrically isolated metal alloy fittings in plastic pipelines if for the size fitting used, an operator can show through various means that adequate corrosion control is provided by alloyage. RSPA recognizes that the word "alloyage" is not common usage and proposes its replacement with "alloy composition" to improve understanding.

Section 192.475 Internal corrosion control: General. Existing § 192.475(c) limits hydrogen sulfide content of natural gas stored in pipe-type or bottle-type holders to 0.1 grain per 100 standard cubic feet of gas. Columbia Gas Transmission Corporation proposed that the rule be relaxed to allow a concentration of 0.25 grain per 100 standard cubic feet of gas.

Because the 0.25 limit is within customary industry contract limits and is still lower than maximum allowable safe limits, RSPA proposes to increase the allowable hydrogen sulfide limit in gas to be stored in pipe-type and bottle-type holders to 0.25 grain per 100 standard cubic feet of gas. This action would lower the cost of processing natural gas that contains small quantities of hydrogen sulfide.

Section 192.485 Remedial measures: Transmission lines. Paragraph (a) requires that each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for the maximum allowable operating pressure of the pipeline must be replaced or the operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so clearly grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

Paragraph (b) requires that each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe, based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (a) and (b) provide no guidance for an operator's use in determining the strength of the remaining wall thickness of corroded steel pipe. To provide this needed guidance, RSPA proposes the adoption of the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure would be in accordance with the limitations set out in the B31G Manual. The proposal would provide guideline information as to whether a corroded region (not penetrating the pipe wall) may be left in service; an option that might require a reduction in maximum allowable operating pressure, but may be more economical than the replacement or repair of the corroded pipe. The proposed revision would not

compromise safety because it merely accepts an established pipeline industry guideline, and does not impose any new requirements on the operators.

Section 192.491 Corrosion control records. Anode Locations. Paragraph (a) requires an operator to maintain records or maps showing the location of cathodically protected piping, cathodic protection facilities, other than unrecorded anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system. The Arizona Corporation Commission stated that records and maps showing the specific location of millions of individual galvanic anodes throughout the gas pipeline systems are not needed because many anodes have deteriorated and do not exist except for the connecting wire. Furthermore, Arizona said that the specific location of a galvanic anode is of little value to the operator or to pipeline safety.

RSPA proposes to eliminate this requirement. The proposed change would relieve operators of the burden of making precise field measurements and preparing and maintaining records and maps showing the specific location of millions of individual anodes. However, the proposed revision would not compromise safety because records or maps can show that a stated number of anodes were installed in a certain manner or spacing between particular reference points along the pipeline. Moreover, it is more common and practical to use electrical measurements to determine individual locations if locating individual anodes is necessary.

Record Retention

Under § 192.491(b), the retention period for records of corrosion control tests, surveys, and inspections is the service life of the pipeline. Several pipeline companies suggested we consider shortening this period as a cost saving measure that would not compromise safety.

Besides indicating compliance with the corrosion control standards, records of required tests, surveys, and inspections provide a history that is useful in analyzing corrosion problems that may arise. For some required corrosion control records, a 5-year retention period is adequate for these purposes. However, records used to determine the need for protection provide a valuable basis for comparison with later data and should be retained for the service life of the pipeline. Therefore, the minimum retention period for corrosion control records would be set at 5 years under a proposed change to § 192.491, except that certain data

involving corrosion control determinations would still have to be kept for as long as the pipeline remains in service.

Section 192.553 General Requirements. (see previous discussion under § 192.14).

Section 192.607 Determination of class location and maximum allowable operating pressure. This rule required operators to determine the maximum allowable operating pressure, class location, and concurrence of associated hoop stress with class location requirements for segments of pipe which produce hoop stress in excess of 40 percent SMYS. For pipelines with hoop stress not commensurate with applicable class location requirements, the rule required operators to confirm or revise the maximum allowable operating pressures. These determinations had to be completed before April 15, 1971. Subsequent work was required to be completed before July 1973 or December 1974.

The South Carolina Public Service Commission recommended that this regulation be deleted because the time periods for completing the studies and compliance work has passed. Deleting this rule would eliminate irrelevant citations and simplify the remaining applicable regulations. Pipeline safety would not be compromised because the rule no longer has application.

Section 192.611 Change in class location. This section requires confirmation or revision of a pipeline's maximum allowable operating pressure (MAOP) within 18 months after a change in class location. As § 192.611(a)(3)(ii) provides, the MAOP that results from confirmation or revision under § 192.611 may not exceed the pipeline's previous MAOP. Any increase in a pipeline's MAOP must be accomplished under the uprating requirements of part 192's subpart K, not § 192.611. However, Enron Corporation pointed out that designating this restriction as § 192.611(a)(3)(ii) suggests that it applies only to confirmations or revisions under paragraph (a)(3), which is not the intent. Therefore, § 192.611(a)(3)(ii) would be redesignated as § 192.611(b), and the existing paragraphs (b) and (c) redesignated as (c) and (d), respectively. Because the proposed change is for clarification only, safety would not be compromised.

Section 192.614 Damage prevention program. Paragraph (b)(2) requires notification of the public in the vicinity of the pipeline and actual notification of persons who normally engage in excavation activities in the area in which the pipeline is located of the

damage prevention program's existence, purpose, and how to learn the location of underground gas pipelines before excavation activities are started. While the paragraph states that "actual" notification is to be given these excavators, no corresponding adjective describes the notification to be given the public in the vicinity of the pipeline. RSPA proposes the insertion of the word "general" to clarify that notification need only be provided by articles or announcements in newspapers, radio or television or other medium of mass communication which are appropriate for the public in the vicinity of the pipeline. The proposed revision would avoid confusion. However, safety would not be compromised because the revision merely expresses the intent of the regulation with greater clarity and certainty.

Section 192.619 Maximum allowable operating pressure: Steel or plastic pipelines. This section establishes various criteria for determining the maximum allowable operating pressure (MAOP) of steel or plastic pipelines, the lowest of which limits the MAOP.

Paragraph (a)(4) limits MAOP for furnace butt welded steel pipe to a maximum of 60 percent of the mill test pressure, the same percent applied as the longitudinal joint factor (E) in the design formula under § 192.105 and 192.113. Paragraph (a)(5) limits MAOP for steel pipe other than furnace butt welded pipe to a maximum of 85 percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by the post installation test.

Enron Corporation proposed that § 192.619(a)(4) and (5) be deleted because mill tests are a quality control test during manufacture. ENRON argued that the only test affects the determination of MAOP should be the in-place hydrostatic strength test.

RSPA proposes to delete § 192.619(a)(4) and (5), but to add a paragraph (a)(2)(iii) applying the longitudinal joint factors for furnace butt welded and lap welded pipe in addition to the appropriate class location factor. The (a)(4) criterion which limits the MAOP of furnace butt welded steel pipe to 60 percent of the mill test pressure will be the applicable criterion in many installations because mill test pressures for this pipe are very low compared to specified minimum yield strength (SMYS). If § 192.619(a)(4) were deleted, no factor would remain to compensate for the low joint efficiency factor assigned to furnace butt welded pipe under § 192.113. For other than furnace butt welded steel pipe, the criterion of limiting MAOP to 85 percent of the mill

test pressure is likely to be the applicable criterion for relatively small diameter pipe, because mill test pressure is based on 75 percent of SMYS, unless the operator has elected to test the pipe after construction to a pressure much lower than permitted by the design formula under § 192.105. The current regulations do not consider that § 192.619(a)(5) includes furnace lap welded pipe, which is no longer manufactured but remains in service. When such pipe was available for new construction, the joint efficiency factor for design was 0.8 or 80 percent of SMYS.

The proposed change will permit the operation of many pipelines with furnace butt welded pipe and some with non-furnace butt welded smaller diameter pipe at pressures higher than presently permitted on the basis of mill test pressure. This should result in reduced operating costs for those pipelines. The remaining limitations on MAOP and the application of the longitudinal joint factor in § 192.619(a)(2)(iii) adequately provide for the safe operation of the pipelines affected.

Section 192.625 Odorization of gas. The Oregon Public Utility Commission (Oregon) commented that master meter operators should be exempted from § 192.625(f) which requires sampling of gas to assure the gas contains the proper concentration of odorant. Oregon stated that master meter operators receive their gas from operators who verify by odorometer that the gas is meeting the one-fifth LEL requirement and that it is unnecessarily burdensome for these operators to buy an odorometer or to hire consultants to do this testing. Oregon suggested that instead of an expensive odorometer test, the master meter operator could be required to conduct a "sniff" test. Oregon estimated a savings of 98 percent in consulting fees.

RSPA currently allows master meter operators to (1) have the company that sells them the gas verify by records or tests that the gas meets the required criteria or (2) have a qualified person, the gas utility company, or transmission company, run an odorometer test of the gas in the system. This procedure is spelled out in the Guidance Manual for Operators of Small Gas Systems, U.S. Department of Transportation, 1991. The Manual further states that periodic "sniff" test can be a guide in determining odorization levels even though they do not replace the need to maintain odorant usage records or perform odorometer tests.

Accordingly, the rule proposes that master meter operators may comply with §§ 192.625(a) and (f) by (1) receiving written verification from their gas supplier that gas odorization levels are sufficient, and (2) conducting periodic "sniff" tests to confirm supplier's findings. These "sniff" tests should be run at the outer ends of the system. The operator must document the specific procedures in its Operating and Maintenance (O&M) plan and keep records of the tests, including dates, names and locations. Since some master meter operators are not aware of the flexibility provided in the manual, the proposal should reduce the cost of compliance for those operators.

Section 192.705 Transmission lines: Patrolling. Paragraph (a) requires an operator to have a patrol program to observe cited surface conditions on and adjacent to its gas transmission line right-of-way for indications of activities and other factors affecting the safety and operation of the pipeline. RSPA proposes that the section be changed to indicate that aerial patrols are an optional method of compliance. The proposed change would provide a more effective option for some operators, who may not be aware that aerial patrols of gas transmission lines are acceptable. The proposed revision would not compromise safety because some surface condition activities adjacent to the right-of-way, that affect safety and operation of pipelines, are more visible from an aerial patrol than from walking or driving the right-of-way.

Section 192.709 Transmission lines: Record keeping. Section 192.709 requires operators to keep various records about transmission lines for as long as the line remains in service. ANR Pipeline, Enron Corporation, and the Interstate Natural Gas Association of America suggested this lengthy record retention period could be significantly shortened with no adverse effect on safety. RSPA has considered changes that would not affect the usefulness of these records in determining an operator's level of compliance effort or in constructing the history of an accident or safety problem. Therefore, RSPA is proposing to adopt a 5-year retention period for records of patrols, surveys, inspections and tests. A 5-year retention requirement would assure that these records are on hand during the normal cycle of routine inspection visits by RSPA field inspection personnel. Also, the current service-life retention period appears unnecessary for records of repairs on facilities other than pipe. A retention period of 1 year would be established for such records. Section 192.709 also

would be changed to clarify the information to be recorded.

Section 192.721 Distribution systems: Patrolling. This section governs the frequency at which operators must patrol mains in distribution systems. The regulation is written in performance terms, except that mains located where anticipated movement or loading could cause leakage must be patrolled at intervals not exceeding 4½ months, but at least four times a year. Northern Illinois Gas recommended that we adopt a more moderate patrol frequency as a cost saving measure, but did not recommend an alternative. The option we are considering is twice a year for mains in Class 1 or 2 locations. The lower frequency would correspond to the lower risk in these less densely populated locations. Twice a year checks also would match the frequency at which operators must patrol transmission lines at highway and railroad crossings in Class 1 and 2 locations (§ 192.705). Because these transmission line crossings pose a high level of risk, and twice-a-year patrols have proved satisfactory, RSPA believes the proposed change to § 192.721 would not reduce safety.

Rulemaking Analyses

Paperwork Reduction Act

The documentation for the information collection requirements for part 192 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 192 are covered by OMB Control Numbers 2137-0049 (approved through October 31, 1994) and 2137-0583 (approved through May 31, 1994). This notice proposed no additional information collection requirements. Instead, the notice proposed to relax the information collection or retention and record retention burden on pipeline operators (described above). Accordingly, there is no need to repeat those submissions with this notice of proposed rulemaking.

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that this proposal is not a major rule under Executive Order 12291. However, it is "significant" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of the interest expressed by the President and the substantial interest by the pipeline industry.

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in savings of

\$33,000,000 per year without associated costs and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing, maintaining, and operating pipelines, improved clarity, and the elimination of burdensome regulations.

Regulatory Flexibility Act

RSPA criteria for small companies or entities are those with less than \$1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. However, RSPA seeks such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that this proposal would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Executive Order 12612

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 would be amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 192.1 Scope of part.

(b) This part does not apply to:

(1) Offshore pipelines upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed whichever facility is farther downstream; and

(4) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system has only one tank and the system is located entirely on the customer's premises, regardless of whether a portion of the system is located in a public place.

3. In § 192.3, a definition of "petroleum gas" would be added and the definitions of "secretary" and "transmission line" would be revised to read as follows:

§ 192.3 Definitions.

Petroleum gas means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi at 100 degrees F.

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Transmission line means a pipeline, other than a gathering line, that:

(1) Transports gas from a gathering line or storage facility to a distribution center, large volume customer, or storage facility;

(2) Operates at a hoop stress of 20 percent or more of SMYS; or

(3) Transports gas within a storage field.

4. Section 192.5 would be revised to read as follows:

§ 192.5 Class locations.

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section:

(1) A "class location unit" is an onshore area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline.

(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1) A Class 1 location is:

(i) An offshore area; or

(ii) Any class location unit that has 10 or fewer buildings intended for human occupancy.

(2) A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.

(3) A Class 3 location is

(i) Any class location unit that has 46 or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

(4) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows:

(1) A Class 4 location ends 220 yards from the nearest building with four or more stories above ground.

(2) When a cluster of buildings intended for human occupancy requires a Class 3 location, the Class 3 location ends 220 yards from the nearest building in the cluster.

(3) When a cluster of buildings intended for human occupancy requires a Class 2 location, the Class 2 location ends 220 yards from the nearest building in the cluster.

5. Section 192.7 would be amended by revising paragraph (a) to read as follows:

§ 192.7 Incorporation by reference.

(a) Any documents or portions thereof incorporated by reference in this part are included in this regulation as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this part.

6. Section 192.9 would be revised to read as follows:

§ 192.9 Gathering lines.

Each operator of a gathering line, except as provided in § 192.1, must comply with the requirements of this part applicable to transmission lines.

7. Section 192.11 would be revised to read as follows:

§ 192.11 Petroleum gas systems.

(a) Each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this part and NFPA Standards No. 58 and No. 59.

(b) Each pipeline system subject to this part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of NFPA Standards No. 58 and No. 59.

(c) In the event of a conflict between this part and the requirements of NFPA

Standards No. 58 and No. 59, NFPA Standards No. 58 and No. 59 prevail.

8. Section 192.14 would be amended by revising paragraph (a)(1) to read as follows:

§ 192.14 Conversion to service subject to this part.

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables for a steel pipeline necessary to verify the design pressure under § 192.105 or to perform the testing under paragraph (a)(4) of this section are unknown, the design pressure may be verified and the MAOP determined by:

(i) Testing the pipeline in accordance with ASME B31.8 Code, Appendix N, to produce a stress equal to the yield strength, and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding, the appropriate factors in §§ 192.619(a)(2)(ii) and (a)(2)(iii).

9. Section 192.107 would be amended by revising paragraph (b)(1) introductory text and paragraph (b)(1)(ii) to read as follows:

§ 192.107 Yield strength (S) for steel pipe.

(b) * * *

(1) If the pipe is tensile tested in accordance with section II-D of appendix B to this part, the lower of the following:

(ii) The lowest yield strength determined by the tensile tests.

10. Section 192.121 would be revised to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined in accordance with one of the two following formulas:

$$(1) \quad P = 2S \frac{t}{(D-t)} \quad 0.32$$

or

$$(2) \quad P = \frac{2S}{(SDR-1)} \quad 0.32$$

P = Design pressure, gage, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23° C (73° F), 38° C (100° F), 49° C (120° F), or 60° C (140° F); for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psi).

T = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

SDR = Standard Dimension Ratio = The ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

11. Section 192.123 would be amended by revising paragraph (b) to read as follows:

§ 192.123 Design limitations for plastic pipe.

(b) * * *

(1) Below minus 40° C (-40° F); or

(2) Above the following applicable temperatures:

(i) For thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under § 192.121 is determined. However, if the pipe was manufactured before May 18, 1978 and its long-term hydrostatic strength was determined at 23° C (73° F), it may be used at temperatures up to 38° C (100° F).

(ii) For reinforced thermosetting plastic pipe, 66° C (150° F).

§ 192.145 [Amended]

12. Section 192.145 would be amended by changing the word "value" to read "valve" in paragraph (l).

13. Section 192.179 would be amended by revising paragraph (a) introductory text to read as follows:

§ 192.179 Transmission line valves.

(a) Unless otherwise approved in writing by the Administrator, upon an operator's demonstrating an equivalent level of safety, each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows:

14. Section 192.203 would be amended by revising paragraph (b)(2) to read as follows:

§ 192.203 Instrument, control, and sampling pipe and components.

(b) * * *

(2) Except for a pressure regulator that can be isolated by other valves from its source of pressure, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

15. Section 192.227 would be amended by revision paragraph (b) and adding paragraph (c) to read as follows:

§ 192.227 Qualification of welders.

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of appendix C to this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of appendix C to this part as a requirement of the qualifying test.

(c) Except as provided in § 192.229(c), after initial qualification, a welder may not perform welding unless:

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under paragraph (b) of this section; or

(2) Within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had—

(i) A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

(ii) For welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in section III of appendix C to this part.

16. Section 192.229 would be amended by revising paragraph (c) to read as follows:

§ 192.229 Limitations on welders.

(c) A welder qualified under § 192.227(a) may not weld on pipe to be operated at a pressure that produces a hoop stress at or above 20 percent of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in appendix A may weld but may not requalify under that earlier edition.

17. Section 192.241 would be amended by revising paragraph (c) to read as follows:

§ 192.241 Inspection and test of welds.

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. The operator may elect to evaluate a girth weld flaw, except a crack, that is unacceptable under section 6 of API Standard 1104, in accordance with the criteria of the appendix (alternative Acceptance Standards for Girth Welds) to API Standard 1104.

18. Section 192.243 would be amended by revising paragraph (d)(4) to read as follows:

§ 192.243 Nondestructive testing.

(d) * * *

(4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

19. Section 192.281 would be amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding paragraph (c)(3) to read as follows:

§ 192.281 Plastic pipe.

(c) * * *

(3) An electrofusion joint must be joined utilizing the equipment and techniques expressly prescribed by the fitting manufacturer.

20. Section 192.283 would be amended by revising paragraph (a)(1)(ii) and adding paragraph (a)(1)(iii) to read as follows:

§ 192.283 Plastic pipe; qualifying joining procedures.

(a) * * *

(1) * * *

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or

(iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Tests) or paragraph 9.2 (Sustained Pressure Test) or paragraph 9.3 (Tensile Strength Test) or paragraph 9.4 (Joint Crush Test) of ASTM F1055;

21. Section 192.317 would be amended by revising paragraph (a) to read as follows:

§ 192.317 Protection from hazards.

(a) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the

operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

22. Section 192.319 would be amended by revising paragraph (c) to read as follows:

§ 192.319 Installation of pipe in a ditch.

(c) All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

23. Section 192.321 would be amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section.

(g) Uncased plastic pipe may be temporarily installed above ground level subject to all of the following:

(1) The duration of the installation must not exceed 30 days.

(2) The location of the pipe must be such that it is unlikely to be damaged by external forces, otherwise the pipe must be protected from such damage.

(3) The pipe must have adequate resistance for the exposure to ultraviolet light and for the exposure to high and low temperatures.

(4) The pipe must not be used in subsequent above ground level installations.

24. Section 192.327 would be amended by revising paragraph (e) to read as follows:

§ 192.327 Cover.

(e) All pipe which is installed in a navigable river, stream, or harbor must have a minimum cover of 48 inches in soil or 24 inches in consolidated rock, and all pipe installed in any offshore location under water less than 12 feet deep, as measured from mean low tide, must have a minimum cover of 36 inches

in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom. However, less than the minimum cover is permitted in accordance with paragraph (c) of this section for pipe other than pipe in the Gulf of Mexico and its inlets.

25. Section 192.455 would be amended by revising paragraphs (a)(2) and (f)(1) to read as follows:

§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

(a) * * *

(2) It must have a cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation, within one-year after completion of construction.

(f) * * *

(1) For the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion resistance is provided by the alloy composition; and

26. Section 192.475 would be amended by revising paragraph (c) to read as follows:

§ 192.475 Internal corrosion control: General.

(c) Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

27. Section 192.485 would be amended by adding paragraph (c) to read as follows:

§ 192.485 Remedial measures: Transmission lines.

(c) In paragraphs (a) and (b) of this section, the strength of the pipe based on actual remaining wall thickness may be determined by the procedure in ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines. Application of the procedure in the B31G Manual shall apply to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the B31G Manual.

28. Section 192.491 would be revised to read as follows:

§ 192.491 Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records

and maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) For each test, survey, or inspection required by this subpart, each operator shall maintain a record in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. For each test, survey, or inspection required by §§ 192.465 (a) and (e) and § 192.475(b), records must be retained for as long as the pipeline remains in service. All other records required by this paragraph must be retained for at least 5 years.

29. Section 192.553 would be amended by revising paragraph (d) to read as follows:

§ 192.553 General requirements.

(d) *Limitation on increase of maximum allowable operating pressure.* Except as provided in § 192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if one or more of the variables necessary to determine the design pressure for the new segment under § 192.619(a)(1) is unknown, the design pressure may be determined by:

(1) Testing the segment in accordance with ASME B31.8, appendix N, to produce a stress equal to the yield strength, and

(2) Applying to not more than 80 percent of the first pressure that produces a yielding the appropriate factors in §§ 192.619(a)(2)(ii) and 192.619(a)(2)(iii).

§ 192.607 [Removed]

30. Section 192.607 would be removed and reserved.

§ 192.611 [Amended]

31. In § 192.611, paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), paragraph (a)(3)(ii) would be redesignated as paragraph (b), and paragraph (a)(3)(iii) would be redesignated as paragraph (a)(3)(ii) respectively.

32. Section 192.614 would be amended by revising paragraphs (b)(2) introductory text and (c)(2) as follows:

§ 192.614 Damage prevention program.

(b) * * *

(2) Provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

(c) * * *

(2) Pipelines in a Class 3 location defined by § 192.5(b)(3)(ii) that are marked in accordance with § 192.707.

33. Section 192.619 would be amended by adding paragraph (a)(2)(iii), and removing paragraphs (a)(4) and (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(4) and revising it.

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

(a) * * *

(2) * * *

(iii) For steel pipe operated at a 100 p.s.i.g. or more, the pressure determined from the table above further reduced by a factor of 0.60 for furnace butt welded pipe and by 0.80 for furnace lap welded pipe.

(4) The pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure.

34. Section 192.625 would be amended by revising paragraph (f) to read as follows:

§ 192.625 Odorization of gas.

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Operators of master meter systems may comply with this requirement by:

(1) Receiving written verification from their gas source that gas odorization levels meet the required levels; and

(2) Conducting periodic "sniff" tests, at the outer extremities of the system, to confirm that the gas contains odorant.

35. Section 192.705 would be amended by adding paragraph (c) to read as follows:

§ 192.705 Transmission lines: Patrolling

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

36. Section 192.709 would be revised to read as follows:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for the useful life of the pipe.

(b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 1 year.

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

37. Section 192.721 would be amended by revising paragraph (b) to read as follows:

§ 192.721 Distribution systems: Patrolling.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In Class 1 and 2 locations, at intervals not exceeding 7½ months, but at least twice each calendar year; and

(2) In Class 3 and 4 locations, at intervals not exceeding 4½ months, but at least four times each calendar year.

38. Appendix A would be amended by adding paragraph II.B. (12) to read as follows:

Appendix A—Incorporated by Reference

II. * * *

B. * * *

(12) ASTM Specification F1055 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter

Controlled Polyethylene Pipe and Tubing" (F1055-87).

39. Appendix A would be amended by adding paragraphs II.D. (3) and (4) to read as follows:

Appendix A—Incorporated by Reference

II. * * *

D. * * *

(3) ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

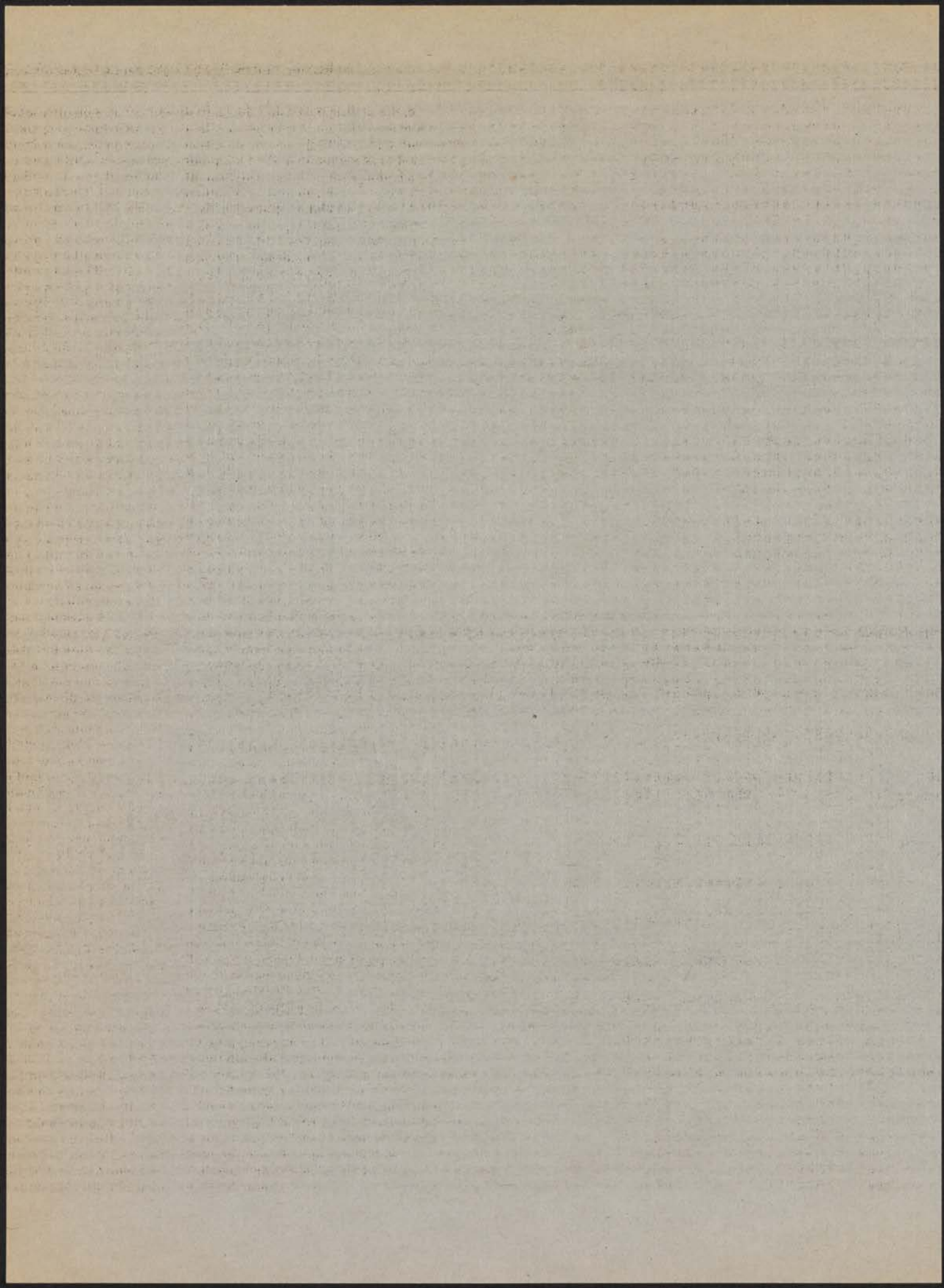
(4) ASME B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with Addenda A, B, C).

Issued in Washington, DC on August 21, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.
[FR Doc. 92-205 (7 File) 8-28-92; 8:45 am]

BILLING CODE 4910 50-M



**Monday
August 31, 1992**

Part VII

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 15, 30, 31, and 52
Federal Acquisition Regulation (FAR);
Cost Accounting Standards and
FAR Availability on Electronic Bulletin
Board and CD-ROM; Interim Rule and
Notice**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 15, 30, 31, and 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost
Accounting Standards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending FAR part 30 based on the Cost Accounting Standards Board's recodification of the Cost Accounting Standards in 48 CFR Chapter 99. The Cost Accounting Standards (FAR subpart 30.4) are removed. FAR subpart 30.6 and the "Administration of Cost Accounting Standards" clause at 52.230-4 are revised to clarify procedures for submission of cost impact proposals. In addition, the clauses at 52.230-1, 52.230-2, 52.230-3, and 52.230-5 have been revised to reflect the recodification of the standards.

DATES: Effective Date: August 31, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 30, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-12, FAR case 92-18 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-12, FAR case 92-18.

SUPPLEMENTARY INFORMATION:

A. Background

The Cost Accounting Standards Board (CASB) issued a final rule in the Federal Register on April 17, 1992, recodifying the Cost Accounting Standards (CAS) at

48 CFR chapter 99 (57 FR 14148). The CAS were previously in both 48 CFR part 30 and 4 CFR parts 331 through 420. The CASB final rule was based upon the notice of proposed rulemaking published in the Federal Register on June 12, 1991 (56 FR 26968), where public comments were invited.

This rule removes the CAS rules and regulations (FAR subpart 30.3) and the standards (FAR subpart 30.4). For ease of reference, Appendix B of the FAR of the FAR loose-leaf edition is added, which incorporates the CAS and CAS rules and regulations recodified by the CASB in title 48 of the Code of Federal Regulations, chapter 99. Appendix B is provided for convenience; the official codified CAS are in 48 CFR chapter 99. FAR part 30 was revised based on the recodification and cross references were updated. A further review of cross references in the FAR and DFARS requiring revision as a result of the recodification is in the process.

FAR revisions originally proposed in FAR case 89-34, Cost Impact Proposals, were incorporated into this interim rule. Those revisions clarify the procedures for submission of cost impact proposals and the authority of the Administrative Contracting Officer (ACO) to withhold a portion of payments when the contractor does not submit the cost impact proposal in a timely manner. A proposed rule was issued June 16, 1989 (54 FR 25686). Revisions as a result of comments on that proposed rule are incorporated into this interim rule.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business are exempt from the application of the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAR Case 92-18), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection associated with the Cost Accounting Standards were

approved by the Office of Management and Budget and assigned Control Number 0348-0051.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the Federal Acquisition Regulation consistent with the Cost Accounting Standards Board's final rule recodifying Cost Accounting Standards, which was effective upon publication April 17, 1992.

List of Subjects in 48 CFR Parts 15, 30, 31, and 52

Government procurement.

Dated: August 24, 1992.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90-12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-12 is effective August 31, 1992.

Dated: August 19, 1992.

Eleanor R. Spector,
Director, Defense Procurement, Department of Defense.

Dated: August 21, 1992.

Richard H. Hopf III,
Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 12, 1992.

Don G. Bush,
Assistant Administrator for Procurement, NASA.

Therefore, 48 CFR parts 15, 30, 31, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15, 30, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY
NEGOTIATION

15.805-3 [Amended]

2. Section 15.805-3 is amended in paragraph (d) by removing the reference

"Part 30" and inserting in its place "48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition)".

15.812-1 [Amended]

3. Section 15.812-1 is amended in the first sentence of paragraph (a) by removing the reference "Part 30" and inserting in its place "48 CFR Chapter 99".

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

4. Part 30 is revised to read as follows:

30.000 Scope of part.

Subpart 30.1—General

30.101 Cost Accounting Standards.

30.102 Cost Accounting Standards Board Publication.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

30.201-1 CAS applicability.

30.201-2 Types of CAS coverage.

30.201-3 Solicitation provisions.

30.201-4 Contract clauses.

30.201-5 Waiver.

30.202 Disclosure requirements.

30.202-1 General requirements.

30.202-2 Impracticability of submission.

30.202-3 Amendments and revisions.

30.202-4 Privileged and confidential information.

30.202-5 Filing disclosure Statements.

30.202-6 Responsibilities.

30.202-7 Determinations.

30.202-8 Subcontractor Disclosure Statements.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Subpart 30.4—Cost Accounting Standards [Reserved]

Subpart 30.5—[Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

30.602 Changes to disclosed or established cost accounting practices.

30.602-1 Equitable adjustments for new or modified standards.

30.602-2 Noncompliance with CAS requirements.

30.602-3 Voluntary changes.

30.603 Subcontract administration.

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR chapter 99 (appendix B, FAR loose-leaf edition)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b), for these and other exemptions).

Subpart 30.1—General

30.101 Cost Accounting Standards.

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR chapter 99), all of which are hereby incorporated in this part 30.

(c) Appendix B to the FAR loose-leaf edition contains: Part I, CAS and CASB Rules and Regulations; Part II, nonregulatory preambles to the CAS; Part III, preambles to CAS Rules and Regulations; Part IV, preambles published under the FAR system; and Part V, CASB Rules and Procedures (administrative).

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in title 48 of the Code of Federal Regulations, chapter 99, and may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Washington, DC, ordering desk at area code (202) 783-3238.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

Title 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subpart 9903.201-1, describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with subpart 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-1 CAS applicability.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1.

30.201-2 Types of CAS coverage.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-3 Solicitation provisions.

The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201.

30.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-1), the contract is subject to modified coverage (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-2), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$10 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause at 52.230-3 requires the contractor to comply with 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subparts 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be

performed substantially in the United Kingdom (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-1(b)(12)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-5, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) of this subsection, or the clause prescribed in paragraph (c) of this subsection.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

30.201-5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses [52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices]. If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-5.

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-1.

30.202-2 Impracticability of submission.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-2.

30.202-3 Amendments and revisions.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-3.

30.202-4 Privileged and confidential information.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-4.

30.202-5 Filing Disclosure Statements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-5.

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are

submitted. (Also see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201-3 and 9903.202.)

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with part 31 shall be processed separately, in accordance with normal administrative practices.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy or

inadequacy, the ACO cognizant of the subcontractor shall provide such determination to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-2.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.3.

Subpart 30.4—Cost Accounting Standards [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), part 9904.

Subpart 30.5 [Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days of the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305. The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractors that:

(a) the Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and

(b) the contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.602-1 Equitable adjustments for new or modified standards.

(a) *New or modified standards.* (1) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the ACO.

(2) Contracts and subcontracts containing the clause at 52.230-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause at 52.230-2 is awarded on or after the effective date of the new or modified standard.

(3) Contracting officers shall encourage contractors to submit to the ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the CASB.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The ACO shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or

decreased by \$10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.*

(1) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall review the contractor submissions required by paragraph (a) of the clause at 52.230-5, Administration of Cost Accounting Standards.

(4) If the contractor disagrees with the initial noncompliance finding, the ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. The ACO shall notify the contractor and the auditor in writing of the determination. If the ACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, shall be followed.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall request that the contractor submit a cost impact proposal within the time specified in the clause at 52.230-5, Administration of Cost Accounting Standards.

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1). In accordance with the clause at 52.230-2, Cost Accounting Standards, the ACO shall include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest shall be computed from the date of overpayment to the time the adjustment is effected. If

the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest under 52.230-2 should be computed pursuant to Public Law 100-679.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment together with any applicable interest as computed in accordance with 30.602-2(c)(2). The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

(3) If the ACO determines that there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action shall be taken, and

that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230-2, Cost Accounting Standards, and/or the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602-3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosure statement or cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to notify the ACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) The ACO shall then follow the procedures in 30.602-1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change

or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is appropriate (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor of next higher tier subcontractor of his decision. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.201-2, 31.203, 31.205-6, 31.205-10, 31.205-11, 31.205-18, 31.205-19, 31.205-24, 31.205-38 [Amended]

5-6. In the list below, for each section indicated in the left column, remove the citation indicated in the middle column from wherever it appears in the section, and insert the citation indicated in the right column:

Section	Remove	Add
31.201-2(b)	Part 30	48 CFR 9903
31.203(e)	30.406	48 CFR 9904.406
31.205-6(j)(2)	30.412 (2 instances)	48 CFR 9904.412 (2 instances)
31.205-6(j)(2)	30.413	48 CFR 9904.413
31.205-6(j)(3)(i)(A)	30.412-40(a)(1)	48 CFR 9904.412-40(a)(1)
31.205-6(j)(3)(i)(A)	30.412-50(c)(3)	48 CFR 9904.412-50(c)(3)
31.205-6(j)(3)(i)(B)	30.412	48 CFR 9904.412
31.205-6(j)(3)(i)(B)	30.413	48 CFR 9904.413
31.205-6(j)(3)(ii)	30.412-50(a)(7)	48 CFR 9904.412-50(a)(7)
31.205-6(j)(3)(iii)	30.413-50(c)(5)	48 CFR 9904.413-50(c)(5)
31.205-6(j)(5)(i)	30.412-50(c)(3)	48 CFR 9904.412-50(c)(3)

Section	Remove	Add
31.205-6(k)(2)	30.415	48 CFR 9904.415
31.205-6(k)(3)	30.415	48 CFR 9904.415
31.205-10(a)(1)(ii)	30.414	48 CFR 9904.414
31.205-10(a)(2)(i)	30.414	48 CFR 9904.414
31.205-10(b)(1)(ii)	30.417	48 CFR 9904.417
31.205-10(b)(2)(i)(A)	30.417	48 CFR 9904.417
31.205-11(b)	30.409 (4 instances)	48 CFR 9904.409 (4 instances).
31.205-11(m)	30.404 (2 instances)	48 CFR 9904.404 (2 instances).
31.205-18(b)	30.420	48 CFR 9904.420
31.205-18(b)(1)	30.420	48 CFR 9904.420
31.205-18(b)(2)	30.420 (3 instances)	48 CFR 9904.420 (3 instances).
31.205-18(b)(2)	4 CFR 420.50(e)(2) (2 instances).	48 CFR 9904.420-50(e)(2) (2 instances).
31.205-18(b)(2)	4 CFR 420.50(f)(2) (2 instances).	48 CFR 9904.420-50(f)(2) (2 instances).
31.205-18(c)(1)(i)	30.420	48 CFR 9904.420
31.205-19(a)	30.416	48 CFR 9904.416
31.205-19(a)(3)(i)	30.416 (3 instances)	48 CFR 9904.416 (3 instances).
31.205-19(a)(3)(i)	4 CFR 416.50(a)(2)(ii)	48 CFR 9904.416-50(a)(2)(ii)
31.205-19(a)(3)(i)	30.416-50(a)(3)(ii)	48 CFR 9904.416-50(a)(3)(ii)
31.205-19(c)	30.416	48 CFR 9904.416
31.205-24(b)	30.404	48 CFR 9904.404
31.205-38(e)	30.405	48 CFR 9904.405

31.205-6 [Corrected]

7. Section 31.205-6 is corrected by removing the introductory text of paragraph (j)(3)(i).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 52.230-1 through 52.230-5 are revised and section 52.203-6 is removed to read as follows:

52.230-1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201-3, insert the following provisions:

Cost Accounting Standards Notices and Certification (Aug 1992)

Note: This notice does not apply to small businesses or foreign governments. This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of \$500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a

part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR, Subpart 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a review certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Exemption for Contracts of \$500,000 or Less

If this proposal is expected to result in the award of a contract of \$500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of 48 CFR, Subpart 9903.201-1(b)(2).

III. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR, Subpart 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR, Subpart 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$10 million in awards of CAS-covered prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$10 million or more.

IV. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No
(End of provision)

52.230-2 Cost Accounting Standards.

As prescribed in 30.201-4(a), insert the following clause:

Cost Accounting Standards (Aug 1992)

(a) Unless the contract is exempt under 48 CFR, Subparts 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply

with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

(End of clause)

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201-4(b)(1), insert the following clause:

Disclosure and Consistency of Cost Accounting Practices (Aug 1992)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred to the Same Purpose, in effect on the date of

award of this contract as indicated in 48 CFR, part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, subparts 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, subpart 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, subpart 9903.201 is required to follow all

CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230-2, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

(End of clause)

52.230-4 Consistency in Cost Accounting Practices.

As prescribed in 30.201-4(c), insert the following clause:

Consistency in Cost Accounting Practices (Aug 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

52.230-5 Administration of Cost Accounting Standards

As prescribed in 30.201-4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Aug 1992)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS

in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standard, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practice):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at 52.230-2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and

Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award

of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
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Dated: August 26, 1992.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy
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