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By the Commission.

Dated: January 27, 2006.

Nancy M. Morris,  
Secretary.

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 19, 24, 25, 26 and 70

[T.D. TTB-41]

RIN 1513-AB17

#### Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers (2005R-441P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Temporary rule; Treasury decision.

**SUMMARY:** This temporary rule implements the quarterly excise tax payment procedure for small alcohol excise taxpayers contained in section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, which amended section 5061 of the Internal Revenue Code of 1986. Before passage of this law, most Federal alcohol excise taxpayers paid the tax on a semimonthly basis. We are amending the applicable regulations on a temporary basis to incorporate the legislative change allowing quarterly payments. We also are soliciting comments from all interested parties on the implementation of this new procedure through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

**DATES:** *Effective Date:* This temporary rule is effective on January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning quarterly filing procedures, contact James S. McCoy, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (513-684-2120); for other questions concerning this document, contact Marjorie Ruhf, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-927-8202 or [marjorie.ruhf@ttb.gov](mailto:marjorie.ruhf@ttb.gov)).

#### SUPPLEMENTARY INFORMATION:

##### Background

This temporary rule implements the statutory change contained in section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144 ("the Act"), signed by President Bush on August 10, 2005. Section 11127 of the Act amended section 5061(d) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5061(d), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting a new paragraph (4) which allows certain Federal alcohol excise taxpayers to pay taxes quarterly, rather than on a semimonthly basis as provided in section 5061(d) before the amendment. This new provision applies to quarterly tax payment periods beginning on and after January 1, 2006.

New paragraph (4) of section 5061(d) specifically references taxes imposed under subparts A, C, and D of part I of subchapter A of chapter 51 of the IRC and section 7652 of the IRC. The taxes imposed under subparts A, C, and D involve gallonage taxes on distilled spirits (26 U.S.C. 5001), wines (26

U.S.C. 5041), and beer (26 U.S.C. 5051). These taxes apply to spirits, wines, and beer produced in or imported into the United States. The Alcohol and Tobacco Tax and Trade Bureau (TTB) collects these taxes from proprietors of domestic bonded premises pursuant to regulations contained in 27 CFR parts 19, 24, and 25, and the Bureau of Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. Section 7652 (26 U.S.C. 7652) imposes a tax on spirits, wines, and beer coming to the United States from Puerto Rico and the U.S. Virgin Islands. TTB collects these taxes from regulated premises in Puerto Rico under regulations in 27 CFR part 26, and CBP collects these taxes pursuant to title 19 of the CFR when the products in question come to the United States from the U.S. Virgin Islands. Tax payments in connection with transactions that are subject to regulations administered by CBP are not dealt with in this document.

The provisions of new paragraph (4) apply to "any taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes \* \* \* for the calendar year and who was liable for not more than \$50,000 in such taxes in the preceding calendar year." In such a case the taxpayer must pay the tax no later than the 14th day after the last day of the calendar quarter during which the action giving rise to the tax (that is, withdrawal, removal, entry, and bringing in from Puerto Rico) occurs. The statute defines a "calendar quarter" as the three-month period ending on March 31, June 30, September 30, or December 31.

New paragraph (4) also provides that the quarterly tax payment procedure does not apply to a taxpayer for any remaining portion of the calendar year following the date on which the aggregate amount of tax due from the taxpayer exceeds \$50,000. If at any point during the year the taxpayer's liability exceeds \$50,000, any tax that has not been paid on that date becomes due on the 14th day after the last day of the semimonthly period in which that date falls. Thus, in effect, a taxpayer whose tax payments exceed the \$50,000 limit during the calendar year is required to revert to the semimonthly payment procedure for the remainder of the year.

#### Basic Interpretative Considerations

Based on a careful reading of the statutory language, TTB has applied the following considerations in drafting the implementing regulatory changes set forth in this document.

1. We note that the longer deferral period allowed under new paragraph (4) will result in a larger unpaid tax liability, with a consequent impact on bonds as discussed below in this document. While we recognize that the intent of the statutory change is to ease the regulatory burden on small taxpayers, we also must acknowledge the need to protect the revenue by ensuring that unpaid taxes are covered by appropriate bond amounts. If a taxpayer otherwise eligible for the new quarterly payment procedure does not wish to adjust the penal sum of its bond, that taxpayer should be allowed to continue to make taxpayments and file returns on a semimonthly basis.

Accordingly, we have decided to treat the quarterly payment procedure as optional rather than mandatory in the implementing regulations in order to provide flexibility to those taxpayers. Looking at section 5061 as a whole, and noting the placement of the semimonthly payment procedure in paragraph (d)(1) as a provision of general applicability, we believe this interpretation is permissible because it makes the semimonthly procedure available to any taxpayer eligible for deferred payment of taxes, even if the taxpayer is also eligible for the quarterly payment procedure. The Conference Report of the Committee of Conference on H.R. 3, Report 109–203 at page 1133, describes the statutory change as follows: “[D]omestic producers and importers of distilled spirits, wine, and beer with excise tax liability of \$50,000 or less attributable to such articles in the preceding calendar year may file returns and pay taxes within 14 days after the end of the calendar quarter instead of semi-monthly.” The use of the word “may” indicates Congress viewed the continued use of the semimonthly procedure as an option.

2. Based on the wording of new paragraph (4) and of redesignated paragraph (5) of section 5061(d), we believe that the “special rule for taxes due in September” properly applies only to semimonthly return periods and therefore does not apply to quarterly payments under new paragraph (4). Therefore we have changed the regulations referring to this payment to restrict its application to taxpayers who file semimonthly returns.

3. New paragraph (4) extends the quarterly payment option to a taxpayer who reasonably expects to be liable for not more than \$50,000 in alcohol excise taxes during the calendar year and who was liable for not more than \$50,000 in the preceding calendar year. We understand “taxpayer” to mean an entity (including an individual,

partnership or corporation) with a single taxpayer identification number. A single taxpayer may have multiple locations; if so, the combined liability of all locations and the same taxable commodity must be considered in determining eligibility for quarterly payments.

4. Since the taxes imposed by 26 U.S.C. 5001, 5041 and 5051 apply to commodities produced in or imported into the United States, a taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports to determine eligibility for the quarterly procedure.

5. New paragraph (4) makes no mention of controlled groups. Accordingly, we believe it is appropriate to take into account only the taxpayer’s own liability in determining eligibility for quarterly payments, even if the taxpayer is considered to be a member of a controlled group for other purposes under the IRC. We also note that there may be some individual taxpayers who are eligible for the quarterly payment procedure but who are required to pay taxes by electronic fund transfer (EFT) because they are part of a controlled group that owes more than \$5 million in distilled spirits, wine, or beer excise taxes per year. See 26 U.S.C. 5061(e). These individual taxpayers must transmit the quarterly payments via EFT.

6. With regard to the requirement that a taxpayer “reasonably expect” to be liable for not more than \$50,000 in a tax year, we believe it is appropriate to define “reasonably expect” in the implementing regulations to mean both that the taxpayer was not liable for more than \$50,000 in taxes the previous year and that there are no other existing or anticipated circumstances (such as an increase in production capacity) that would cause the taxpayer’s liability to increase beyond that limit.

7. If a taxpayer exceeds \$50,000 in tax liability during a taxable year and therefore must revert to the semimonthly payment procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed in which the taxpayer’s liability did not exceed \$50,000. New taxpayers will be eligible to file quarterly returns in their first year of business simply if they reasonably expect to owe less than \$50,000 in taxes during that calendar year.

#### **Effect on Bond Amounts**

The bond regulations that apply to domestic producers of distilled spirits and wine at 27 CFR 19.245 and 24.148,

and the regulations covering deferral bonds for proprietors bringing distilled spirits, wine, and beer to the United States from Puerto Rico at 27 CFR 26.66 (for distilled spirits), 26.67 (for wine) and 26.68 (for beer), require proprietors to calculate the penal sum of their deferral bonds to cover the unpaid tax that is chargeable against the bond at any one time. We do not believe that new paragraph (4) requires any changes to these regulatory provisions, the terms of which will clearly apply to taxpayers who use the quarterly payment procedure. We note, however, that it would be prudent for a taxpayer who uses the quarterly payment procedure to review the current deferral bond coverage, which in all likelihood is based on anticipated semimonthly taxes plus a 14-day deferral period. Such taxpayers may need to increase the deferral coverage for anticipated quarterly taxes because of the longer three-month plus 14-day deferral period.

We note that the penal sum amount set by regulation at 27 CFR 25.93 for a brewer’s bond is 10 percent of the maximum amount of annual tax liability, with a minimum amount of \$1,000. This 10 percent/minimum amount provides adequate bond coverage for small brewers who incur less than \$50,000 of annual taxable liability each year and who file on a semimonthly basis. However, we also note that the average maximum tax liability per return period for small brewers who pay quarterly will be approximately 29 percent of their annual liability. Our calculation indicates that the average maximum liability for a quarter of the year plus the additional liability incurred during the 14 day period provided for payment, equals between 2.5 and 3.0 times the amount of the bond coverage presently required. Thus we conclude that required bond coverage under § 25.93 is inadequate for small brewers who pay taxes quarterly. As a result, we are increasing the required bond coverage for small brewers who pay excise taxes quarterly to 29 percent of the maximum amount of annual tax liability. Further, such increased bonding liability will apply only to small brewers who pay excise taxes quarterly and not to other small brewers who continue to pay semimonthly.

#### **Effect on Reporting Requirements**

In general, proprietors of distilled spirits plants, bonded wine cellars, and breweries must file monthly reports of operations. Since proprietors who are small taxpayers may be filing quarterly tax returns, we considered whether

these proprietors should file quarterly reports of operations as well.

The beer regulations at 27 CFR 25.297(b) already allow brewers to file quarterly reports if they produce less than 10,000 barrels of beer during a calendar year. This level of activity represents a tax liability of \$70,000 per year at the reduced rate of tax for small brewers, so brewers eligible to file quarterly returns under new paragraph (4) of section 5061(d) are already eligible to file quarterly reports under the existing rule. Therefore, we have not made any changes to the regulations regarding the brewers' report of operations.

The wine regulations at 27 CFR 24.300(g)(2) already allow small proprietors to file an annual, rather than a monthly, report of operations if they are eligible to pay taxes on an annual basis and their total wine to be accounted for in a calendar month does not exceed 20,000 gallons. We believe it is appropriate to allow wine premises proprietors to file quarterly reports of operations if they are eligible to make quarterly tax payments. Accordingly, we have revised paragraph (g) of § 24.300 to give quarterly taxpayers the option of filing quarterly reports of operations. However, in this revised text we have set a maximum activity level of 60,000 gallons of wine to be accounted for in a calendar quarter in order to ensure that proprietors with very large production or storage capacity who pay little or no tax will continue to file monthly reports of operations. We are also making a corresponding conforming change to 27 CFR 24.313, Inventory records.

For distilled spirits plant proprietors, there are four operational report forms, and there is no provision in the TTB regulations specifying a reporting interval less frequent than monthly. We do not believe this document is the appropriate vehicle for making a change in the timing for reports of operations. Because of the short time available before this temporary rule takes effect, we will defer consideration of adoption of a quarterly report of operations for distilled spirits plant proprietors.

#### Other Considerations

The TTB regulations include provisions that allow TTB to require prepayment of taxes or to make a jeopardy assessment of taxes if we believe such action is necessary to protect the revenue. We have reviewed those prepayment and jeopardy assessment provisions and have determined that no changes to them are needed in order for them to apply to taxpayers who pay on a quarterly basis.

We also considered whether to require the filing of a notice of intent by a taxpayer who chooses to make quarterly tax payments before the taxpayer begins the procedure. Since we can determine from records we already have that a taxpayer appears to be eligible for the quarterly payment procedure (in particular, that the taxpayer's liability for the previous calendar year did not exceed \$50,000), and because advance notice would serve no other useful purpose, we have decided not to require advance notice.

#### Discussion of Regulatory Amendments

In addition to the regulatory changes discussed above, we are including definitions of "reasonably expects" and "taxpayer" in the amended provisions of parts 19, 24, 25, and 26. We are also adding a definition of "calendar quarter and quarterly" to the definitions section of parts 19, 24, and 26. The following additional points are noted regarding the regulatory amendments contained in this document:

##### Part 19

We are revising § 19.565 and amending §§ 19.522, 19.523, and 19.703 in part to accommodate the quarterly return procedure. In addition to the removal of the word "semimonthly" from the existing text, the revision of § 19.565 includes a reorganization of the text for editorial purposes.

##### Part 24

We are amending § 24.271, which prescribes the return periods available for proprietors who have deferral bonds, to accommodate the quarterly procedure.

Since 1990, part 24 has included § 24.273, which allows certain wine premises proprietors to file annual tax returns and pay taxes annually. Because the wine bond's coverage is split between operations coverage and deferral coverage, we were not limited by the existing language of section 5061, which specified semimonthly return periods for removals under a bond for deferred payment of taxes. Thus, we were able administratively to allow an annual return period for small proprietors who had no bond for deferred payment of taxes and who owed less than \$1,000 per calendar year in taxes. New paragraph (4) of section 5061(d) does not affect the right of eligible proprietors to continue to pay taxes on an annual basis under this regulation. However, we are revising § 24.273 to show that it is an exception to both semimonthly and quarterly return filing, and we are reorganizing the section for clarity.

##### Part 25

We are amending § 25.93 to change the bond penal sum for quarterly taxpayers, as discussed above. We are also amending §§ 25.164 and 25.164a, which cover tax return filing rules for brewers, to reflect the adoption of the quarterly return procedure. Finally, we are amending § 25.166 by replacing the reference to "semimonthly" returns.

##### Part 26

We are amending § 26.112, which concerns returns for taxes imposed under section 7652, to incorporate the quarterly taxpayment procedure.

##### Part 70

We are amending paragraph (a) of § 70.412, which summarizes alcohol tax return filing procedural rules, to include a reference to quarterly returns.

#### Temporary Rule

Based on the January 1, 2006, effective date of the statutory change to section 11127, TTB believes that proper administration and enforcement of those requirements necessitates the immediate adoption of implementing regulations as a temporary rule pursuant to 5 U.S.C. 553(b)(A) and (B), and 5 U.S.C. 553(d)(1), (2), and (3). TTB believes that such implementing action ensures that affected industry members will have timely knowledge of the regulatory requirements that will enable them to obtain the benefits of the statutory change.

#### Public Participation

To submit comments on these regulations, please refer to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, we will submit this temporary rule to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the temporary regulations.

#### Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not necessary.

## Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The collections of information contained in the regulations amended by this temporary rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 under control numbers 1513-0053, 1513-0083, and 1513-0090. There is no new collection of information imposed by this Treasury decision. There is a decrease in the reporting or recordkeeping burden resulting from the change from semimonthly to quarterly tax return periods for certain small taxpayers.

## Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

It has been determined that prior notice and comment procedures are not required pursuant to 5 U.S.C. 553(b)(A), and a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

## Drafting Information

Charles N. Bacon, Daniel J. Hiland, Ramona Hupp, and Marjorie D. Ruhf of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

## List of Subjects

### 27 CFR Part 19

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

### 27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

### 27 CFR Part 25

Administrative practice and procedure, Beer, Claims, Electronic

funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

### 27 CFR Part 26

Administrative practice and procedure, Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

### 27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

## Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR parts 19, 24, 25, 26 and 70 as follows:

### PART 19—DISTILLED SPIRITS PLANTS

■ 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, 5148, 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, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 19.11 is amended by adding in appropriate alphabetical order a definition of “calendar quarter and quarterly” to read as follows:

#### § 19.11 Meaning of terms.

\* \* \* \* \*

*Calendar quarter and quarterly.* These terms refer to the three-month period ending on March 31, June 30, September 30, or December 31.

\* \* \* \* \*

■ 3. Section 19.522 is amending by revising paragraph (a) to read as follows:

#### § 19.522 Taxes to be collected by returns.

(a)(1) *Deferred payment of taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on Form 5000.24, Excise Tax Return. The return, Form 5000.24, shall be executed and filed for each return period notwithstanding that no tax is due for

payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on Form 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

#### (2) Return periods—(i) Definitions.

For purposes of this section, the following terms have the meanings indicated:

*Reasonably expects.* When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

*Taxpayer.* A taxpayer is a person who is liable for excise tax imposed with respect to distilled spirits by 26 U.S.C. 5001 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

#### (ii) Semimonthly return period.

Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.523(c).

(iii) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing of the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

\* \* \* \* \*

■ 4. In § 19.523, the first sentence of paragraph (a) is amended by removing the word “Where” and adding, in its place, the words “Except when payment is pursuant to a quarterly return as provided in paragraph (d) of this section, where” and a new paragraph (d) is added to read as follows:

**§ 19.523 Time for filing returns.**

\* \* \* \* \*

(d) *Payment pursuant to quarterly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.522(b)(3), the proprietor shall file a quarterly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.525, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

■ 5. Section 19.565 is revised to read as follows:

**§ 19.565 Shortages of bottled distilled spirits.**

(a) *Determination of shortage.* Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by § 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(b) *Payment of tax on shortage.* An unexplained shortage of bottled distilled spirits shall be taxpaid:

(1) Immediately on a prepayment return on Form 5000.24, or

(2) On the return on Form 5000.24 for the return period during which the shortage was ascertained.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

■ 6. In § 19.703, paragraph (a) is amended by removing the words “semimonthly tax return” and adding, in their place, the words “next deferred payment of tax”.

**PART 24—WINE**

■ 7. The authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081,

5111-5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 8. Section 24.10 is amended by adding in appropriate alphabetical order a definition of “calendar quarter and quarterly” to read as follows:

**§ 24.10 Meaning of terms.**

\* \* \* \* \*

*Calendar quarter and quarterly.* These terms refer to the three-month period ending on March 31, June 30, September 30, or December 31.

\* \* \* \* \*

■ 9. Section 24.271 is amended by revising the section heading and paragraphs (a) and (b) and the heading of paragraph (c), and by adding headings to paragraphs (c)(1) and (c)(1)(i), to read as follows:

**§ 24.271 Payment of tax by return with remittance.**

(a) *General.* The tax on wine is paid by an Excise Tax Return, Form 5000.24, which is filed with remittance (check, cash, or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form. If no tax is due for the return period, the filing of a return is not required.

(b) *Return periods and due dates.* (1) *Return periods.* (i) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

*Reasonably expects.* When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

*Taxpayer.* A taxpayer is a person who is liable for excise tax imposed with respect to wine by 26 U.S.C. 5041 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(ii) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, the annual return period as provided in § 24.273 or the quarterly return period as provided in paragraph (b)(1)(iii) of this section, all taxpayers who have filed a bond for deferred payment of taxes must use semimonthly return periods. The semimonthly return

periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (c) of this section.

(iii) *Quarterly return period.* Effective January 1, 2006, a taxpayer who has filed a bond for deferred payment of taxes, who reasonably expects to be liable for not more than \$50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(2) *Semimonthly and quarterly tax return due dates.* The taxpayer shall file the semimonthly or quarterly return, with remittance, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

(c) *Special September rule for taxes due by semimonthly return.* (1) *Division of second semimonthly period.* (i) *General.* \* \* \*

\* \* \* \* \*

■ 10. Section 24.273 is revised to read as follows:

**§ 24.273 Exception to filing semimonthly or quarterly tax returns.**

(a) *Eligibility for annual filing.* A proprietor may file the Excise Tax Return, Form 5000.24, and remittance, within 30 days after the end of the calendar year instead of semimonthly or quarterly as provided in § 24.271, if the proprietor has not given a bond for deferred payment of wine excise tax and if the proprietor:

(1) Paid wine excise taxes in an amount less than \$1,000 during the previous calendar year, or

(2) Is the proprietor of a newly established bonded wine premises and expects to pay less than \$1,000 in wine

excise taxes before the end of the calendar year.

(b) *Loss of eligibility for annual filing.*

(1) If before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals \$1,000 or more, the proprietor will commence semimonthly or quarterly filing of the wine Excise Tax Returns and making of payments as required by § 24.271.

(2) If there is a jeopardy to the revenue, the appropriate TTB officer may deny the exceptions to filing tax returns provided in this section at any time.

(c) *Other rules apply.* A proprietor who files under this section is subject to the failure to pay or file provisions of § 24.274.

■ 11. Section 24.300 is amended by revising paragraph (g) to read as follows:

**§ 24.300 General.**

\* \* \* \* \*

(g) *F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations must complete and submit a F 5120.17 in accordance with the instructions on the form.

(1) *Monthly report.* The proprietor must submit F 5120.17 on a monthly basis, except as otherwise provided in paragraph (g)(2) or (g)(3) of this section.

(2) *Quarterly or annual report.* (i) *General.* A proprietor may file a completed F 5120.17 on a quarterly or annual basis if the proprietor meets the criteria in paragraph (g)(2)(ii) or (g)(2)(iii) of this section. To begin the quarterly or annual filing of a report of bonded wine premises operations, a proprietor must state the intent to do so in the "Remarks" section when filing the prior month's F 5120.17. A proprietor who is commencing operations during a calendar year and expects to meet these criteria may use a letter notice to the appropriate TTB officer and file F 5120.17 quarterly or annually for the remaining portion of the calendar year. If a proprietor becomes ineligible for quarterly or annual filing by exceeding the

applicable tax liability or activity limit, the proprietor must file F 5120.17 for that month and for all subsequent months of the calendar year. If there is a jeopardy to the revenue, the appropriate TTB officer may at any time require any proprietor otherwise eligible for quarterly or annual filing of a report of bonded wine premises operations to file such report monthly.

(ii) *Eligibility for quarterly report filing.* In order to be eligible to file F 5120.17 on a quarterly basis, the proprietor must be filing quarterly tax returns under § 24.271, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(iii) *Eligibility for annual report filing.* In order to be eligible to file F 5120.17 on an annual basis, the proprietor must be filing annual tax returns under § 24.273, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 20,000 gallons for any one month during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(3) *No reportable activity.* A proprietor who files a monthly F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months may attach to the filed F 5120.17 a statement that, until a change in the inventory or a reportable operation occurs, a F 5120.17 will not be filed.

**§ 24.313 [Amended]**

■ 12. Section 24.313 is amended by removing the words "monthly reports" in the first sentence and adding, in their place, the words "monthly or quarterly

reports" and by adding a new sentence following the second sentence, to read as follows: "However, proprietors who file quarterly reports must select an annual inventory period that begins on the first day of a calendar quarter."

**PART 25—BEER**

■ 13. The authority citation for part 25 continues to read as follows:

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5148, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 14. Section 25.93 is amended by revising paragraph (a) to read as follows:

**§ 25.93 Penal sum of bond.**

(a)(1) *Brewers filing semimonthly tax returns.* For brewers filing tax returns and remitting taxes semimonthly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(2) *Brewers filing quarterly tax returns.* For brewers filing tax returns and remitting taxes quarterly under § 25.164(c)(3), the penal sum of the brewers bond must be equal to 29 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

\* \* \* \* \*

■ 15. In § 25.164:

■ a. The section heading is revised;

■ b. The first and second sentences of paragraph (a) are amended by removing the word "semimonthly";

- c. Paragraphs (c) and (d) are revised;
- d. The first sentence of paragraph (e)(1) is amended by adding the words "or quarterly" after "semimonthly"; and
- e. Paragraph (e)(2) is amended by adding the words "or quarterly" after "semimonthly" wherever it appears.

The revisions read as follows:

**§ 25.164 Quarterly and semimonthly returns.**

\* \* \* \* \*

*(c) Return periods.*

(1) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

*Reasonably expects.* When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

*Taxpayer.* A taxpayer is a person who is liable for excise tax imposed with respect to beer by 26 U.S.C. 5051 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(2) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (c)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month, except as otherwise provided in § 25.164a.

(3) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing of the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has

not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(d) *Time for filing returns and paying tax.* Except as otherwise provided in § 25.164a for semimonthly tax returns, the brewer shall file the tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 25.164a(c).

\* \* \* \* \*

- 16. Section 25.164a is amended by revising the section heading and paragraph (a)(1) to read as follows:

**§ 25.164a Special September rule for taxes due by semimonthly return.**

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return, Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

\* \* \* \* \*

- 17. In § 25.166, the first sentence of paragraph (a) is amended by removing the words "semimonthly return" and adding, in their place, the words "return for deferred payment of tax".

**PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS**

- 18. The authority citation for part 26 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, 5146, 5148, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

- 19. Section 26.11 is amended by adding in appropriate alphabetical order a definition of "calendar quarter and quarterly" to read as follows:

**§ 26.11 Meaning of terms.**

\* \* \* \* \*

*Calendar quarter and quarterly.* These terms refer to the three-month period

ending on March 31, June 30, September 30, or December 31.

\* \* \* \* \*

- 20. Section 26.112 is amended by revising the section heading and paragraph (b) and the heading of paragraph (d), and by adding a heading to paragraph (d)(1) to read as follows:

**§ 26.112 Returns for deferred payment of tax.**

\* \* \* \* \*

(b) *Return periods.* (1) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

*Reasonably expects.* When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

*Taxpayer.* A taxpayer is a person who is liable for excise tax under 26 U.S.C. 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(2) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (e) of this section.

(3) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes imposed by 26 U.S.C. 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of semimonthly period in which that date occurs.

\* \* \* \* \*



(d) *Special September rule for taxes due by semimonthly return.* (1) *General.*

\* \* \*

\* \* \* \* \*

## PART 70—PROCEDURE AND ADMINISTRATION

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

**Authority:** 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 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, 6416, 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.

■ 22. In § 70.412, the second sentence of paragraph (a) is revised to read as follows:

### § 70.412 Excise taxes.

(a) *Collection.* \* \* \* If the person responsible for paying the taxes has filed a proper bond to defer payment, such person may be eligible to file semimonthly or quarterly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during the semimonthly or quarterly period. \* \* \*

\* \* \* \* \*

Signed: December 13, 2005.

**John J. Manfreda,**  
Administrator.

Approved: December 23, 2005.

**Timothy E. Skud,**

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 06–981 Filed 2–1–06; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### 33 CFR Part 401

[Docket No. SLSDC 2005–23248]

RIN 2135–AA22

#### Seaway Regulations and Rules: Periodic Update, Various Categories

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation (SLSDC) and

the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The changes update the following sections of the Regulation and Rules: Condition of Vessels; Preclearance and Security for Tolls; Seaway Navigation; Toll Assessment and Payment; and Information and Reports. These amendments are necessary to take account of updated procedures and/or technology and enhance the safety of transits through the Seaway. Several of the amendments are merely editorial or for clarification of existing requirements.

**DATES:** This rule is effective March 6, 2006.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number SLSDC 2005–23248] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

**SUPPLEMENTARY INFORMATION:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes update the following sections of the Regulations and Rules: Condition of Vessels; Preclearance and Security for Tolls; Seaway Navigation; Toll Assessment and Payment; and Information and Reports. These updates are necessary to take account of updated procedures and/or technology, which will enhance the safety of transits through the Seaway. Many of these changes are to clarify existing requirements in the regulations. Where new requirements or regulations are made, an explanation for such a change is provided below.

#### *Regulatory Notices: Privacy Act:*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

The SLSDC is making two amendments to the joint regulations pertaining to the Condition of Vessels. Under sections 401.16, “Propeller Direction Alarms”, and 401.17, “Pitch Indicators and Alarms”, the SLSDC is adding language that would require visible and audible alarms to have a time delay of not greater than 8 seconds. In confined waters of the Seaway or while entering a lock it is important for the master/pilot to know immediately when an incorrect command is received in order to take appropriate corrective action. Currently some vessels have alarms with a 30 second delay in which time the vessel could be outside the