

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 290, 295 and 296

[T.D. ATF-420]

RIN: 1512-AB88

Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R-88P]

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

ACTION: Treasury decision, final rule.

SUMMARY: This document implements the January 1, 2000 and January 1, 2002 tax increases on tobacco products and cigarette papers and tubes imposed by section 9302 of the Balanced Budget Act of 1997 (Pub. L. 105-33). ATF is amending existing regulations to show the new tax rates. This document also makes additional changes of a technical nature.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8202, mdruh@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Tax Increases

Public Law 105-33, entitled "The Balanced Budget Act of 1997" (the Act) was enacted on August 5, 1997. Section 9302 (a) through (f) (111 Stat. 671) increases the tax imposed by the Internal Revenue Code of 1986 relating to tobacco products and cigarette papers and tubes in two increments. The first tax increase applies to articles removed from ATF or customs bond on or after January 1, 2000. The second tax increase applies to such articles removed on or after January 1, 2002. Section 9302(g) imposes a new tax on "roll-your-own" tobacco. In this document, we are simply listing the new tax rates in the appropriate sections of the regulations. In separate rulemaking documents, we will make other changes to the tobacco regulations to administer the new tax on "roll-your-own" tobacco, the floor stocks tax, and other provisions of section 9302.

Tobacco regulations in 27 CFR parts 270, 275, 290, 295 and 296 that specified only the pre-2000 tax rates are amended to show the new rates. Examples of calculations in these regulations have been amended

to show the current and future tax rates.

Excise Tax on Cigarette Papers

The Act modifies the tax imposed on cigarette papers manufactured in or imported into the United States. Sections 9302(c) of the Act raises the rate of tax. Section 9302(h)(3) of the Act revises how the excise tax on cigarette papers is applied. Previously, the excise tax only applied to books or sets of cigarette papers that contained more than 25 papers. As of January 1, 2000, all cigarette papers manufactured in or imported into the United States must be taxed without regard to the size of the book or set. The tax continues to be computed on each 50 papers or fractional part thereof, so in the following examples of tax computation, fractions of 50 papers are treated as a full 50 papers:

rate applicable:		Computation using tax	
Quantity		Prior to 1/1/2000	1/1/2000 to
12/31/2001	1/1/2002 and after		
1,000 books of 20 papers each.... papers \$4.88 (20,000 papers	No tax.....	\$4.24 (20,000	$\div 50$
= 400);	$\div 50 = 400$;	(400 x 1.06	4.24).
cents = \$ (400 x 1.22 cents = \$			
4.88)			
1,007 books of 30 papers each.... papers \$7.381 (30,210 papers	\$4.5375 (30,210 papers	\$6.413 (30,210	$\div 50 = 605$; (605
$\div 50 = 605$;	$\div 50 = 605$;	x 0.75 cents = \$4.5375	(605 x 1.06
cents = \$ (605 x 1.22 cents = \$)	6.413).	
7.381)			
1,007 books of 60 papers each.... papers \$14.7498 (60,420 papers	\$9.0675 (60,420 papers	\$12.8154 (60,420	$\div 50 = 1209$;
$\div 50 = 1209$;	$\div 50 = 1209$;	(1209 x 0.75 cents = \$	(1209 x 1.06
cents = (1209 x 1.22 cents =	9.0675).	\$12.8154).	
\$14.7498)			

Sale Price for Large Cigars

Regulations that refer to the wholesale price of large cigars have been removed or amended to refer to the sale price. Before January 1,

1991, the excise tax on large cigars was based on the wholesale price, but after that date, Public Law 101-508 changed the tax so it was based on the sale price. Since it is unlikely ATF or industry members will need to compute tax at the pre-1991 rates, we are deleting all references to those rates in the regulations. Should the need arise, we will refer to regulations that were in force at the time of removal. In this document, we have expanded the sale price regulations to include information contained in the old wholesale price regulations where this information is applicable to sale price. For example, we adopt rules for pricing of combination packages and cigars sold as "seconds."

Delegations of Authority

Pursuant to Treasury Decision 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of ATF, the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by ATF delegation orders, regional directives, or similar delegation documents. In addition, the Secretary has placed delegations to specific ATF officials in some of the regulations issued pursuant to the IRC. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 52, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all redelegations of the Director's authority in the revised or amended sections of the regulations. The regulations, which specified an ATF officer by title, are being replaced with delegations to the "appropriate ATF officer." Along with this final rule, ATF is publishing a delegation order, in which we give the organizational titles

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of the individuals who have authority to carry out each of the specified duties. The effect of these changes is to consolidate all delegations of authority into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the event of a change in delegation or in the event of a restructuring. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition to the above, this final rule also eliminates all references in the affected regulatory sections which identify the ATF officer with whom an ATF form is filed. Thus, in lieu of identifying the authorized officer in the regulations, the form itself will indicate the officer with whom it must be filed. Similarly, this final rule also amends the affected sections of the various parts to provide that documents other than ATF forms (such as letterhead applications,

notices and reports) will be filed with the "appropriate ATF officer." The "appropriate ATF officer" is the Director's delegate and will be identified in the accompanying Delegation Order. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed in the event that authority to receive such submissions, or the title of the officer, changes.

Consistent with the above, this final rule makes various technical amendments to the affected parts of 27 CFR. Specifically, new sections are added to recognize the authority of the Director to delegate regulatory authorities in each part and to identify the appropriate delegation order as the instrument reflecting such delegations. Also, each part affected by this document is amended to provide that the instructions on an ATF form identify the ATF officer with whom it is filed.

Since ATF is issuing this Treasury decision to implement Public Law 105-33, we are amending only the sections that were affected by the law change. We intend to make similar changes in delegations to the remainder of parts 270, 275, 290, 295 and 296 in future technical correction documents. We plan to amend each part of Title 27 of the Code of Federal Regulations through a separate rulemaking. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Administrative Corrections

Minor changes are also made to remove references to obsolete OMB Control Number 1512-0362 and to reflect current ATF form numbers. The locations in the regulations regarding the form changes are as follows:

Regulation citation in 27 CFR	Old Form No.	New Form No.
270.431.....	2132	5230.2
270.422, 275.141.....	2138	5230.3

"Plain Language" Changes

When we were revising the regulations to make the changes in the tax rates, we also tried to simplify and clarify the language of the affected regulations. We did not change any requirements of these sections. Although we are not making a formal request for comments as part of this rulemaking, we welcome suggestions for improving the readability of these regulations at any time.

Administrative Procedure Act

This document merely implements parts of section 9302 of the Balanced Budget Act of 1997 that are effective on January 1, 2000. Therefore, we find it is unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) do not apply to this final rule. We were not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. The revenue effects of this rulemaking on small businesses result directly from the underlying statute. Pursuant to section 7805(f), we have sent a copy of this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Executive Order 12866

This document is not a significant regulatory action within the meaning of Executive Order 12866.

Paperwork Reduction Act

This document does not contain any new collections of information nor does it revise existing collections of information to impose new burdens. Consequently, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document. Three sections of the regulations that contain paperwork requirements are amended, but there are no changes of burden as a result of these changes:

- 27 CFR 275.181 is revised to eliminate the requirement for records of wholesale price; the requirement for records of sale price is retained (1512-0368).

- 27 CFR 295.51 is revised to change "wholesale" price to "sale" price, and the section is reorganized to make it easier to read (1512-0363).

- 27 CFR 296.74 is amended to give current and future tax rates, to clarify the wording, and to display the number of the current OMB approval (1512-0492).

Drafting Information

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

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

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspections, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 296

Authority delegations, Cigars and cigarettes, Claims, Disaster assistance,

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Excise taxes, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

Issuance

Title 27 CFR is amended as follows:

PART 270--MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The heading of part 270 is revised to read as set forth above.

Pars. 2-3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.11 is amended by removing the definitions for the terms "Determined or determination" and "Wholesale price," and adding definitions for the terms "Appropriate ATF officer," "ATF," "Determine" and "Sale price" to read as follows:

Sec. 270.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

* * * * *

ATF. The Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with Sec. 270.22 and used for computation of the tax.

* * * * *

Par. 5. Section 270.21 is revised to read as follows:

Sec. 270.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

during the years:		Tax rate for removals	
		1993 to 1999	2000 and
2001	Type and amount 2002 and after		
	Small cigars per thousand.....	\$1.125	\$1.594
	\$1.828		
	Large cigars per thousand *		
	<bullet> percentage of sale price.	12.75%	18.063%
	20.719%		
	<bullet> but not to exceed<r-	\$30	\$42.50
	\$48.75		
	arrow>.		

*For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand.

(b) See Sec. 270.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

Sec. 270.22 [Removed]

Par. 6. Section 270.22 is removed.

Sec. 270.22a [Redesignated as Sec. 270.22 and revised]

Par. 7. Section 270.22a is redesignated as Sec. 270.22, and newly redesignated Sec. 270.22 is revised to read as follows:

Sec. 270.22 Determination of sale price of large cigars.

(a) General rule. The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) Special cases.--(1) In general. If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with Sec. 70.701(d) of this chapter.

(2) Adjustments in sale price.--(i) Reasons for adjustment. Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) Time of adjustment. If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by ATF's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) Amount of adjustment. The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) Pricing for different packaging. If different bona fide sale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes

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of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) Pricing of seconds. If some of an otherwise identical cigar

brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) Combination packages. If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) Removals for another person. If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

Par. 8. Section 270.23 is revised to read as follows:

Sec. 270.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes.....	\$12	\$17	\$19.50
Large cigarettes up to 6 1/2" long.....	25.20	35.70	40.95
Large cigarettes over 6 1/2" long.....	Taxed at the rate for small cigarettes, counting each 2 3/4 inches or fraction thereof of the length of each as one cigarette.		

Par. 9. Section 270.25 is revised to read as follows:

Sec. 270.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound * for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after

Snuff.....	\$0.36	\$0.51	\$0.585
Chewing tobacco.....	0.12	0.17	0.195

* Prorate tax for fractions of a pound.

Par. 10. Section Sec. 270.25a is revised to read as follows:

Sec. 270.25a Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound * for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco.....	\$0.675	\$0.9567	\$1.0969
Roll-your-own tobacco.....	* No tax	0.9567	1.0969

* Prorate tax for fractions of a pound.

Par. 11. A new Sec. 270.49 is added to read as follows:

Sec. 270.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 270. Some of the authorities in this part are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Par. 12. Section 270.183 is amended by revising paragraph (e) to read as follows:

Sec. 270.183 Record of tobacco products.

* * * * *

(e) Removed subject to tax (itemize large cigars by sale price in accordance with Sec. 270.22, except cigars that cost more than \$235.294 may optionally be

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shown as if the price were \$236 per thousand);

* * * * *

Par. 13. Section 270.184 is revised to read as follows:

Sec. 270.184 Record of removals subject to tax.

(a) Requirement. Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

- (1) The date of removal,
- (2) The name and address of the person to whom shipped or delivered,
- (3) The kind and quantity of tobacco products removed, and
- (4) For large cigars, show the sale price (If the sale price is more than \$235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) Exceptions. (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an ATF officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

Sec. 270.187 [Removed]

Par. 14. Section 270.187 is removed. and adding, in its place, a reference to Sec. 270.22.

Sec. 270.187 Record of sales prices of large cigars.

Par. 16. Section 270.311 is amended by revising paragraph (b) to read as follows:

Sec. 270.311 Action by claimant.

* * * * *

(b) Large cigars. Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see Sec. 270.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 17. Section 270.351 is revised to read as follows:

Sec. 270.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers \1\ for removals during the years:		
	1993 to 1999 \2\	2000 and 2001	2002 and after
Cigarette papers up to 6\1/2\" long.....	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6\1/2\" long.....	Use rates above, but count each 2\3/4\ inches, or fraction thereof, of the length of each as one cigarette paper.		

\1\ Tax rate for less than 50 papers is the same. The tax is not prorated.

\2\ Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 18. Section 270.352 is revised to read as follows:

Sec. 270.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6\1/2\" long.....	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6\1/2\" long.....	Use rates above, but count each 2\3/4\ inches, or fraction thereof, of the length of each as one cigarette tube.		

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 19. Section 270.421 is revised to read as follows:

Sec. 270.421 General.

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the date and number of cigarette papers and the date and number of cigarette tubes:

- (1) Manufactured;
- (2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;
- (3) Removed, subject to tax;
- (4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to Sec. 270.451; or
- (5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on

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which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

Par. 20. Section 270.422 is revised to read as follows:

Sec. 270.422 General.

Every manufacturer of cigarette papers and tubes must prepare a report on ATF Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) Reports for periods on or after January 1, 2000. Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) Reports for periods prior to January 1, 2000. Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

Par. 21. Section 270.431 is revised to read as follows:

Sec. 270.431 General.

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on ATF Form 5230.2 in accordance with instructions for the form. Such inventory is subject to verification by an ATF officer. The manufacturer must retain a copy of each inventory completed on ATF Form 5230.2 in accordance with this subpart.

(a) Reports of inventory for periods on or after January 1, 2000. Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) Reports of inventory for periods prior to January 1, 2000. Reports of inventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

(26 U.S.C. 5721)

PART 275--[AMENDED]

Par. 22. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 20. Section 275.11 is amended by removing the definitions for the terms "Determined or determination" and "Wholesale price" and by adding definitions for the terms "Appropriate ATF officer," "ATF," "Determine" and "Sale price" to read as follows:

Sec. 275.11 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

* * * * *

ATF. The Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before 1/1/2000 or sale price of large cigars), that information must also be established as part of tax determination.

* * * * *

Sale price. The price for which large cigars are sold by the importer or manufacturer, determined in accordance with Sec. 275.39 and used for computation of the excise tax.

* * * * *

Par. 23. A new Sec. 275.29 is added to read as follows:

Sec. 275.29 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Par. 24. Section 275.30 is revised to read as follows:

Sec. 275.30 Pipe tobacco and roll-your-own tobacco.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

removals during the years Product		Tax rate per pound \1\ for	
		1993 to 1999	2000 and after
2001	2002 and after		
Pipe tobacco.....		\$0.675	\$0.9567
\$1.0969			
Roll-your-own tobacco.....		No tax	0.9567
1.0969			

\1\ Prorate tax for fractions of a pound.

Par. 25. Section 275.31 is revised to read as follows:

Sec. 275.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

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during the years Product		Tax rate for removals	
		1993 to 1999	2000 and after
2001	2002 and after		

Small cigars (per thousand).....	\$1.125	\$1.594
\$1.828		
Large cigars \1\ percentage of sale price.....	12.75%	18.063%
20.719%		
but not to exceed per thousand....	\$30	\$42.50
\$48.75		

\1\ For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294.

(b) See Sec. 275.39 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

Par. 26. Section 275.32 is revised to read as follows:

Sec. 275.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

removals during the years Product		Tax rate per thousand for	
		1993 to 1999	2000 and
2001	2002 and after		
Small cigarettes.....	\$12	\$17	
\$19.50			
Large cigarettes up to 6\1/2\" long..	25.20	35.70	
40.95			
Large cigarettes over 6\1/2\" long...	Use tax rates for small cigarettes, but count each 2\3/4\ inches or fraction thereof of the length of each as one cigarette.		

Par. 27. Section 275.33 is revised to read as follows:

Sec. 275.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound \1\ for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff.....	\$0.36	\$0.51	\$0.585
Chewing tobacco.....	\$0.12	\$0.17	\$0.195

\1\ Prorate tax for fractions of a pound.

Par. 28. Section 275.34 is revised to read as follows:

Sec. 275.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers \1\ for removals during the years		
	1993 to 1999 \2\	2000 or 2001	2002 and after
Cigarette papers up to 6\1/2\" long.....	\$0.0075	\$0.0106	\$0.0122
Cigarette papers over 6\1/2\" long.....	Use rates above, but count each 2\3/4\ inches, or fraction thereof, of the length of each as one cigarette paper.		

\1\ Tax rate for less than 50 papers is the same. The tax is not prorated.

\2\ Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

Par. 29. Section 275.35 is revised to read as follows:

Sec. 275.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Tax rate for each 50 tubes \1\ for removals during the years

Product	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6\1/2\" long.....	\$0.015	\$0.0213	\$0.0244
Cigarette tubes over 6\1/2\" long.....	Use rates above, but count each 2\3/4\" inches, or fraction thereof, of the length of each as one cigarette tube.		

\1\ Tax rate for less than 50 tubes is the same. The tax is not prorated.

Par. 30. Section 275.39 is amended to read as follows:

Sec. 275.39 Determination of sale price of large cigars.

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See Sec. 270.22(b) of this chapter for information on determining the sale price in special cases.

Par. 31. Section 275.81 is amended by revising paragraphs (c)(1), (c)(4)(ii) and (c)(4)(iii) to read as follows:

Sec. 275.81 Taxpayment.

* * * * *

(c) * * *

(1) For cigarette papers: For cigarette papers imported on or after January 1, 2000, the importer will show the total number of cigarette papers, the rate of tax, and the amount of tax due. For cigarette papers imported prior to January 1, 2000, the importer will show the number of books or sets, the number of papers in each book or set, the rate of tax, and the amount of tax due.

* * * * *

(4) * * *

(ii) For large cigars with a sale price of not more than \$235.294 per thousand, the number and total sale price of such cigars;

(iii) For large cigars with a sale price of more than \$235.294 per thousand, the number of cigars;

* * * * *

Par. 32. Section 275.107 is amended by revising paragraph (c)(4) to read as follows:

Sec. 275.107 Procedures at port of entry.

* * * * *

(c) * * *

(4) The number of cigarette papers. If imported prior to January 1, 2000, the number of books or sets of cigarette papers of each different

numerical content.

* * * * *

Par. 33. Section 275.110 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 275.110 Computation of tax and execution of agreement to pay tax.

* * * (b) the number and total sale price of large cigars with a price of not more than \$235.294 per thousand to be shipped; (c) the number of large cigars with a sale price of more than \$235.294 per thousand to be shipped.

* * * * *

Par. 34. Section 275.117 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 275.117 Procedure at port of entry.

* * * (b) the number and sale price of large cigars with a sale price of not more than \$235.294 per thousand, (c) the number of large cigars with a sale price of more than \$235.294 per thousand, * * *

* * * * *

Par. 35. Section 275.139 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 275.139 Records.

* * * * *

(b) The sale price of large cigars removed subject to tax, except that if the price is more than \$235.294 per thousand, it may be shown as if it were \$236 per thousand.

(c) Cigarette papers:

(1) Before January 1, 2000, the date and number of books or sets of cigarette papers of each numerical content.

(2) On and after January 1, 2000, the date and number of cigarette papers.

* * * * *

Par. 36. Section 275.170 is amended by revising the section heading and paragraph (b) to read as follows:

Sec. 275.170 Reduction of tobacco products to materials; ATF action.

* * * * *

(b) Large cigars. Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see Sec. 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required

record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.
(See 26 U.S.C. 5705)

Par. 37. Section 275.172 is amended by revising paragraph (b) to read as follows:

Sec. 275.172 Return to nontaxpaid status; action by taxpayer.

* * * * *

(b) Large cigars. Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax applicable to that brand and size of cigar during the required record retention period (see Sec. 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the importer must include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

Par. 38. Section 275.181 is revised to read as follows:

Sec. 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States must keep such records as are necessary to establish and verify the sale price that applies to large cigars removed (entered or withdrawn).

(a) Basic record. The importer must keep a record to show each sale price (as determined under Sec. 275.39), which is applicable to large cigars removed. No later than the tenth business day in

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January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) Copies of price announcements. The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy

does not show the actual date when issued it must be annotated to show this information.

(c) Copies of entry and withdrawal forms. The importer must keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to Sec. 275.81.

(d) Alternative record. If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1512-0368)

PART 290--[AMENDED]

Par. 39. The authority citation for part 290 continues to read as follows:

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

Par. 40. Section 290.11 is amended by removing the definition for the term "wholesale price" and adding a definition for the term "sale price" to read as follows:

Sec. 290.11 Meaning of terms.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with Sec. 270.22 or Sec. 275.39.

* * * * *

PART 295--[AMENDED]

Par. 41. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 42. Section 295.11 is amended by removing the definition for the term "Wholesale price" and adding a definition for the term "Sale price" to read as follows:

Sec. 295.11 Meaning of terms.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with Sec. 270.22 or Sec. 275.39 and used in computation of the tax.

* * * * *

Par. 43. Section 295.51 is revised to read as follows:

Sec. 295.51 Supporting records.

(a) Records of removals. Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 270 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

(1) The date of removal;

(2) The name and address of the Federal agency to which shipped or delivered;

(3) The kind and quantity and,

(4) for large cigars, the sale price.

(b) Records of returns. If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) Commercial records. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) Retention period. The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512-0363)

(See 26 U.S.C. 5741)

PART 296--[AMENDED]

Par. 44. The authority citation for part 296 continues to read as follows:

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

Par. 45. The heading of subpart C is revised to read as follows:

Subpart C--Disaster Loss Claims

Par. 46. Section 296.72 is amended by removing the definition for the term "Wholesale price" and adding definitions for the terms

"Appropriate ATF officer" and "Sale price" to read as follows:

Sec. 296.72 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296.

* * * * *

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with Sec. 270.22 or 275.39 and used in computation of the tax.

* * * * *

Par. 47. Sections 296.74 through 296.77 are revised to read as follows:

Sec. 296.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim--Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

Sec. 296.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes

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has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993-1999 Rates]

Rate of tax	Quantity Amount	Article	
20,000.....		Small cigars.....	\$1.125
per thousand.....	\$22.50		
1,000.....		Large cigars--sale price \$100/	12.75%
of sale price.....	12.75	thousand.	
500.....		Large cigars--sale price \$236/	\$30 per
thousand.....	15.00	thousand.	
10,000.....		Small cigarettes.....	\$12 per
thousand.....	120.00		
5,000.....		Large cigarettes.....	\$25.20
per thousand.....	126.00		
2,000 sets.....		Cigarette papers--50 per set..	\$0.0075
per set.....	15.00		
1,000 sets.....		Cigarette papers--100 per set.	\$0.015
per set.....	15.00		
1,000.....		Cigarette tubes.....	\$0.015
per 50 tubes.....	0.30		
100 lbs.....		Chewing tobacco.....	\$0.12
per pound.....	12.00		
200 lbs.....		Snuff.....	\$0.36
per pound.....	72.00		
100 lbs.....		Pipe tobacco.....	\$0.675
per pound.....	67.50		
300 lbs.....		Roll-your-own tobacco.....	\$0 per
pound.....			
Total claimed.....			
	478.05		

[Example using 2000-2001 Rates]

Rate of tax	Quantity Amount	Article	
20,000.....		Small cigars.....	\$1.594
per thousand.....	\$31.88		
1,000.....		Large cigars--sale price \$100/	18.063%
of sale price.....	18.06	thousand.	
500.....		Large cigars--sale price \$236/	\$42.50
per thousand.....	21.25	thousand.	
10,000.....		Small cigarettes.....	\$17.00
per thousand.....	170.00		

5,000.....		Large cigarettes.....	\$35.70
per thousand.....	178.50		
199,975.....		Cigarette papers.....	\$0.0106
per 50 papers.....	42.40		
1,000.....		Cigarette tubes.....	\$0.0213
per 50 tubes.....	0.43		
100 lbs.....		Chewing tobacco.....	\$0.17
per pound.....	17.00		
200 lbs.....		Snuff.....	\$0.51
per pound.....	102.00		
100 lbs.....		Pipe tobacco.....	\$0.9567
per pound.....	95.67		
300 lbs.....		Roll-your-own tobacco.....	\$0.9567
per pound.....	287.01		
Total claimed.....			
.....	964.20		

[Example using rates for 2002 and After]

Rate of tax	Quantity Amount	Article	
20,000.....		Small cigars.....	\$1.828
per thousand.....	36.56		
1,000.....		Large cigars--sale price \$100/ of sale price.....	20.719%
	20.72	thousand.	
500.....		Large cigars--sale price \$236/ thousand.	\$48.75
per thousand.....	24.38		
10,000.....		Small cigarettes.....	\$19.50
per thousand.....	195.00		
5,000.....		Large cigarettes.....	\$40.95
per thousand.....	204.75		
199,975.....		Cigarette papers.....	\$0.0122
per 50 papers.....	48.80		
1,000.....		Cigarette tubes.....	\$0.0244
per 50 tubes.....	0.49		
100 lbs.....		Chewing tobacco.....	\$0.195
per pound.....	19.50		
200 lbs.....		Snuff.....	\$0.585
per pound.....	117.00		
100 lbs.....		Pipe tobacco.....	\$1.0969
per pound.....	109.69		
300 lbs.....		Roll-your-own tobacco.....	\$1.0969
per pound.....	329.07		
Total claimed.....			
.....	1,105.96		

Sec. 296.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

296.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

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Par. 48. A new undesignated centerheading and Sec. 296.81 are added to the end of subpart C to read as follows:

Administrative Provisions

Sec. 296.81 Delegations of the Director.

The Director has general authority to take action on all matters under this subpart. Some of the authorities in this subpart are redelegated to "appropriate ATF officers." The title of the appropriate ATF officer for each section is listed in ATF Order 1130.15, Delegation Order--Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov>).

Signed: October 5, 1999.

John W. Magaw,
Director.

Approved: October 27, 1999.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).
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