

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 252

[TTB Notice No. 16]

RIN 1513-AA78

Evidence of Exportation for Distilled Spirits; Use of Alternative Documentation (2002R-045P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to amend its regulations listing the documents that provide adequate evidence of export for shipments of distilled spirits. We also propose to require submission of these documents within a specific 90-day timeframe. This action is being taken to clarify the existing regulations as to the types of acceptable documentation and to inform the public that the Bureau will consider the approval of alternative types of documentation as adequate export evidence.

DATES: Written comments must be received by November 24, 2003.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091-0221 (Attn: TTB Notice No. 16). See the "Public Participation" section of this notice for alternative means of commenting.

Copies of the proposed regulation, background materials, and any written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-7890. You may also view online copies of this proposed regulation and any comments received regarding it under this notice number at <http://www.ttb.gov/alcohol/rules/index/htm>.

FOR FURTHER INFORMATION CONTACT:

Joanne Brady, Specialist, Regulations and Procedures Division (Philadelphia, PA), Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone 215-333-7050 or e-mail Joanne.Brady@ttb.gov.

SUPPLEMENTARY INFORMATION:

Impact of the Homeland Security Act on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of distilled spirits, including evidence of exportation, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background

Under the provisions of the Internal Revenue Code at 26 U.S.C. 5214, distilled spirits can be withdrawn from bonded premises for exportation, free of tax or without payment of tax, subject to regulations prescribed by the Secretary of the Treasury. To help carry out these statutory provisions, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued regulations which list several types of evidence that a proprietor can submit as adequate proof of export for shipments of distilled spirits. The proprietor is relieved of the tax liability at the time the distilled spirits are exported to a foreign or export destination, provided the proper evidence of exportation is submitted to TTB in a timely manner.

The Proposal

We propose to amend 27 CFR part 252, Exportation of Liquors, in order to clarify the existing regulations regarding evidence of exportation for shipments of distilled spirits. A new section, 27 CFR 252.39, clarifies the types of documentation that TTB will accept as adequate proof of export for shipments of distilled spirits. This new section will also require the documentation to be

submitted within 90 days of the date of withdrawal of the distilled spirits.

We are taking this action regarding the submission of export documents for distilled spirits at the recommendation of the Office of the Inspector General. TTB's current internal processing procedures are directed by order TTB O 5020.8A. According to this order, it is our policy that exporters submit adequate proof of exportation within 90 days. An extension may be granted due to just cause. It is critical that TTB act promptly in tax assessment matters.

The tobacco export regulations at 27 CFR part 44 require that export evidence be furnished within 90 days of the date of removal of the tobacco products, or cigarette papers or tubes. In order to maintain consistency in TTB's internal processing procedures, we propose to apply the 90-day requirement to shipments of distilled spirits. We consider this time period to be a reasonable time for exporters to obtain and submit documentation to us in support of an export shipment. This period may be extended for just cause. At this time we are concentrating on revising the regulations for exporters of distilled spirits only. We will also be developing updated procedures for the beer and wine industries in the future.

We propose to revise 27 CFR 252.40 to reflect a change in the section heading. We also propose to add 27 CFR 252.44 to clarify and remind the industry of the opportunity to submit alternative types of documentation as adequate proof of export, provided such documentation is:

- Complete and accurate;
- Third-party verifiable; and
- Contains the same information

required in an export bill of lading as outlined in 27 CFR 252.250.

In addition, we propose to add two new sections, 27 CFR 252.254 and 252.255, addressing certification of form TTB F 5100.11 by U.S. Customs Service and certificates of receipt issued by officials of foreign countries, both of which qualify as evidence of exportation.

TTB believes these additions and changes to the regulations will provide the public with a better understanding of its export documentation requirements, while allowing the industry the opportunity to submit alternative documents for approval.

Public Participation

TTB requests comments from all interested parties on the proposals contained in this notice. We specifically request comments on the clarity of this proposed rule and how it may be made easier to understand.

What Is a Comment?

In order for a submission to be considered a "comment," it must clearly indicate a position for or against the proposed rule or some part of it, or express neutrality about the proposed rule. Comments that use reasoning, logic, and, if applicable, good science to explain the commenter's position are the most persuasive in the formation of a final rule.

To be eligible for consideration, comments must:

- Contain your name and mailing address;
- Reference this notice number;
- Be legible and written in language generally acceptable for public disclosure;
- Contain a legible, written signature if submitted by mail or fax; and
- Contain your e-mail address if submitted by e-mail.

To assure public access to our office equipment, comments submitted by fax must be no more than five pages in length when printed on 8½ x 11" paper. Comments submitted by U.S. mail or e-mail may be of any length.

How May I Submit Comments?

By Mail: You may send written comments by U.S. mail to the address shown above in the **ADDRESSES** section of this notice.

By Fax: You may submit comments by facsimile transmission to 215-333-8871. We will treat faxed transmissions as originals.

By E-Mail: You may submit comments by e-mail by sending the comments to nprm@ttb.treas.gov. We will treat e-mail transmissions as originals.

By On-line Form: You may also submit comments using the comment form provided with the online copy of this proposed rule on the TTB Internet Web site at <http://www.ttb.treas.gov/>. We will treat comments submitted via the Web site as originals.

How Does TTB Use the Comments?

We will carefully consider all comments we receive on or before the closing date. We will not acknowledge receipt of comments or reply to individual comments. We will summarize and discuss pertinent comments in the preamble to any subsequent notices or the final rule published as a result of the comments.

May I Review Comments Received?

You may view copies of the comments on this notice of proposed rule making by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927-7890. You may also request copies of comments (at 20 cents per page) by contacting the ATF Librarian at the above address.

For the convenience of the public, TTB will post comments received in response to this notice on the TTB web site. All comments posted on our web site will show the name of the commenter, but will not show street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit <http://www.ttb.treas.gov/alcohol/rules/index.htm>, and click on the "View comments" button under this notice number.

Will TTB Keep My Comments Confidential?

TTB cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public in the ATF library. We may also post the comment on our web site. (See "May I Review Comments Received?") Finally, we may disclose the name of any person who submits a comment and quote from the comment in the preamble to a final rule on this subject. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in your comments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

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 notice because no new requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

TTB certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. We expect no negative impact on small entities. We are not proposing new requirements.

Accordingly, the Act does not require a regulatory flexibility analysis.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment.

Drafting Information

The principal author of this document is Joanne Brady, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

For the reasons set forth in the preamble, TTB proposes to amend 27 CFR part 252 as follows:

PART 252—EXPORTATION OF LIQUORS

1. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

Subpart C—Miscellaneous Provisions

2. Section 252.39 is added to read as follows:

§ 252.39 Filing of evidence of exportation for distilled spirits.

(a) *Required evidence of exportation.* You must provide acceptable export evidence that covers the transportation of the specified shipments of distilled spirits from your plant to the foreign or export destination. This evidence must be accurate and complete and verified by the signature of an authorized individual. We accept the following documents as proof of exportation:

- (1) A copy of an export bill of lading, such as an ocean bill of lading, signed by the carrier or its agent (§ 252.250); or
- (2) A copy of the railway express receipt (§ 252.251), signed by the carrier or its agent, containing the same information required in an export bill of lading (§ 252.250); or
- (3) A copy of the air express receipt (§ 252.252), signed by the carrier or its agent, containing the same information

required in an export bill of lading (§ 252.250); or

(4) A copy of the through bill of lading, signed by the carrier or its agent, where exportation is to a contiguous foreign country (§ 252.250); or

(5) A certificate from the export carrier or its agent, showing actual exportation, when a bill of lading is required and not obtainable, executed under the penalties of perjury, as provided for in § 252.253. It must contain the same information required in an export bill of lading (§ 252.250); or

(6) U.S. Customs certification on TTB F 5100.11, or a certificate of receipt as provided for in § 252.254; or

(7) A certificate of receipt issued by an official of the country or possession where the shipment of distilled spirits has actually landed, as provided for in § 252.255.

(b) *Time period for filing evidence.* You must submit the evidence of exportation of any shipment of distilled spirits to the appropriate TTB officer within 90 days of the date of withdrawal and removal of the distilled spirits from the premises of the distilled spirits plant covered by the bond of the proprietor. The appropriate TTB officer may grant an extension in cases where just cause is shown.

3. The heading of § 252.40 is revised to read as set forth below:

§ 252.40 Filing of evidence of exportation for wine.

* * * * *

4. Section 252.44 is added to read as follows:

§ 252.44 Alternative documentation.

We may approve alternative types of documentation, upon letterhead request, provided such documentation is complete and accurate, third party verifiable, and contains the same information required in an export bill of lading (§ 252.250). You must follow the procedures in § 252.20 if you wish to request approval for use of alternative types of documentation.

Subpart M—Shipment or Delivery for Export

5. Section 252.254 is added as follows:

§ 252.254 Certification on withdrawal of spirits, specially denatured spirits, or wines for exportation, TTB F 5100.11.

To use TTB F 5100.11 as proof of export you must obtain certification by U.S. Customs Service in Part VII, Certificate of Clearance or Use, of the form. A signed certificate of receipt from U.S. Customs Service is also acceptable, if it contains the same information

required in an export bill of lading (§ 252.250).

6. Section 252.255 is added as follows:

§ 252.255 Certificate by foreign official.

TTB will accept an appropriate certification from a foreign official as proof of export. If you use this proof, you must provide a signed certificate of receipt by an authorized official of a foreign country or possession verifying actual exportation. The certificate must contain sufficient information to identify the shipment and the TTB F 5100.11 covering the shipment.

Signed: August 8, 2003.

Arthur J. Libertucci,
Administrator.

Approved: August 8, 2003.

Timothy E. Skud,
Deputy Assistant Secretary, Regulatory, Tariff & Trade Enforcement.

[FR Doc. 03-23886 Filed 9-23-03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030912231-3231-01; I.D. 090403A]

RIN 0648-AR43

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period, and to change the regulations regarding the scup commercial quota counting procedures. **DATES:** Comments on this proposed rule must be received on or before October 9, 2003.

ADDRESSES: Copies of the Framework 3 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment, and other supporting

documents for the framework adjustment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Framework 3." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail sarah.mclaughlin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for scup (*Stenotomus chrysops*), specified in the FMP, is defined as U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The FMP and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coast, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass FMP. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

Scup was most recently assessed at the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated. SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of the fishing mortality rate cannot be determined because of a lack of reliable