

## **PART 22--DISTRIBUTION AND USE OF TAX-FREE ALCOHOL**

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AUTHORITY: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271-5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

SOURCE: T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, unless otherwise noted.

## Subpart A--Scope

### §22.1 General.

The regulations in this part relate to tax-free alcohol and cover the procurement, storage, use, and recovery of tax-free alcohol.

### §22.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

### §22.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19--Distilled Spirits Plants.

27 CFR Part 30--Gauging Manual.

27 CFR Part 170--Miscellaneous Regulations Relating To Liquor.

27 CFR Part 200--Rules of Practice in Permit Proceedings.

27 CFR Part 250--Liquors and Articles from Puerto Rico and the Virgin Islands.

27 CFR Part 251--Importation of Distilled Spirits, Wines and Beer.

31 CFR Part 225--Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF-207, 50 FR 23682, June 5, 1985]

## Subpart B--Definitions

### §22.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

*Alcohol.* Spirits having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

*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 1130.9, Delegation Order--Delegation of the Director's

*CFR.* The Code of Federal Regulations.

*Clinic.* When used in this part the term includes veterinary clinics.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

*Executed under penalties of perjury.* Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration "I declare under the penalties of perjury that this \_\_\_\_\_ (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

*Fiduciary.* A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

*Gallon or wine gallon.* The liquid measure equivalent to the volume of 231 cubic inches.

*Hospital.* When used in this part the term includes veterinary hospitals.

*Initial order.* The first order of tax-free alcohol placed by a permittee or Governmental agency with a distilled spirits plant or vendor, and, the first order placed following the issuance of an amended or corrected permit.

*Liter or litre.* A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters (ml). The symbol for milliliter or milliliters is "ml".

*Permit.* The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw tax-free alcohol from the premises of a distilled spirits plant and use such alcohol under specified conditions.

*Permittee.* Any person holding a permit, on Form 5150.9, issued under this part to withdraw and use tax-free alcohol.

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

*Proof.* The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

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

*Restoration.* Restoring to the original state of recovered tax-free alcohol, including redistillation of the recovered alcohol to 190° or more of proof and the removal of foreign materials by redistillation, filtration, or other suitable means.

*Secretary.* The Secretary of the Treasury or his delegate.

*Spirits or distilled spirits.* The substance known as ethyl alcohol, ethanol, or spirits of wine, having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

*This chapter.* Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

*U.S.C.* The United States Code.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5475, Jan. 19, 2001]

## **Subpart C--Administrative Provisions**

### **Authorities**

#### **§22.20 Delegations of the Director.**

All of the regulatory authorities of the Director contained in this Part 22 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.9, Delegation Order--Delegation of the Director's Authorities in 27 CFR Parts 20, 21 and 22. ATF delegation orders, such as ATF Order 1130.9, are available to any interested person by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5950, or by accessing the ATF web site ((<http://www.atf.treas.gov/>)).

[T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

#### **§22.21 Forms prescribed.**

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF-249, 52 FR 5961, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996; T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

#### **§22.22 Alternate methods or procedures; and emergency variations from requirements.**

(a) *Alternate methods or procedures--*

(1) *Application.* A permittee, after receiving approval from the appropriate ATF officer, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the appropriate ATF officer. The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by appropriate ATF officer.* The appropriate ATF officer may approve the use of an alternate method or procedure if:

- (i) The applicant shows good cause for its use;
- (ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The appropriate ATF officer will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval.* A permittee may not employ an alternate method or procedure until the appropriate ATF officer has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements--*

(1) *Application.* When an emergency exists, a permittee may apply to the appropriate ATF officer for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by appropriate ATF officer.* The appropriate ATF officer may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A permittee may not employ an emergency variation from the requirements until the appropriate ATF officer has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the permittee fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.*

The appropriate ATF officer may withdraw approval for an alternate method or procedure or an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the appropriate ATF officer finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512-0335)

(Act of August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); sec. 201, Pub. L. 85-859, 72 Stat.



1395, as amended (26 U.S.C. 5552))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.23 Allowance of claims.**

The appropriate ATF officer is authorized to allow claims for losses of tax-free alcohol.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.24 Permits.**

(a) The appropriate ATF officer shall issue permits on Form 5150.33 covering the withdrawal of tax-free alcohol by the United States or a Governmental agency as provided in §22.172.

(b) The appropriate ATF officer shall issue the permit to withdraw and use tax-free alcohol, Form 5150.9 required under this part.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.25 Bonds and consents of surety.**

The regional director (compliance) is authorized to approve all bonds and consents of surety required by this part.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.26 Right of entry and examination.**

An appropriate ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records required by this part to be kept on those premises. An appropriate ATF officer may also inspect and take samples of tax-free alcohol to which those records relate.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.27 Detention of containers.**

#### *(a) Summary detention.*

An appropriate ATF officer may detain any container containing, or supposed to contain, alcohol when the appropriate ATF officer believes the alcohol was withdrawn, sold, transported, or used in violation of law of this part. The appropriate ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

#### *(b) Limitations.*

Summary detention may not exceed 72 hours without process of law or intervention of the regional director (compliance). The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on its premises during detention.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1375, as amended (26 U.S.C. 5311))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## Liability for Tax

### §22.31 Persons liable for tax.

All tax-free alcohol removed, sold, transported, or used in violation of law or regulations in this part, is subject to all provisions of law relating to taxable alcohol, including the requirement for payment of tax on the alcohol. The person removing, selling, transporting, or using tax-free alcohol in violation of law or regulations pertaining to tax-free alcohol shall be required to pay the distilled spirits tax on the alcohol.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

## Destruction of Marks and Brands

### §22.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing tax-free alcohol shall immediately destroy or obliterate the marks, brand, and labels required by this chapter to be placed on packages of tax-free alcohol.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

## Document Requirements

### §22.35 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the permittee or other authorized person shall:

(1) Insert the declaration "I declare under the penalties of perjury that I have examined this \_\_\_\_\_ (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete"; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the permittee or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6056))

### §22.36 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an appropriate ATF officer during business hours.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## Subpart Ca--Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17545, May 17, 1988, unless otherwise noted.

## **§22.37 Liability for special tax.**

### *(a) Tax-free alcohol permittee.*

Except as otherwise provided in this section, every person who is required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover alcohol free of tax for nonbeverage purposes shall pay a special (occupational) tax at the rate of \$250 per year. A separate tax shall be paid for each tax-free alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing the business of a tax-free alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

### *(b) Transition rule.*

For purposes of paragraph (a) of this section, a permittee engaged in nonbeverage tax-free distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

### *(c) Each place of business taxable.*

Special (occupational) tax liability is incurred at each place of business for which a permit under subpart D of this part to procure, use, and/or recover distilled spirits free of tax has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

### *(d) Exception for United States.*

Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

### *(e) Exception for certain educational institutions.*

(1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research as specified in §22.104, which holds a permit to procure and use distilled spirits free of tax under this part, is not required to pay special tax under this subpart if--

(i) The university, college, or institution procures less than 25 gallons of tax free spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1) (i) and (ii) of this section during any calendar year, shall pay

special tax as provided in paragraph (a) of this section for the special tax year (July 1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

[T.D. ATF-271, 53 FR 17545, May 17, 1988, as amended by T.D. ATF-285, 53 FR 12610, Mar. 28, 1989; T.D. ATF-337, 58 FR 19061, Apr. 12, 1993]

## **§22.38 Special tax returns.**

### *(a) General.*

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

### *(b) Preparation of ATF Form 5630.5.*

All of the information called for on Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see §22.38a).
- (4) The exact location of the place of business, by name and number of building or street, of if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (5) The class(es) of special tax to which the taxpayer is subject.
- (6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

### *(c) Multiple locations and/or classes of tax.*

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall--

- (1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and
- (2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list

shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of corporate taxpayer) for the period specified on §22.164.

(d) *Signing of ATF Forms 5630.5--*

(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7100)

**§22.38a Employer identification number.**

(a) *Requirement.*

The employer identification number (defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in §70.105 of this chapter.

(b) *Application for employer identification number.*

Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS-4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS-4.*

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

(26 U.S.C. 6109)

## Special Tax Stamps

### §22.39 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.*

Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by §22.38(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.*

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.*

All stamps denoting payment of special tax shall be kept available for inspection by appropriate ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### §22.40 Changes in special tax stamps.

(a) *Change in name.*

If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship--*

(1) *General.* If there is a change in the proprietorship of a tax-free alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to

register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.*

Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

- (1) *Death.* The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;
- (2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);
- (3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;
- (4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.*

If there is a change in location of a taxable place of business, the permittee shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The permittee shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the permittee does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

## Subpart D--Qualification

### Application for Permit, Form 5150.22

#### §22.41 Application for industrial alcohol user permit.

(a) *Users.*

Each person desiring to withdraw and use tax-free alcohol shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9, except permittees who were previously qualified to withdraw and use tax-free alcohol on the effective date of this regulation.

(b) *Filing.*

All applications and necessary supporting documents, as required by this subpart, shall be filed with the appropriate ATF officer. All data, written statements, affidavits, and other documents submitted in support of the application are considered a part of the application.

- (1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.



(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of tax-free alcohol in a number of institutions under its control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the tax-free alcohol to be withdrawn.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.42 Data for application, Form 5150.22.**

(a) Unless waived under §22.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of tax-free alcohol in proof gallons, which will be procured during a 12-month period (one calendar year).

(4) Location, or locations where tax-free alcohol is to be used, if different from the business address.

(5) Statement showing the specific manner in which, or purposes for which, tax-free alcohol will be withdrawn and used.

(6) Statement that tax-free alcohol will be stored in accordance with the requirements of this part.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in §22.45.

(8) Listing of the principal equipment for the recovery and restoration of alcohol (including the serial number, kind, capacity, name and address of manufacturer, and name and address of owner if different from applicant).

(9) List of any trade name(s) under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the tax-free alcohol activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the appropriate ATF officer may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity the appropriate ATF officer may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under §22.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) of this



section is on file with any appropriate ATF officer, the applicant may incorporate this information by reference by stating that the information is made a part of the application.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.43 Exceptions to application requirements.**

(a) The appropriate ATF officer may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) of §22.42, and of paragraph (a)(8) of that section as it relates to recovery, in the case of--

(1) All applications, Form 5150.22 filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants, if their annual withdrawal and usage of tax-free alcohol does not exceed 1,500 proof gallons.

(b) The waiver provided for in this section will terminate when the permittee, other than States or political subdivisions thereof or the District of Columbia, files an application to amend their permit, Form 5150.9, to increase the annual withdrawal and usage of tax-free alcohol in excess of 1,500 proof gallons. In this case the permittee will furnish information in respect to the previously waived items, as provided in §22.57(a)(2).

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.44 Disapproval of application.**

The appropriate ATF officer may, in accordance with Part 200 of this chapter, disapprove an application for a permit to withdraw and use tax-free alcohol, if on examination of the application (or inquiry), the appropriate ATF officer has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and use alcohol free of tax;

(b) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with their application; or

(d) The premises at which the applicant proposes to conduct the business are not adequate to protect the revenue.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.45 Organizational documents.**

The supporting information required by §22.42(a)(7) includes, as applicable:

(a) *Corporate documents.*

(1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated).

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate officers, if applicable, are directly responsible for the tax-free alcohol activities of the business.

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.*

True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.*

(1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons must be submitted to the appropriate ATF officer if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## **Industrial Alcohol User Permit, ATF F 5150.9**

### **§22.48 Conditions of permits.**

Permits to withdraw and use tax-free alcohol will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use or recovery of tax-free alcohol are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

### **§22.49 Duration of permits.**

Permits to withdraw and use tax-free alcohol are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in §22.51, or voluntarily surrendered. The provisions of §22.58 are considered part of the terms and conditions of all permits.

### **§22.50 Correction of permits.**

If an error on a permit is discovered, the permittee shall immediately return the permit to the appropriate ATF officer for correction.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.51 Suspension or revocation of permits.**

The appropriate ATF officer may institute proceedings under Part 200 of this chapter to suspend or revoke a permit whenever there is reason to believe that the permittee--

- (a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;
- (b) Has violated the conditions of that permit;
- (c) Has made any false statements as to any material fact in the application for the permit;
- (d) Has failed to disclose any material information required to be furnished;
- (e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of an offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense;
- (f) Is, by reason of its operations, no longer warranted in procuring and using tax-free alcohol authorized by the permit; or
- (g) Has not engaged in any of the operations authorized by the permit for a period exceeding two years.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.52 Rules of practice in permit proceedings.**

The regulations of Part 200 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

### **§22.53 Powers of attorney.**

An applicant or permittee shall execute and file a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act in its behalf. Form 1534 is not required for persons whose authority is furnished in accordance with §22.42(a)(10).

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.54 Photocopying of permits.**

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw tax-free alcohol from a distilled spirits plant.

### **§22.55 Posting of permits.**

Permits issued under this part will be kept posted and available for inspection on the

permit premises.

## Changes After Original Qualification

### §22.57 Changes affecting applications and permits.

#### (a) *General--*

(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the appropriate ATF officer to amend the application.

(2) *Changes affecting waivers.* When any waiver under §22.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* All written notices to amend an application on Form 5150.22 will--

- (i) Identify the permittee;
- (ii) Contain the permit identification number;
- (iii) Explain the nature of the change and contain any required supporting documents;
- (iv) Identify the serial number of the applicable application, Form 5150.22; and
- (v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

#### (b) *Amended application.*

The appropriate ATF officer may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked "No change since Form 5150.22, Serial No. \_\_\_\_\_."

#### (c) *Changes in officers, directors and stockholders--*

(1) *Officers.* In the case of a change in the officers listed under the provisions of §22.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the appropriate ATF officer) to

those offices, the incumbents of which are responsible for the operations covered by the permit.

(2) *Directors.* In the case of a change in the directors listed under the provisions of §22.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of §22.45(c)(1), a permittee may, upon filing written notice to the appropriate ATF officer and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under §22.58.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985; T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.58 Automatic termination of permits.**

(a) *Permit not transferable.*

Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.*

(1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall within 10 days of the change, give written notice to the appropriate ATF officer. The written notice shall be accompanied by (or within 30 days of the change) an application and supporting documents on Form 5150.22 for a new permit. If an application on Form 5150.22 for a new permit is not filed within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application on Form 5150.22 for a new permit is filed within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit will remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and the permittee shall forward it to the appropriate ATF officer for cancellation.

(c) *Proprietorships.*

In the event of a change in proprietorship of a business of a permittee (as for instance, by reason of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit under the same conditions provided for in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1512-0335)

### **§22.59 Adoption of documents by a fiduciary.**

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

### **§22.60 Continuing partnerships.**

#### *(a) Continuing partnerships.*

If, under the laws of a particular State, a partnership is not terminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use tax-free alcohol under the prior qualifications of the partnership.

#### *(b) Bonds.*

If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

#### *(c) Requalification.*

If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in §22.58(b).

#### *(d) More than one partner.*

The rule set forth in this section also applies if there is more than one surviving partner.

### **§22.61 Change in name of permittee.**

When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit has been issued by the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512-0335)

### **§22.62 Change in trade name.**

Where there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the appropriate ATF officer. A new bond or consent of surety is not required for changes in trade names.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.63 Change in location.**

#### *(a) Permit.*

When there is to be a change in location, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information, to amend the application and permit has been filed and an amended permit has been issued by the appropriate ATF officer.

#### *(b) Bond.*

If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.64 Return of permits.**

Following the termination, surrender or revocation of a permit, or the issuance of a new or amended permit, caused by a change, the permittee shall (a) obtain and destroy all photocopies of the previous permit from its suppliers, and (b) return the original of the permit or obsolete permit to the appropriate ATF officer for cancellation.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## **Registry of Stills**

### **§22.66 Registry of stills.**

The provisions of subpart C of part 170 of this chapter are applicable to stills on the premises of a permittee used for distilling. As provided in §170.55, the listing of a still in the permit application (Form 5150.22), and approval of the application, constitutes registration of the still.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

[T.D. ATF-207, 50 FR 23682, June 5, 1985]

## **Permanent Discontinuance of Use of Tax-Free Alcohol**

### **§22.68 Notice of permanent discontinuance.**

#### *(a) Notice.*



A permittee who permanently discontinues the use of tax-free alcohol shall file a written notice with the appropriate ATF officer to cover the discontinuance. The notice will be accompanied by the permit, and contain--

- (1) A request to cancel the permit,
- (2) A statement of the disposition made, as provided in §22.154, of all tax-free and recovered alcohol, and
- (3) The date of discontinuance.

(b) *Bonds.*

The bond of a permittee may not be canceled until all tax-free and recovered alcohol has been properly disposed of in accordance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## Subpart E--Bonds and Consents of Surety

### §22.71 Bond.

(a) Any bond previously approved, under this chapter, on Form 1448 (5150.25) which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on Form 5150.25.

(b) Each person who intends to withdraw more than 1,500 proof gallons of tax-free alcohol per annum shall file a bond, Form 5150.25, before issuance of the permit. However, no bond is required if the permittee is a State, any political subdivision of a State, or the District of Columbia. The penal sum of the bond will be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 1,500 proof gallons	No bond required.
Over 1,500 but not over 3,000 proof gallons	\$2,000 plus \$100 for each additional 100 proof gallons up to a maximum of \$3,000 (2,500 proof gallons).
Over 3,000 but not over 6,000 proof gallons.	\$3,000 plus \$200 for each additional 100 proof gallons up to a maximum of \$7,500 (5,250 proof gallons).
Over 6,000 proof gallons	\$7,500 plus \$250 for each additional 100 proof gallons up to a maximum penal sum of \$15,000 (9,000 proof gallons).

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
1,250 proof gallons	No bond required.
2,800 proof gallons	\$3,000 (\$2,000 plus \$1,000 (\$100 x 10 units), last 300 proof gallons does not require additional bond



	coverage.
8,250 proof gallons.	\$13,000 (\$7,500 plus \$5,500 (\$250 x 22 units), the remaining 50 proof gallons does not increase the bond since it is not an "additional" 100 proof gallon unit).

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, as amended by 50 FR 20099, May 14, 1985]

### **§22.72 Evaluation of bond penal sum.**

#### *(a) Permittee's evaluation.*

Each permittee shall, for the period from January 1 through the following December 31, make an annual evaluation of its previous and future needs for tax-free alcohol. Based on the results of this evaluation:

- (1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of §22.71, or
- (2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of §22.71.

#### *(b) Authority of appropriate ATF officer.*

The appropriate ATF officer may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.73 Corporate surety.**

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary in the current revision of Treasury Department Circular No. 570.

(b) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985]

### **§22.74 Filing of powers of attorney.**

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The appropriate ATF officer may require additional evidence of the authority of the agent or officer to execute the bond or consent.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.75 Execution of powers of attorney.**

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is not a manually signed original, it shall be accompanied by certification of its validity.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

### **§22.76 Deposit of securities instead of corporate surety.**

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR Part 225.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

### **§22.77 Consents of surety.**

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

### **§22.78 Strengthening bonds.**

(a) When the penal sum of any bond becomes insufficient based on projected annual withdrawals, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered--

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full sum.

(b) Strengthening bonds will show the date of execution and the effective date, and will be marked "Strengthening Bond."

### **§22.79 Superseding bonds.**

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the appropriate ATF officer when any other contingency affects the validity or impairs the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under §22.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds will show the date of execution and the effective date, and will be marked "Superseding Bond." If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.80 Notice by surety of termination of bond.**

A surety on any bond required by this part may at any time, in writing, notify the principal and appropriate ATF officer with whom the bond is filed, that the surety desires (after a

specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the appropriate ATF officer. The surety shall also file with the appropriate ATF officer an acknowledgment or other proof of service of the notice of termination on the principal.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.81 Termination of rights and liability under a bond.**

(a) If the notice of termination given by the surety is not withdrawn in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to--

- (1) The date named in a notice of termination (§22.80); or
- (2) The effective date of a superseding bond (§22.79); or
- (3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all tax-free alcohol and recovered alcohol on hand or in transit to the principal on that date until the spirits have been lawfully disposed of or a new bond has been filed by the principal.

### **§22.82 Release of pledged securities.**

Securities of the United States, pledged and deposited as provided in §22.76, will be released only under the provisions of 31 CFR Part 225. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the regional director (compliance) may extend the date of release for any additional length of time considered necessary.

(Chapter 390, Pub. L. 80-280, 61 Stat. 648 (6 U.S.C. 6, 7))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## **Subpart F--Premises and Equipment**

### **§22.91 Premises.**

All persons qualified to withdraw and use tax-free alcohol shall have premises suitable for the business being conducted and adequate for the protection of the revenue. Storage facilities shall be provided on the premises for tax-free alcohol received or recovered. The storage facilities may consist of a combination of storerooms, compartments, or stationary storage tanks.

### **§22.92 Storage facilities.**

(a) Storerooms or compartments shall be so constructed and secured as to prevent unauthorized access and will be equipped for locking. These storage facilities shall

be of sufficient capacity to hold the maximum quantity of tax-free alcohol which will be on hand at one time.

(b) Each stationary storage tank used to hold tax-free alcohol shall be equipped for locking in such a manner as to control access to the spirits. All stationary storage tanks shall be equipped with an accurate means of measuring the spirits.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

### **§22.93 Equipment for recovery and restoration of tax-free alcohol.**

(a) *Location.*

All equipment used to recover and restore tax-free alcohol for reuse shall be located on the permit premises.

(b) *Construction.*

(1) Distilling apparatus, pipelines and other equipment used for recovery and restoration of tax-free alcohol shall be constructed and secured in such a manner as to prevent unauthorized access and so arranged as to be readily inspected.

(2) Storage tanks shall be provided for the collection of recovered tax-free alcohol. Each storage tank shall--

- (i) Be durably marked as to use and capacity;
- (ii) Be equipped with, or for, an accurate means of measuring the spirits; and
- (iii) Be equipped for locking to control unauthorized access to the spirits.

## **Subpart G--Use of Tax-Free Alcohol**

### **§22.101 Authorized uses.**

Alcohol may be withdrawn free of tax from the bonded premises of a distilled spirits plant for the use of any State or political subdivision of a State, or the District of Columbia, for nonbeverage purposes. Alcohol may also be withdrawn by persons eligible to use tax-free alcohol, for nonbeverage purposes and not for resale or use in the manufacture of any product for sale. Tax-free alcohol shall be withdrawn and used only as provided by law and this part, as follows:

(a) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(b) For any laboratory for use exclusively in scientific research;

(c) For use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at a hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or test, for hospitals or sanitariums; or

(d) For the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment of patients outside of the clinic).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended, (26 U.S.C. 5214))

### **§22.102 Prohibited uses.**

(a) *Usage.*

Under no circumstances may tax-free alcohol withdrawn under this part be used for beverage purposes, food products, or in any preparation used in preparing beverage or food products.

(b) *Selling.*

Persons qualified under this part are prohibited from selling tax-free alcohol, using tax-free alcohol in the manufacture of any product for sale, or selling any products resulting from the use of tax-free alcohol. A separate charge may be made by a hospital, sanitarium or clinic for medicines compounded with tax-free alcohol and dispensed to patients for use on the premises, as provided in §§22.105 and 22.106. Hospitals may not furnish tax-free alcohol for use of physicians in their private practice.

(c) *Removal from premises.*

Persons qualified under this part may not remove tax-free alcohol or products resulting from the use of tax-free alcohol from the permit premises unless specifically authorized by the terms of their permit, or permission is obtained from the appropriate ATF officer, except that:

(1) Products made through the use of tax-free alcohol which contain no alcohol may be removed to other premises for the sole purpose of further research; or

(2) Under the provisions of §§22.105 and 22.106, clinics operated for charity and not for profit may compound bona fide medicines with tax-free alcohol, and dispense the medicine from the premises for use by its patients outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(d) *Liability for tax.*

Permittees who use tax-free alcohol in any manner prohibited by this section become liable for the tax on the alcohol. Any permittee who sells tax-free alcohol also becomes liable for special (occupational) tax as a liquor dealer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1343, as amended, 1362, as amended (26 U.S.C. 5001, 5121, 5214))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.103 States and the District of Columbia.**

Except as otherwise provided in this section, tax-free alcohol withdrawn by a State or political subdivision of a State, or the District of Columbia shall be used solely for mechanical and scientific purposes, and except on approval of the appropriate ATF officer, the use of tax-free alcohol or the use of any resulting product will be confined to

the premises under the control of the State or political subdivision of a State, or the District of Columbia. Tax-free alcohol withdrawn for use in hospitals, clinics, and other establishments specified in §§22.104 through 22.108, operated by a State, political subdivision of a State, or the District of Columbia, shall be used in the manner prescribed for those establishments.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.104 Educational organizations, colleges of learning, and scientific universities.**

(a) *Educational organizations.* Educational organizations authorized to withdraw and use tax-free alcohol under §22.101 are those organizations which normally maintain a regular faculty and curriculum and which normally have a regularly enrolled body of students in attendance at the place where their educational activities are regularly carried on and which are exempt from Federal income tax under 26 U.S.C. 501(a).

(b) *Colleges of learning.*

Colleges of learning, for the purposes of this subpart, have a recognized curriculum and confer degrees after specified periods of attendance at classes or research work.

(c) *Scientific universities.*

Scientific universities include any university incorporated or organized under any Federal or State law which provides training in the sciences.

(d) *Uses.*

Tax-free alcohol withdrawn by educational organizations, scientific universities, and colleges of learning shall be used only for scientific, medicinal, and mechanical purposes. Use of tax-free alcohol and resulting products are limited by the provisions of §22.102.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

### **§22.105 Hospitals, blood banks, and sanitariums.**

(a) Tax-free alcohol withdrawn for use by hospitals, blood banks, and sanitariums shall be used exclusively for medicinal, mechanical (analysis or test) and scientific purposes and in the treatment of patients. The use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined to the permit premises, except as provided in this section and §22.102. Medicines compounded with tax-free alcohol on the premises of a hospital or sanitarium, for use of patients on the premises, may not be sold, but a separate charge may be made for the medicine.

(b) A hospital, operating a clinic on premises, may withdraw tax-free alcohol for use in the clinic, if the clinic is operated for charity and not for profit. Medicines compounded with tax-free alcohol may be dispensed to patients at a clinic for use outside of the clinic, if the furnishing of the medicine is not conditioned upon

payment.

(c) A hospital or sanitarium, operating a pathological or other laboratory on premises, may withdraw tax-free alcohol for authorized use in the laboratory.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

### **§22.106 Clinics.**

Tax-free alcohol withdrawn by clinics operated for charity and not for profit shall be used only for medicinal, scientific, and mechanical purposes and in the treatment of patients. Medicine compounded with tax-free alcohol may be dispensed to patients for use off the premises, if the furnishing of the medicine is not conditioned upon payment. A separate charge may be made for medicine compounded on the clinic premises with tax-free alcohol for use of patients on the premises. Except as provided in this section and in §22.102, the use of tax-free alcohol shall be confined strictly to the premises of the clinic.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

### **§22.107 Pathological laboratories.**

(a) Pathological laboratories, not operated by a hospital or sanitarium, may withdraw and use tax-free alcohol if exclusively engaged in making analyses or tests for hospitals or sanitariums. If a pathological laboratory does not exclusively conduct analyses or tests for hospitals or sanitariums, it does not qualify for the permit issued under this part.

(b) A pathological laboratory which uses tax-free alcohol for any other purpose, except as provided in this section, shall become liable for the tax on the alcohol.

(c) Except as provided in §22.102, the use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined strictly to the permit premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1362, as amended (26 U.S.C. 5001, 5214))

### **§22.108 Other laboratories.**

Laboratories, other than pathological laboratories specified in §22.107, may withdraw and use tax-free alcohol exclusively in scientific research. The use of tax-free alcohol or of products resulting from the use of tax-free alcohol shall be confined strictly to the laboratory premises, except as provided in §22.102.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

## **Subpart H--Withdrawal and Receipt of Tax-Free Alcohol**

### **§22.111 Withdrawals under permit.**

(a) *General.*

The permit, Form 5150.9, issued under subpart D of this part, authorizes a person to withdraw tax-free alcohol from the bonded premises of a distilled spirits plant or, under the provisions of 26 U.S.C. 5688(a)(2)(B), receive alcohol from the General Services Administration.



(b) *Photocopying of permit, Form 5150.9.*

(1) As provided in §22.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw tax-free alcohol.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant for the "initial order" from that distilled spirits plant.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy shall be signed, dated, and contain the word "COPY" across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants when (i) an amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of use of tax-free alcohol.

(c) *Withdrawals under permit.*

(1) When a permittee places an initial order for tax-free alcohol it shall forward a signed copy of the permit, for retention by the distilled spirits plant, along with the purchase request.

(2) When the permittee places a subsequent order for tax-free alcohol, the purchase request, in addition to any other information, shall contain the permit identification number along with a statement that the permittee possesses a valid permit to withdraw tax-free alcohol, a copy of which is on file.

(3) Shipments shall not be made by a proprietor of a distilled spirits plant until it is in possession of a signed copy of a valid permit, Form 5150.9, unless the appropriate ATF officer authorizes the shipment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985; T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

**§22.112 Regulation of withdrawals.**

(a) Each permittee shall regulate its withdrawals of tax-free alcohol to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorized by the permit, Form 5150.9. Recovered alcohol and alcohol received from the General Services Administration shall be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, tax-free alcohol and recovered alcohol shall be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

**§22.113 Receipt of tax-free alcohol.**



(a) When tax-free alcohol is received, it shall be placed in the storage facilities prescribed by §22.91 and kept there under lock until withdrawn for use. Unless required by city or State fire code regulations or authorized by the appropriate ATF officer or the terms of the permit, the permittee may not remove tax-free alcohol from the original packages or containers in which received until the alcohol is withdrawn for use. If the tax-free alcohol is transferred to "safety" containers in accordance with fire code regulations, the containers to which they are transferred shall be appropriately marked to identify the package from which transferred, the quantity transferred, the date of transfer, and the name and address of the vendor.

(b) When tax-free alcohol is received, the permittee shall ascertain and account for any losses in transit in accordance with subpart I of this part. The permittee shall note any loss or deficiency in the shipment on the record of receipt.

(c) Records of receipt shall consist of the consignors invoice or bill. Records of receipt may be filed in accordance with the permittee's own filing system as long as it does not cause inconvenience to appropriate ATF officers desiring to examine the records. The filing system shall systematically and accurately account for the receipt of all tax-free alcohol.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.114 Alcohol received from the General Services Administration.**

Any nonprofit charitable institution holding a permit on Form 5150.9, and receiving alcohol from the General Services Administration under the provisions of 26 U.S.C. 5688(a)(2)(B), shall include any quantity of alcohol received in computing the quantity of tax-free alcohol that may be procured under its permit during the calendar year. The alcohol, on receipt, shall be placed in the storage facilities prescribed in §22.91 and kept there under lock until withdrawn for use.

## **Subpart I--Losses**

### **§22.121 Liability and responsibility of carriers.**

(a) A person or carrier transporting tax-free alcohol to a consignee or returning the alcohol to the consignor is responsible for the safe delivery and is accountable for any tax-free alcohol not delivered.

(b) A person or carrier transporting tax-free alcohol in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol subject to and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C 5001))

### **§22.122 Losses in transit.**

#### *(a) Reporting losses.*

Upon discovering any loss of tax-free alcohol while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of the theft, the carrier shall also immediately notify the consignee's appropriate ATF officer of the facts and circumstances relating to the loss.

(b) *Recording losses.*

At the time the shipment or report of loss is received, the consignee shall determine the quantity of tax-free alcohol lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in §22.113. For the purpose of maintaining the records prescribed in subpart M of this part, receipts of tax-free alcohol shall only include the quantity actually received.

(c) *Claims.*

A claim for allowances of losses of tax-free alcohol shall, as prescribed in §22.125, be filed:

- (1) If the quantity lost in transit exceeds 1 percent of the total quantity shipped and is more than 5 proof gallons, the consignee shall file a claim for allowance of the entire quantity lost; or
- (2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowances of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

**§22.123 Losses on premises.**

(a) *Recording of losses.*

A permittee shall determine and record, in the records prescribed by subpart M of this part, the quantity of tax-free or recovered alcohol lost on premises--

- (1) At the end of each semi-annual period when the inventory required by §22.162 is taken, or
- (2) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.*

A claim for allowances of losses of tax-free alcohol shall be filed as prescribed in §22.125, in the following circumstances--

- (1) if the quantity lost during any semi-annual inventory period exceeds 1 percent of the quantity to be accounted for during that period, and is more than 10 proof gallons, or
- (2) if the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowances of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512-0334)

**§22.124 Incomplete shipments.**

(a) Subject to the provisions of this part and Part 19 of this chapter, when containers of tax-free alcohol have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the distilled spirits plant.

(b) When tax-free alcohol is returned to the distilled spirits plant, in accordance with this section, the carrier shall inform the proprietor, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's appropriate ATF officer of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in §22.122, the proprietor of the distilled spirits plant shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable date required by §22.125.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.125 Claims.**

(a) Claims for allowances of losses of tax-free or recovered alcohol shall be filed, on Form 2635 (5620.8), within 30 days from the date the loss is ascertained, and shall contain the following information:

- (1) Name, address, and permit number of claimant;
- (2) Identification and location of the container(s) from which the tax-free or recovered alcohol was lost, and the quantity lost from each container;
- (3) Total quantity of tax-free or recovered alcohol covered by the claim and the aggregate quantity involved;
- (4) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss; and
- (5) Name of carrier where a loss in transit is involved.

(b) The carrier's statement regarding a loss in transit, prescribed by §22.122 or 22.124, shall accompany the claim.

(c) The appropriate ATF officer may require additional evidence to be submitted in support of the claim.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## **Subpart J--Recovery of Tax-Free Alcohol**

### **§22.131 General.**

Any person or permittee conducting recovery operations of tax-free alcohol shall be qualified by the terms of their permit to do so, under the provision of subpart D of this part. Restoration of recovered tax-free alcohol may only be accomplished on the permit premises or by the proprietor of a distilled spirits plant.

### **§22.132 Deposit in storage tanks.**

(a) Recovered alcohol shall be accumulated and kept in separate storage tanks conforming to §22.93. Recovered alcohol shall be measured before being redistilled or reused.

(b) Recovered alcohol may be removed from storage tanks for packaging and shipment to a distilled spirits plant for redistillation.

### **§22.133 Shipment for redistillation.**

(a) Unless a permittee intends to redistill recovered alcohol to its original state, the recovered alcohol shall be shipped in containers to a distilled spirits plant for restoration.

(b) Containers shall be labeled with--

(1) The name, address, and permit number of permittee,

(2) The quantity of recovered alcohol in gallons,

(3) The words "Recovered tax-free alcohol", and

(4) A package identification number or serial number in accordance with paragraph (c)(1) or (c)(2) of this section.

(c) (1) A package identification number shall apply to all of the packages filled at the same time. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown--

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from "A" through "L", representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with "A" representing the second lot of the day, "B" representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as "83K19," "83K19A," and "83K19B.")

(2) A consecutive serial number shall be marked on each package, beginning with the number "1" and continuing in regular sequence. When any numbering series reaches "1,000,000," the user may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

### **§22.134 Records of shipment.**

A consignor shipping recovered alcohol or tax-free alcohol to a distilled spirits plant shall prepare and forward a record of shipment to the consignee. The record of shipment may consist of a shipping invoice, bill, or bill of lading, or another document intended for the same purpose. The record of shipment shall accurately identify and account for the tax-

free or recovered alcohol being shipped. A permittee shall file one copy of the record of shipment with the records required by §22.161.

(Approved by the Office of Management and Budget under control number 1512-0334)

## **Subpart K--Destruction**

### **§22.141 General.**

A permittee may terminate liability for payment of tax, prescribed by law, when tax-free or recovered alcohol is destroyed in accordance with this subpart.

### **§22.142 Destruction.**

(a) A permittee may destroy tax-free or recovered alcohol upon (1) the filing of a notice of intention to destroy with the area supervisor at least 7 days prior to the proposed date of destruction, or (2) furnishing the notice to an appropriate ATF officer at the premises who may supervise the destruction or transmit the notice to the appropriate ATF officer.

(b) The notice of intention to destroy shall contain--

(1) The reason for destruction,

(2) The date, time, location and manner of destruction, and

(3) The quantity involved and, if applicable, the package identification numbers of containers.

(c) If, by the date and time specified in the notice, an appropriate ATF officer has not supervised the destruction, or the appropriate ATF officer has not advised the permittee to the contrary, the spirits may be destroyed in the manner stated in the notice.

(d) Following the destruction, if unsupervised by an appropriate ATF officer, the permittee shall annotate a copy of the notice with the name of the individual who accomplished or supervised the destruction. This notice shall serve as a record of destruction and shall be maintained with the records required by §22.161.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

## **Subpart L--Return, Reconsignment and Disposition of Tax-Free or Recovered Alcohol**

### **§22.151 Return.**

A permittee may, following the receipt of tax-free alcohol and for any legitimate reason, return the spirits to any distilled spirits plant if the consignee consents to the shipment. The consignor shall prepare a record of shipment in the same manner prescribed in §22.134 for shipment of recovered alcohol.

(Approved by the Office of Management and Budget under control number 1512-0334)

### **§22.152 Reconsignment in transit.**

(a) *Reconsignment.*

Tax-free alcohol may be reconsigned to another permittee or returned to the consignor if, prior to, or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage.*

In the case of reconsignment, the bond, if required, of the permittee to whom the tax-free alcohol was reconsigned or the bond of the consignor, if for return, shall cover the spirits while in transit.

(c) *Records of reconsignment.*

In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment shall be annotated "Reconsignment."

(Approved by the Office of Management and Budget under control number 1512-0334)

### **§22.153 Disposition after revocation of permit.**

When any permit issued on Form 5150.9 is revoked, all tax-free alcohol in transit and all alcohol on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the alcohol, for a period of 60 days following the date of revocation. Any tax-free or recovered alcohol not disposed of within the specified 60-day period, is subject to seizure and forfeiture.

### **§22.154 Disposition on permanent discontinuance of use.**

(a) *Tax-free alcohol.*

Tax-free alcohol on hand at the time of discontinuance of use, may be disposed of by (1) returning the spirits to a distilled spirits plant, as provided in §22.151, (2) destruction, as provided in §22.142, or (3) shipping to another permittee, in accordance with §22.155.

(b) *Recovered tax-free alcohol.*

Upon permanent discontinuance of use, a permittee may dispose of recovered tax-free alcohol by (1) shipment to a distilled spirits plant, as provided in §22.133, (2) destruction, as provided in §22.142, or (3) upon the filing of an application with the appropriate ATF officer, any other approved method.

(Approved by the Office of Management and Budget under control number 1512-0335)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.155 Emergency disposition to another permittee.**

(a) In the case of an emergency, a permittee may, upon the filing of a notice with the area supervisor, dispose of tax-free alcohol to another permittee, when the quantity involved does not exceed 10 proof gallons. In the case of a medical emergency or

disaster, the area supervisor is authorized to verbally approve, with the required notice to follow, disposals of tax-free alcohol to another permittee or Government agency in excess of 10 proof gallons. The tax-free alcohol disposed of shall be in original unopened containers. The consignor shall prepare a record of shipment in the same manner prescribed in §22.134.

(b) The notice required by this section shall (1) explain the nature of the emergency, (2) identify the consignee by name, address and permit number, and (3) list the quantity of alcohol and package identification number of the container(s) involved.

(c) The consignor permittee may not receive remuneration for tax-free alcohol given to another permittee in case of an emergency, as authorized by this section.

(Notice approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

## **Subpart M--Records of Transactions**

### **§22.161 Records.**

#### *(a) General.*

All persons qualified under this part shall keep accurate records of all receipts, shipments, usage, destructions and claims pertaining to the withdrawal and use of tax-free alcohol. These records shall be in sufficient detail to enable the permittee to reconcile any losses or gains for the semi-annual inventory, and to enable appropriate ATF officers to verify all transactions and to ascertain whether there has been compliance with law and regulations. All records required by this section shall identify tax-free alcohol by proof, date of transaction, and quantity involved, and shall include alcohol received from the General Services Administration and the recovery of alcohol and its disposition. Records shall be kept current at all times.

#### *(b) Records of receipt and shipment.*

Records of receipt and shipment shall consist of the consignor's or consignee's (as the case may be) invoice, bill or bill of lading, or another document used for the intended purpose. Records of receipt shall record only the quantity of tax-free alcohol actually received. Losses in transit shall not be considered as received, but may be the subject of a claim for allowances of losses, as prescribed in Subpart I of this part.

#### *(c) Records of usage.*

For the purpose of this subpart, tax-free or recovered alcohol shall be considered as "used" when permanently removed from a permittee's supply storeroom, compartment, or tank for any authorized use. Records of usage shall identify the tax-free alcohol by quantity, proof, and purpose of removal (office, department or location to which dispensed). This record shall list separately, the usage of tax-free alcohol from recovered alcohol or alcohol received from the General Services Administration.

#### *(d) Records of destruction.*

Records of destruction shall consist of a copy of the notice of intention to destroy, prescribed in §22.141, signed by an appropriate ATF officer or employee witnessing



the destruction.

(e) *Claims.*

Claims for allowance of losses of tax-free alcohol, required to be filed under Subpart I of this part, shall consist of Forms 2635 (5620.8) and supporting data.

(Approved by the Office of Management and Budget under control number 1512-0334)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

**§22.162 Inventories.**

Each permittee shall take a physical inventory of the tax-free and recovered alcohol in its possession semi-annually for the periods ending June 30 and December 31 of each year; or other inventory periods which are approximately 6 months apart, upon filing written notice with the appropriate ATF officer establishing other inventory periods. These inventories may be recorded separately or as an entry in the record of usage with any necessary adjustments (losses or gains). If an inventory results in a loss in excess of the quantities prescribed by Subpart I of this part, the permittee shall file a claim for allowance of loss.

(Notice approved by the Office of Management and Budget under control number 1512-0335; recordkeeping approved by the Office of Management and Budget under control number 1512-0334)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

**§22.163 Time for making entries.**

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same day the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

**§22.164 Filing and retention of records.**

Each person required to maintain records of operations and transactions under this part shall:

- (a) Keep on file all records and copies of claims for a period of not less than 3 years following the date of transaction or, at the discretion of the appropriate ATF officer, an additional 3-year period; and
- (b) Maintain all records at the permit premises, except that the records may be kept at a central location by a State or political subdivision of a State, or the District of Columbia which distributes tax-free alcohol to multiple dependent agencies, institutions, or departments.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

**§22.165 Photographic copies of records.**

(a) *General.*



Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

*(b) Copies of records treated as original records.*

Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

## **Subpart N--Use of Tax-Free Spirits by the United States or Government Agency**

### **§22.171 General.**

(a) The United States or any of its Government agencies may withdraw tax-free spirits for nonbeverage purposes from a distilled spirits plant under this part, as authorized by 26 U.S.C. 5214(a)(2). Before any tax-free spirits may be withdrawn, a permit to procure the spirits shall be obtained from the appropriate ATF officer. Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure tax-free spirits.

(b) The provisions of subpart M of 27 CFR part 251 cover the withdrawal of imported spirits, free of tax, for use of the United States or any of its Government agencies.

(26 U.S.C. 5214, 5271, 5272, 5276)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF-285, 54 FR 12610, Mar. 28, 1989; T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.172 Application and permit, Form 5150.33.**

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and shall be regulated by the same provisions of this subpart as it refers to permits on Forms 5150.33.

(b) A Government agency shall apply for a permit to obtain tax-free spirits on Form 5150.33. Upon approval, Form 5150.33 will be returned to the Government agency, and shall serve as authority to procure spirits free of tax.

(c) A Government agency may specify on its application for a permit to procure tax-free spirits, Form 5150.33, that it desires a single permit authorizing all sub-agencies under its control to procure tax-free spirits; or each Government location (agency, department, bureau, and etc.) desiring to procure tax-free spirits for nonbeverage purposes may individually submit an application for a permit on Form 5150.33.

(d) An application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign for the head of the agency or sub-agency shall be furnished with the application.

(e) Tax-free spirits obtained by Government agencies may not be used for non-Government purposes.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985; 50 FR 20099, May 14, 1985; T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.173 Procurement of tax-free spirits.**

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for tax-free spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit shall contain an attachment listing all other locations authorized to procure tax-free spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

### **§22.174 Receipt of shipment.**

On receipt of a shipment of tax-free spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the appropriate ATF officer.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.175 Discontinuance of use.**

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use tax-free spirits, the permit shall be returned to the appropriate ATF officer for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]

### **§22.176 Disposition of excess spirits.**

At the time of discontinuance of use of tax-free spirits, a Government agency may dispose of any excess tax-free spirits (a) by transferring the spirits to another Government agency holding a permit, (b) by returning the spirits to a vendor, or (c) in any manner authorized by the appropriate ATF officer. Tax-free spirits may not be disposed of to the general public.

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985 as amended by T.D. ATF-435, 66 FR 5476, Jan. 19, 2001]