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Part II

Department of the Treasury

**Alcohol and Tobacco Tax and Trade
Bureau**

**27 CFR Part 19
Proposed Revision of Distilled Spirits
Plant Regulations (2001R-194P); Proposed
Rule**

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 19**

[Docket No. TTB-2008-0004]; [Notice No. 83]

RIN 1513-AA23

Proposed Revision of Distilled Spirits Plant Regulations (2001R-194P)**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its distilled spirits plant regulations. Many of these proposed revisions are the result of comments submitted by the Distilled Spirits Council of the United States in response to a Bureau of Alcohol, Tobacco and Firearms notice of proposed rulemaking (NPRM) published in November 1998. Other proposed revisions are a result of a comprehensive TTB review of the distilled spirits plant regulations. This NPRM supersedes the NPRM issued in November 1998. We believe the proposed amendments will modernize the requirements for operating distilled spirits plants and make the regulations easier to understand, thereby allowing proprietors of such plants to operate in a more efficient manner. The proposed regulations are also written in a plain language format to improve clarity.

DATES: We must receive your written comments on or before August 6, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB-2008-0004 on Regulations.gov, the Federal e-rulemaking portal); or

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

- *Hand Delivery/Courier in lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at <http://www.regulations.gov>. A direct link to the appropriate Regulations.gov docket is available

under Notice No. 83 on the TTB Web site at http://www.ttb.gov/spirits/spirits_rulemaking.shtml. You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Hiland, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200-E, Washington, DC 20220; telephone 202-927-8176.

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Notice to Readers—Impact of the Homeland Security Act on This Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to ATF in this notice reflect the time period prior to January 24, 2003, while references to TTB are after that date.

I. Background Information for This Notice*A. Distilled Spirits Plant Operations Under Current Law*

Distilled spirits taxation is a specialized area of Federal law. The following background material provides basic information about how distilled spirits plants operate and are regulated under Federal law.

Basis Definitions

Distilled Spirits. The term “distilled spirits” refers to those products that contain ethyl alcohol and are generally the result of distillation. This term does not apply to wine and beer, which are products of fermentation. Examples of distilled spirits products include vodka, whiskey, gin, brandy, cordials, liqueurs, flavored brandies, and other similar products.

Distilled Spirits Plants. The term “Distilled Spirits Plant” (DSP) refers to a plant at which distilled spirits are manufactured or produced, aged or stored, or packaged or bottled, either for beverage or industrial use.

Federal Laws and Regulatory Authority

Federal law prohibits the manufacture or production of distilled spirits in the United States at other than a registered DSP that has received a permit from

TTB. While Federal law allows for the limited home production of wine and beer, no such exemption exists for distilled spirits.

DSPs are regulated under the provisions of two laws, the Internal Revenue Code of 1986 (IRC) (Title 26 of the United States Code) and the Federal Alcohol Administration Act (FAA Act) (Title 27 of the United States Code). The IRC imposes an excise tax on distilled spirits, requires plants to register, requires plants to obtain permits not otherwise required by the FAA Act, and imposes strict controls over the operation of DSPs. The FAA Act imposes a requirement to obtain a basic permit and contains various consumer-protection provisions, including provisions related to the formulation, labeling, and advertising of alcohol beverages. The FAA Act also controls various trade practices within the alcohol industry.

Under these two laws, TTB regulates the distilled spirits industry in the United States. Each law authorizes the Secretary of the Treasury to prescribe regulations to carry out and enforce its provisions, and the Secretary has delegated this authority to TTB. The TTB regulations concerning DSPs are contained in title 27 of the Code of Federal Regulations, Part 19, Distilled Spirits Plants (27 CFR part 19).

Major Regulatory Provisions

A DSP consists of one or more of the following: production, storage, processing, denaturation, and bottling facilities. A DSP may be a large and complex plant, having all facilities, a simple storage facility consisting of only one building, or a small bottling facility with storage facilities. Production facilities are usually accompanied by some storage facilities. Bottling facilities are often accompanied by storage facilities, and must by law be accompanied by either a production or a storage facility. However, large storage facilities are often not accompanied by either of the other two types.

Registration. Before commencing operations, the DSP proprietor must obtain an approved notice of registration. This application for registration includes: documents to set up distilling apparatus, environmental impact forms, personnel questionnaires, signature authorities, and a statement of security.

Permits. Under the FAA Act, all persons who intend to engage in the business of: (a) Distilling spirits; (b) rectifying, blending, or bottling (processing) distilled spirits; or (c) warehousing and bottling distilled spirits, must file for a basic permit.

To maintain control over the industrial use of distilled spirits, the IRC requires that an operating permit be obtained before commencing the production, warehousing, or bottling of alcohol for industrial use. Specifically, a permit is required for:

- Distilling for industrial use.
- Bonded warehousing of spirits for industrial use.
- Denaturation of spirits.
- Bonded warehousing of spirits (without bottling) for non-industrial use.
- Bottling or packaging of spirits for industrial use.
- Any other distilling, warehousing, or bottling operations not required to be covered by a basic permit under the FAA Act.

DSP Bonded Premises. The physical premises of a DSP are divided into two technical categories: “bonded premises,” and unbonded or “general premises.” All activities relating to the distilling, storage, and processing (blending and mixing) of distilled spirits must be conducted on bonded premises. All activities relating to taxpaid alcohol beverages conducted at the distilled spirits plant must be conducted on general premises.

Operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a DSP by a person qualified to carry on such operations under 27 CFR part 19 and who has obtained the basic permits required by 27 CFR part 1, or, as appropriate, the operating permit required by part 19. However, certain other activities, such as those of apothecaries, customs bonded warehousemen, manufacturers of nonbeverage products, and users of specially denatured alcohol, may be carried on outside of DSPs.

The continuity of a DSP must be unbroken except for separations that may include public waterways, thoroughfares, or carrier rights-of-way. In most instances, DSPs are also prohibited from being located in a dwelling house, in a shed, yard, or enclosure connected with a dwelling house, on board a vessel or boat, on premises where beer or wine is produced, in a retail liquor establishment, or where any other business is conducted.

Bonds. Normally, the distilled spirits tax is not collected while spirits are held on the “bonded” premises of a distilled spirits plant. The potential tax liability of the spirits held on bonded premises is guaranteed by an operations bond, and taxable removals are covered by a withdrawal bond.

The bond is a legally binding, written agreement involving three parties: the

taxpayer, the surety (insurance or bonding company), and the U.S. Government. The purpose of the bond is to protect the financial interest of the Government. If for any reason, the taxpayer fails to pay the tax, then the surety (insurance or bonding company) is obliged to pay, up to the limit of the bond.

Other Requirements. In addition to registering, obtaining a permit, and providing a bond, plants are required to comply with a number of regulations relating to plant security; the production, storage, and processing of spirits; recordkeeping; inspection and audit; and filing of reports. These requirements are outlined in 27 CFR part 19.

Recordkeeping Accounts. All operations at a DSP are accounted for within three recordkeeping accounts: Production, Storage, and Processing. Since the facilities (tanks and rooms) of a DSP may be used for multiple purposes, the accountability of spirits must be maintained by appropriate records within the three accounts instead of physical separation.

Payment of Taxes. The Federal excise tax on distilled spirits attaches to the spirits as soon as they are produced, and the distilled spirits plant is held liable for the tax on all distilled spirits held in the bond premises. The amount of Federal excise tax that a distilled spirits plant must pay is based upon the taxable removal of the spirits from the bonded premises. There are two basic methods of paying the tax on distilled spirits withdrawn from bonded premises—deferred payment and prepayment. Under the deferred payment system, the proprietor may withdraw spirits from bond after tax determination but before payment of tax. The excise tax paid is based on the amount of spirits removed from bond during each return period. Under the prepayment system, the proprietor must pay the distilled spirits tax after tax determination but before withdrawal of the spirits from bonded premises. Most DSP proprietors use the deferred payment system.

Currently, the Federal excise tax rate on distilled spirits is \$13.50 per proof gallon. The term “proof gallon” is unique to this particular commodity and means: a liquid gallon that contains 50 percent ethyl alcohol.

Although the tax rate for distilled spirits is \$13.50 per proof gallon, many distilled spirits products are actually taxed at a lower rate. Many products contain wine and/or flavors, and the IRC at 26 U.S.C. 5010 provides a credit for the wine and flavors content of the product. These credits effectively

reduce the rate of excise tax paid on distilled spirits products that contain wine and flavors.

Nontaxable Transactions. Certain types of shipments to and from a distilled spirits plant are permitted without payment of tax. Examples are:

- Shipments of bulk (unbottled) spirits from one registered distilled spirits plant to another. (Bottled spirits are not eligible for untaxed transfer in bond between plants.)
- Shipments of bulk imported spirits from U.S. Customs and Border Protection custody to a distilled spirits plant. (Only bulk imported spirits are eligible for this type of transfer.)
- Direct exports of products from the United States.
- Shipments to users of industrial alcohol (certain permit holders who use alcohol for medical, research, or industrial purposes).

B. Notice No. 870 and the Petition To Amend 27 CFR Part 19

On November 30, 1998, ATF issued a notice of proposed rulemaking, Notice No. 870 (63 FR 65720), that solicited comments on proposed changes to several sections of the regulations in 27 CFR part 19. The proposed changes included: (1) Delegations of authority, (2) removing a special tax provision, (3) liberalizing the requirement for approval of certain changes in plant personnel or procedures, (4) reducing the paperwork when plant premises are alternated with other premises, (5) providing for alternation of distilled spirits plant and brewery premises, (6) allowing denaturation and manufacture of articles to be done in a single, unified process, (7) specifying marks for packages of industrial spirits withdrawn taxpaid, (8) clarifying regulations that refer to a transfer record, and (9) incorporating a provision of an ATF Industry Circular regarding alcohol fuel into the regulations.

In addition to these proposed changes, ATF asked for comments regarding the general recordkeeping system for distilled spirits plants prescribed in part 19.

In response to Notice No. 870, ATF received extensive comments from the Distilled Spirits Council of the United States (DISCUS), a trade association representing distilled spirits industry members with interests in the U.S. market. While DISCUS provided comments on the specific issues raised in Notice No. 870, it also asked that ATF consider a broad range of regulatory changes to part 19. Essentially, in its comments on part 19, DISCUS asked ATF to initiate a complete revision of part 19. In support of its petition,

DISCUS provided ATF with sample regulations that consisted of a “markup” version of 27 CFR part 19, along with numerous copies of variances (alternate methods or procedures) that ATF granted to members of the distilled spirits industry over the years. Suggested amendments included a broad range of issues, including, but not limited to, reduced recordkeeping requirements for distilled spirits plants, greater use of commercial records, reduced reporting requirements, reduced requirements for reporting changes affecting the DSP’s registration, liberalized use of DSP premises, storage of distilled spirits on bonded premises through “constructive segregation” based on commercial records, and adoption of alternative methods in the regulations for universal applicability.

In response to Notice No. 870, ATF also received comments from Equistar Chemicals, LP. Equistar is a producer of industrial ethyl alcohol, and its comments addressed issues in Notice No. 870 related to industrial alcohol. Equistar also commented on other issues affecting distilled spirits plants such as the amendment of plant registrations, recordkeeping, denaturation, and gauging.

After reviewing the comments received in response to the Notice No. 870, ATF concluded that the amendments proposed in the 1998 NPRM were not extensive enough to address the changes that have taken place in the industry since the last major revision to the distilled spirits plant regulations took place over 20 years ago when ATF implemented the Distilled Spirits Tax Revision Act of 1979, commonly referred to as “All in Bond.”

As the successor agency to ATF, TTB undertook a comprehensive review of the distilled spirits plant regulations in 27 CFR part 19 and the comments received in response to Notice No. 870. This notice of proposed rulemaking is the result of that review, and this notice supersedes Notice No. 870. We believe the proposed amendments will modernize the requirements for operating distilled spirits plants and make the regulations easier to understand, thereby allowing proprietors of such plants to operate in a more efficient manner. A discussion of our new proposal to amend part 19 in a more comprehensive way follows.

C. General Changes Proposed in This Notice

The following summarizes the general changes we propose to make to 27 CFR part 19.

Plain Language

On June 1, 1998, the President issued a memorandum that requires Federal agencies to write regulations in “plain language.” We fully support this initiative, and we have written these proposed regulations in the plain language style. In an effort to make these regulations easier to understand, we made several plain language changes to the part 19 regulations:

- We use the active voice in the regulations, whenever possible;
- We use shorter sentences, paragraphs, and sections; and
- We minimize the use of jargon and unnecessary technical terms.

Structure of Part 19

In its comments on part 19, DISCUS points out that part 19 is “excessively long, overcomplicated and very difficult to read.” Further, it stated that the regulations are “divided into 25 subparts, with many related and overlapping provisions included in two or more subparts.” DISCUS recommends “consolidating and re-grouping a number of regulatory provisions which are closely related, eliminating regulations which merely are redundant of each other or the statute, adding cross-references to related regulations, and clarifying regulatory language.”

We reviewed the various sections and subparts in the current part 19 and determined that much of the basic structure for part 19 needs to be amended. Under the current structure, information is not always located where a reader would logically expect to find it.

For example, under the current regulations, information regarding distilled spirits taxes is found in two separate subparts, Subpart C, Taxes, and Subpart P, Transfers and Withdrawals. Subpart C contains much of the basic information about distilled spirits taxes, including the methods for calculating tax credits under the IRC at 26 U.S.C. 5010. However, information regarding determination of taxes and the filing of tax returns is located in subpart P. Logically, all information associated with distilled spirits taxes should appear within the same subpart. The proposed regulations consolidate all of the information concerning distilled spirits taxes into a new Subpart I, Distilled Spirits Taxes. Similarly, we reviewed all of the major topics covered in part 19 and attempted to group them together in a more logical order. Accordingly, this proposed, amended version of part 19 has been restructured with new subparts and related

information has been consolidated, where appropriate, into a single subpart. In addition, duplicative sections have been eliminated. The intent of this restructuring is to assist the reader and make it easier to locate related topics within part 19.

The proposed subparts are as follows:

- Subpart A—General Provisions
- Subpart B—Administrative and Miscellaneous Provisions
- Subpart C—Restrictions on Production, Location, and Use of Plants
- Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit
- Subpart E—Changes to Registrations and Permits
- Subpart F—Bonds and Consents of Surety
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- Subpart X—Distilled Spirits for Fuel Use
- Subpart Y—Paperwork Reduction Act

Redundancy With the Law

In its comments on part 19, DISCUS recommends that several sections of the regulations be deleted because those sections are “redundant with the law.” DISCUS notes that many of the sections simply repeat provisions of law contained in title 26 of the IRC. DISCUS recommends we delete these redundant sections of part 19 or revise the regulations to simply reference the appropriate section of the IRC.

TTB recognizes that some sections of the part 19 regulations repeat provisions of the IRC. However, we intend that the part 19 regulations provide users with a

comprehensive and complete body of the requirements for operating a distilled spirits plant. By making part 19 a complete reference tool, persons researching a particular issue will not need access to both the IRC and the regulations. Therefore, when a provision of law affects operations at a distilled spirits plant, we included that provision in part 19. However, in some instances, we deleted sections of the regulations that simply repeated information found in other regulations within part 19.

Alternate Methods or Procedures.

Periodically, TTB allows industry members to use an alternate method or procedure in lieu of a specific regulatory requirement in part 19. The current regulation at 27 CFR 19.62 describes how DSP proprietors may apply for an alternate method or procedure. Section 19.62 also describes the criteria that TTB uses when evaluating such requests. Generally, TTB may approve the use of an alternate method or procedure when:

- Good cause has been shown for use of the alternate method or procedure,
- The alternate method or procedure is consistent with the intent of the regulation, and
- The alternate method or procedure is not contrary to the law.

Over the years, DSP proprietors have applied for a wide range of alternate methods or procedures in lieu of the requirements stated in part 19. We have evaluated these requests on a case-by-case basis using the criteria established in 27 CFR 19.62, and we have approved many of these requests. Industry members commonly refer to these alternate methods or procedures as “variances.”

As part of its comments on part 19, DISCUS submitted numerous copies of variances that have been granted to members of the distilled spirits industry. The variances submitted by DISCUS were divided into three general categories, recordkeeping, separation of premises, and “other.” In its comments, DISCUS asserts that ATF granted variances from many of the regulatory requirements and that it is not aware of any variance that has caused any problems with Federal excise tax compliance. DISCUS recommends that variances granted to individual plant proprietors be extended to all plants in the revised regulations.

In response to this suggestion, TTB reviewed the individual variances submitted by DISCUS for possible applicability to all distilled spirits plants. We found that many variances did, in fact, have general applicability to all plants. As a result, we have

incorporated many of those methods or procedures into the proposed regulations, where appropriate. For example:

- Several variances were issued that allowed for the use of computer-generated records. This proposal has been adopted into the revised regulations at § 19.572 and is discussed later in this preamble under our discussion of Records in subpart V.

- Several variances were issued that allowed for computer-generated reports and computer-generated transaction forms. These proposals were adopted into the revised regulations at § 19.634, and are discussed later in this preamble under our discussion of records in subpart V.

- A variance was issued that allows for the filing of letterhead notices to report certain changes at a plant. This procedure providing for the use of letterhead notices has been incorporated into the new subpart E and is explained more fully under our discussion of subpart E.

- Several variances were issued that allow for the use of “commercial records” to record transactions and/or operations. The use of documents created in the ordinary course of business, rather than documents created expressly to meet the requirements of part 19 is now provided for in the proposed regulations at § 19.572 in subpart V.

- A variance was issued that allows modified “abbreviations” to be used. The proposed regulations will not prescribe any official abbreviations for use on forms and records to identify spirits, and the provisions of current § 19.726, which prescribe official abbreviations have been deleted from the proposed regulations. However, we will continue to list authorized abbreviations for marking containers found in the current regulations at § 19.612.

- A variance was issued that allows filled, capped, and labeled bottles to remain on the bottling line at the end of each work day if the same brand and size will be produced on the next bottling shift. This variance was incorporated into the proposed regulations at § 19.358 and is discussed under subpart N.

- A variance that allows the bottling of liqueurs from a tank truck or tote was incorporated into the proposed regulations at § 19.352 and is discussed under subpart N.

- A variance whereby certain small tanks are not required to be mounted on scales was incorporated into the proposed regulations at § 19.183 and is discussed under subpart G.

• Several variances have been approved that allow for the use of meters in gauging spirits for purposes other than tax determination. We are proposing significant changes in the new regulations that will allow for the use of accurate mass flow meters, without prior approval by TTB, for bulk tax determination gauges and other required gauges at a distilled spirits plant if the meters meet certain criteria for accuracy.

During our review of the variances submitted by DISCUS, we also found several that were not appropriate for incorporation into the new, revised regulations. In some instances, we did not wish to apply the provisions of a particular alternate method or procedure to all DSP proprietors without regard to their compliance history and other factors. As such, proprietors may continue to apply for these types of alternate methods or procedures, and we will evaluate them on a case-by-case basis.

For example, we have issued several variances to DSP proprietors regarding the timing and frequency of required inventories for bulk and cased spirits. In evaluating this type of variance, we frequently consider the compliance history of the particular plant, shortages and gains disclosed by past inventories, along with other factors. Accordingly, this type of authorization does not have general applicability and is not appropriate for inclusion in the new proposed regulations. However, we will continue to approve this type of request, when appropriate, on a case-by-case basis.

In other instances, the subject matter of a particular variance only applied to a very specific situation at a single plant and was, therefore, not applicable to all plants. Accordingly, we did not incorporate this type of variance into the new proposed regulations. For example:

- We approved several variances in regard to case markings that did not have general application to the case markings used by other plants.
- We approved a “business day” for a plant that runs from 2 a.m. through 1:59 a.m. This type of variance does not have general applicability to other plants.

In summary, we have incorporated a number of existing variances into the proposed regulations where appropriate, and when the variance would have general applicability to the industry.

D. Specific Changes Proposed in This Notice

The following is a discussion of the new, revised subparts in 27 CFR part 19

and the specific changes that we propose to make in the part 19 regulations.

Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 19, including a revised definitions section, a section that defines the territorial extent of the regulations, and a section that identifies other regulations that relate to part 19.

In the proposed definitions section at § 19.1, we propose some minor amendments to the language used within this section to clarify the meaning of some terms. We also propose to add some new terms and delete an outdated term found in the current definitions section. We propose to add the terms “accurate mass flow meter,” “general premises,” “letterhead application,” “letterhead notice,” “National Revenue Center,” “TTB officer,” and “we.” We propose to delete the term “region director.”

We also propose to move two sections currently located in subpart D, under the heading “Activities Not Subject To This Part,” to subpart A. The relocated sections are § 19.4, Recovery and reuse of denatured spirits in manufacturing processes, and § 19.5, Manufacturing products unfit for beverage use, which are currently found at §§ 19.57 and 19.58, respectively.

Subpart B—Administrative and Miscellaneous Provisions

Proposed subpart B contains the administrative and miscellaneous provisions for part 19 that are currently found in subpart D. However, some sections of regulations that are located in the current subpart D have been relocated to other revised subparts, where appropriate. For example, we propose to move sections relating to gauging to the new proposed Subpart K, Gauging. Similarly, we propose to relocate sections relating to the conveyance of spirits or wines on plant premises to the new proposed Subpart C, Restrictions, Location, and Use of Plants.

Proposed subpart B includes a “penalty of perjury” section that is currently located at § 19.100. In its comments on part 19, DISCUS proposes the deletion of the requirement that documents be executed under penalties of perjury from several sections of regulations. DISCUS states that “these penalties are unnecessary and excessive in light of the fact that a proprietor’s permit is subject to revocation under the Federal Alcohol Administration Act for failure to comply with the Bureau’s requirements.” TTB did not adopt this

proposal. The penalty of perjury statement is an important safeguard that places legal responsibility for the truthfulness of significant documents filed with TTB on the documents’ signatories. Generally, we do not require the “penalty of perjury” statement on most documents and records. Its use is generally restricted to claims, tax returns, applications, and similar documents. The IRC at 26 U.S.C. 6065 states, “Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provisions of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury.” Consistent with the IRC at 26 U.S.C. 6065 and along with the other tax collection agencies within the Department of the Treasury, TTB requires that such documents be signed under penalties of perjury. The penalty of perjury provision in the proposed regulations is located at § 19.45.

Subpart C—Restrictions on Production, Location, and Use of Plants

Proposed subpart C covers restrictions associated with the operation of a distilled spirits plant, along with the location and use of DSP premises. In its comments on part 19, DISCUS makes several recommendations affecting those sections of the current regulations that govern restrictions, locations, and use of DSP premises. We discuss these recommendations and our responses below.

Restrictions regarding location. Currently, 27 CFR 19.131 provides that a distilled spirits plant may not be located on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 19.133) on premises where any other business is conducted. DISCUS contends that physical separation of commodities is meaningless and recommends that this restriction be amended to allow a distilled spirits plant to be located on such premises if the proprietor’s records show the separate operations. We did not adopt this proposal because Federal law does not provide for “constructive” separation of premises by records only. The language of this regulation is derived directly from the language of the IRC at 26 U.S.C. 5178(a)(1)(B), which states that a distilled spirits plant shall not be located “on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).” This

provision appears in the proposed regulations at § 19.52.

Continuity of premises. Currently, the regulation at § 19.132 provides that the physical continuity of a distilled spirits plant must be unbroken except for separation by public waterways, thoroughfares, or carrier rights-of-way. However, TTB may approve other separations of the plant premises when all parts of the plant are in the “same general location.” DISCUS recommends that the term “same general location” mean within 200 miles of the distilled spirits plant.

We did not adopt this recommendation in the proposed regulations. Although DISCUS states that a “200 mile rule” would provide increased operational flexibility for proprietors, they do not explain how this would occur under their proposal and why that distance is more appropriate than any other.

Over the years TTB has received a number of requests to establish non-contiguous distilled spirits plant premises. We have evaluated each of these requests on a case-by-case basis. In our evaluation of each request, we consider a number of factors, such as:

- Security and protection of the revenue,
- Distance between the main plant premises and the proposed non-contiguous premises,
- Whether the non-contiguous premises would cross State lines,
- Whether the non-contiguous premises will facilitate inspections and audits, and
- Whether establishment of non-contiguous premises would provide the proprietor with a means for delaying payment of taxes.

We propose to retain the case-by-case analysis based on multiple factors, instead of adopting a 200 mile rule as proposed by DISCUS. As a general rule, we believe that the “same general location” must not be too large an area so that the revenue is placed at risk. Also, because a distance of 200 miles could extend over a multi-state area and would cross over into different field offices within TTB, such a distance would create administrative difficulties for TTB. This provision appears in the proposed regulations at § 19.53.

Other businesses. Currently, the regulation at § 19.68 provides that TTB may authorize the carrying on of other businesses (not otherwise prohibited) on DSP premises under certain conditions. The other businesses should not pose a jeopardy to the revenue, hinder the effective administration of part 19, or be contrary to law. There is a similar section of regulations at § 19.72.

DISCUS recommends the removal of § 19.68 since it is redundant with § 19.72.

We agree that §§ 19.68 and 19.72 are very similar, and we have merged the two sections into a single section within the proposed regulations at § 19.55.

Bonded warehouses not on premises qualified for production of spirits. The current regulation at § 19.134 allows for the establishment of a bonded warehouse on premises that are not qualified for the production of spirits, if the need for such is clearly established. DISCUS recommends the amendment of this section by adding language stating that the warehouse may be within 200 miles of the main plant. We did not adopt this recommendation for the same reasons discussed above under the heading, “Continuity of Premises.” This provision is found in the proposed regulations at § 19.56.

Taxpaid spirits or wines on bonded premises. The current regulation at § 19.97 provides that spirits or wines on which the tax has been paid or determined may be conveyed across bonded premises but cannot be stored or remain on bonded premises, and must be kept separate and apart from spirits or wines on which the tax has not been paid or determined. DISCUS recommends the addition of new language to this section whereby the area where taxpaid spirits or wines are stored will not be considered bonded premises if the proprietor’s records show that the tax has been paid or determined. They state that their proposal would “shift the focus from the outdated requirement of physical segregation to a modernized, efficient approach based upon ‘constructive segregation.’”

We did not adopt this recommendation because the IRC does not allow for the separation of premises solely by records. The IRC at 26 U.S.C. 5612 clearly states that taxpaid or tax determined spirits cannot be stored on bonded premises. Further, the bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by records of the type of spirits stored on the premises. In our proposed regulations, this section is now found at § 19.58.

Conveyance of untaxed spirits or wines within a distilled spirits plant. Currently, the regulation at § 19.98 provides that untaxed spirits or wines can be conveyed between different bonded areas of a plant and across areas of a plant that are not bonded. DISCUS recommends the amendment of this section by adding language whereby if the proprietor’s records show the tax

has not been paid or determined, then the untaxed spirits will be considered to be on bonded premises (constructive segregation).

We did not adopt this recommendation because the regulation already allows for the transfer of untaxed spirits across areas of a plant that are not bonded. The amendment proposed by DISCUS would only incorporate the idea of “constructive segregation” into this section of the regulations. However, since the regulation already allows for transfers across areas of the plant that are not bonded, the amendment proposed by DISCUS is not necessary. This section of the regulations is now found at § 19.59 in the proposed regulations.

Spirits in customs custody. Currently, the regulation at § 19.99 provides that spirits in customs custody may be conveyed across DSP premises under certain conditions. Those conditions include:

- The spirits may not be stored or allowed to remain on DSP premises.
- The spirits must be kept separate from other spirits on DSP premises.
- The means and route of conveyance must be approved.
- The proprietor must file a consent of surety.

DISCUS recommends the addition of language to this section whereby if the proprietor’s records show that spirits are in customs custody, then the area where the spirits are stored will not be considered part of the DSP premises.

We did not adopt this DISCUS recommendation for several reasons. First, this section of regulations deals with conveyance of spirits in customs custody across DSP premises. It does not deal with the storage of such spirits on DSP premises.

In addition, TTB bonded premises and customs bonded premises are two distinct types of bonded premises. TTB bonded premises are established under the laws and regulations administered by the Alcohol and Tobacco Tax and Trade Bureau, while customs bonded premises are established under a separate set of laws and regulations administered by U.S. Customs and Border Protection. As such, the premises cannot be co-located, and there is no basis in the law for constructive segregation of these bonded premises by records only. The bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by records. In our proposed regulations, this section is now found at § 19.60.

Production of distilled spirits for personal use. Frequently, TTB receives

questions from the general public asking whether the law allows for the production of distilled spirits in the home for personal use. Under Federal law (26 U.S.C. 5171), distilled spirits may only be produced at a registered distilled spirits plant. Therefore, we propose to add a new section to subpart C, which will explain that a person may not distill spirits at home for personal use. This new section is found in the proposed regulation at § 19.51.

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

The current regulations governing the qualification of a distilled spirits plant are found in subpart G. These regulations cover a number of issues, including the requirements for plant registration, operating permits, alternation of premises, and amending registrations and operating permits.

Proposed subpart D covers the initial registration of a distilled spirits plant and procedures for obtaining an operating permit. We propose to assign regulations concerning changes after the original qualification of the plant to the new subpart E.

In the proposed subpart D, we also propose to rearrange the information related to the qualification of a distilled spirits plant in a more logical order. For example, we propose to group all registration information together under a heading titled “Requirements for Registering a Plant,” while information relating to operating permits is grouped together under a separate heading titled “Requirements for an Operating Permit Under the I.R.C.” In the current regulations, much of the information regarding registration and operating permits is intermingled. We believe that separating these subjects will make it easier for readers to understand which requirements apply to plant registration and which requirements apply to operating permits.

Other businesses. In its comments on part 19, DISCUS proposes the inclusion of a cross-reference at § 19.152 of the current regulations, indicating that “other businesses” may be allowed under a separate section of the regulations. We adopted this proposal in the proposed regulations at § 19.73(b).

Major equipment. DISCUS also recommends in its comments that the requirement to list major equipment on the application for registration, currently found at § 19.166, be amended. First, it states that the regulation should be clarified to provide that “major equipment” must be identified in the registration only if it is “set up” and “used for distillation, redistillation, or recovery of spirits.”

We adopted this suggestion in part. We do not see any need to list major equipment in the application that is not “set up” and used for the production, storage, or processing of spirits. Therefore, we have inserted language in the proposed regulations at § 19.75, which requires that equipment be listed if it is “set up” and used for the production, storage, or processing of spirits.

DISCUS also recommends that a paragraph be added to § 19.166 stating that “bulk containers of less than 101 wine gallon capacity and not meeting the criteria of a tank under § 19.273 (such as perks and small totes) are not items of major equipment and are not required to be listed in the application for registration.” This recommendation is reasonable because such containers are not items of major equipment, and we include it in the proposed regulation at § 19.75.

In addition, DISCUS recommends that the requirement to provide a “statement of certification of accurate calibration” for tanks found in the current regulations at §§ 19.166 and 19.273(a)(6) be eliminated. This recommendation is reasonable and has been adopted in the proposed regulations because it only involves eliminating a requirement to include a “statement of certification of accurate calibration” in the notice of registration. The proposed regulation at § 19.182 will continue to require that tanks be accurately calibrated.

Registration file. The IRC at 26 U.S.C. 5171(c) requires that persons must apply for and receive a notice of registration before commencing business as a distilled spirits plant. In regard to the maintenance of the registration file, currently at § 19.155, DISCUS recommends the addition of language to allow the registration file to be kept in computerized records. We did not adopt this proposal because registration documents are normally submitted to TTB in a hard-copy format and returned to the proprietor by TTB in hard-copy format. DISCUS also recommended the elimination of the requirement that the registration file be kept “at the plant.” We did not adopt this proposal because the file must be readily available for inspection by appropriate TTB officers.

LLCs and LLPs. The current regulations governing qualification of a distilled spirits plant in subpart G only acknowledge three types of business organizations, sole proprietorships, partnerships, and corporations. In view of the increasing use of limited liability companies (LLCs) and limited liability partnerships (LLPs), we have included instructions for these types of business

organizations in the proposed regulations at § 19.93.

Subpart E—Changes to Registrations and Permits

Proposed subpart E includes the regulations governing changes to the distilled spirits plant registration, changes to operating permits, and alternation of plant premises. Similar to the changes that we propose in new subpart D, much of the information in the new subpart E is arranged in a more logical order. For example, matters affecting changes to registration are grouped together under the heading titled “Rules for Amending a Registration,” and matters affecting changes to operating permits are grouped together under the heading titled “Rules for Amending an Operating Permit.”

In the current regulations, much of the information regarding changes to the registration and changes to the operating permit is intermingled. As with new subpart D, we believe that separating these subjects will make it easier for readers to understand the specific requirements that apply to amending either the plant registration or the operating permit.

Letterhead notices and letterhead applications. In its comments on part 19, DISCUS makes several recommendations regarding how proprietors should apply for changes to a plant’s registration or operating permit. Generally, DISCUS recommends that, in most instances, the regulations allow proprietors to request changes by filing a letterhead notice. In its petition, DISCUS states that:

Subpart G provisions regarding changes in the information shown in the original registration should be revised to eliminate unnecessary prior submissions and prior approval requirements. Similar to our alternation proposals, 27 CFR 19.180, 19.82 and 19.183 (application for amended registration, change in name of proprietor and change of trade name, respectively) should be amended to provide that a proprietor file a letterhead notice reporting any change within 30 days after the change. Further, 27 CFR 19.184 and 19.185 (changes to largest stockholders and changes in officers and directors, respectively) should be revised to provide identical treatment (i.e., reported in the next amended registration) because there is no reason to treat these changes differently.

TTB agrees that we should simplify the amendment of registrations and permits wherever possible. Accordingly, we are proposing to expand the use of both letterhead notices and letterhead applications for reporting changes to the registration and permit. We will allow the use of letterhead notices to report

minor changes affecting the registration or permit. We will allow for the use of letterhead applications for more substantive changes but these must be approved by TTB prior to the change. The use of amended applications, letterhead applications, and letterhead notices are discussed in the proposed regulations at §§ 19.112 and 19.126.

Changes in the statement of plant security. In the current regulation at § 19.153(b), an application for amended plant registration (form TTB F 5110.41) must be filed each time there is a change in plant personnel or procedures contained in the statement of security. In Notice No. 870, ATF proposed to liberalize this requirement. Therefore, we propose that § 19.153(b) be amended to require that a letterhead application be filed for changes in the security procedures listed in § 19.153(a)(1)–(4), and that a letterhead notice be filed for changes in the personnel listed in § 19.153(a)(5). Thus, the letterhead application or letterhead notice would replace the amended registration that was required each time that the information in § 19.153(a)(1)–(5) changed. The plant registration would be updated on an annual basis to incorporate changes made during the preceding year.

In its comments on Notice No. 870, Equistar Chemicals states that it endorses the proposed changes and would encourage any additional efforts to facilitate compliance through reducing nonessential paperwork. However, Equistar asks for some clarification of this proposal. It pointed out that the proposal allows companies to submit a “letterhead application” and “letterhead notice” for changes. Equistar states that it presumes that we intended companies to simply send an informal letter notifying the agency of procedure or personnel changes. The company asks for a clarification of these terms.

In response to this request for clarification, TTB advises that the terms “letterhead application” and “letterhead notice” refer to a letter from a company representative, with signature authority, on company letterhead (see definitions). The “letterhead application” is subject to TTB approval prior to the change; however, the “letterhead notice” is not subject to prior approval. These terms are now fully explained in the proposed regulations at §§ 19.112 and 19.126.

Equistar also points out that “the proposal requires a letterhead application for ‘changes in any of the information’ listed in the sections of the Statement of Physical Security that address procedural changes.” The company states that a requirement to advise us of “any changes” is overly

broad and could encompass non-substantive as well as substantive changes. Equistar recommends that we maintain the rule’s original language that covers changes in “procedure” rather than “any changes.”

The current regulation governing changes in plant security, which appears at § 19.153, has been rewritten to clarify the type of changes that may be reported to TTB by letterhead application or letterhead notice. In our proposed regulations, this section is now located at § 19.123.

In its response to Notice No. 870, DISCUS states that it supports the proposal whereby a distilled spirits plant would file a letterhead notice instead of an amended registration for changes in the information provided under 27 CFR 19.153(a)(5). However, DISCUS recommends the deletion of the word “security” from the proposed term “security personnel listed in paragraph (a)(5).” DISCUS states that the term “security personnel” is not used in paragraph (a)(5) and is not synonymous with the persons covered by paragraph (a)(5).

We agree that the term “security personnel” is not an accurate term. Therefore, we propose deleting the word “security” from the proposed regulation at § 19.76.

DISCUS also recommends that the regulations conform their treatment of changes in § 19.153(a)(1)–(4) to the proposed changes in paragraph (a)(5). DISCUS asks that the regulations allow these changes to be reported by a letterhead notice within 30 days after the changes. DISCUS states that the information required by paragraphs (a)(1)–(4) and (a)(5) concern the same issues, and “no reason exists to subject subsection (a)(5) to different treatment than subsections (a)(1)–(a)(4).”

In response to this recommendation, TTB advises that the information at § 19.153 is part of the data for an “application” for registration (27 CFR 19.152(k)). As such, the items of information provided under § 19.153 are subject to pre-approval for initial qualification of a distilled spirits plant and continued qualification of each plant. Further, the items listed under § 19.153(a)(1) through (4) represent crucial physical security features of a plant and must, therefore, be subject to prior approval by TTB. In contrast, the information required by § 19.153(a)(5) is a listing of persons having responsibility for custody and access to keys for approved locks at the distilled spirits plant. Since plants are free to designate the persons responsible for such custody, this particular item of information is not something that needs

to be pre-approved. Therefore, this item will be treated as a “notification” rather than an “application.” These changes now appear in the new, proposed regulations §§ 19.76 and 19.123.

Change in name of proprietor. The current regulation at § 19.182 requires that the proprietor file an application to amend the registration and the operating permit whenever there is a change in the name of the proprietor. DISCUS recommends the amendment of that regulation to allow the filing of a letterhead notice within 30 days of the name change, and that the new information be included in the next application to amend the registration and the next application to amend the operating and/or basic permit filed by the proprietor. DISCUS also recommends deleting from the current regulations the phrase, “Operations may not be conducted under the new name prior to approval of the amended registration and issuance of the amended permit.”

The provisions of the current regulation at § 19.182 will be covered in the proposed regulations at §§ 19.113 and 19.128, and the proposed regulations will no longer require the filing of amended applications. Instead, the proposed regulations will allow for the filing of a letterhead application. However, since a change in the proprietor’s name is a substantive change, the proposed regulation will still prohibit operations conducted under the new name before TTB approves the letterhead application.

Change of trade name. The current regulation at § 19.183 requires that the proprietor file an application to amend the operating permit when there is a change in the trade name of the proprietor. Operations may not be conducted under the new trade name until the amended permit is approved. DISCUS recommends the amendment of the regulation to allow for the filing of a letterhead notice within 30 days of the change and no longer require an application to amend the operating permit.

In the proposed regulation at § 19.129, TTB will no longer require the filing of an amended application. Instead, the proposed regulation will allow for the filing of a letterhead application. However, since any change in the trade names used by the proprietor is a substantive change, the proposed regulations will still prohibit operations conducted under the new trade name prior to TTB’s approval of the letterhead application.

Change of stockholders. The current regulation at § 19.184 allows for the filing of an annual report of changes in

major stockholders except where the sale or transfer of capital stock results in a change in control or management. In its comments on part 19, DISCUS recommends that the language of the regulation be amended to read, "Changes in the list of stockholders furnished under the provision of Sec. 19.167(c)(1) shall be reported in the next application for amended registration on Form 5110.41 filed by the proprietor."

In the proposed regulations at §§ 19.114 and 19.130 we will allow a proprietor to submit an annual letterhead notice regarding changes in major stockholders. Under the proposed regulations, the changes must be incorporated in the next application filed, unless a change of control occurs. If a change in control takes place, § 19.114 requires that the proprietor must file TTB F 5110.41, Registration of Distilled Spirits Plant, within 30 days of the change, and § 19.130 requires that the proprietor must file TTB F 5110.25, Application for Operating Permit Under 5171(d), within 30 days of the change.

Changes in officers and directors. The current regulation at § 19.185 requires that a proprietor file an application for amended registration on Form 5110.41 when there is a change in the list of officers or directors. DISCUS recommends that the regulation be amended to state that the proprietor will report the change on the next application on TTB F 5110.41 for amended registration filed by the proprietor.

In the proposed regulations at §§ 19.115 and 19.131, we propose to allow a proprietor to submit a letterhead notice at the time of the changes and incorporate the changes in the next application for amended registration filed on form TTB F 5110.41 and the next form TTB F 5110.25 filed.

Permit transfers. In its comment on Notice No. 870, Equistar Chemicals asked that ATF (BATF in its comment) examine ways to minimize the paperwork and notice requirements associated with ATF permits when a change of ownership occurs. Equistar states:

BATF should examine ways to minimize the paperwork and notice requirements necessary to transfer BATF permit ownership in order to facilitate a smoother and less burdensome transition to the acquiring entity. Because the Securities and Exchange Commission (SEC) obtains copious records on publicly traded companies, perhaps BATF could coordinate efforts with SEC in cases where the acquiring entity is a publicly traded company and obtain company information through existing government databases. Alternatively, BATF could also prevent duplication by allowing companies to submit their annual reports in lieu of

filling out numerous forms and applications. Such solutions would simultaneously facilitate BATF's access to companies' business information and alleviate the burden on companies who must currently submit new documentation of standard business information to each governmental branch who requests it.

In general, TTB agrees that we should simplify the amendment of registrations and permits wherever possible. For this reason, we propose to expand the use of both letterhead notices and letterhead applications for reporting changes to the registration and the operating permit.

However, in regard to utilizing SEC filings in cases where there is a change in ownership or control, there are several problems. First, much of the information that a proprietor submits in support of a plant registration or an operating permit is specific to distilled spirits operations. As such, this type of information, except for some similar items of information, is not required by agencies such as the SEC and so copies of such submissions would be inadequate for TTB purposes.

Adoption of formulas. The current regulation at § 19.187 provides for the adoption of formulas by a successor. DISCUS recommends in its comments on part 19 that the regulation refer to 27 CFR 5.28 and that the language in § 19.187 which is redundant with § 5.28 be removed.

In the proposed regulations we eliminated § 19.187 as a separate section of regulations and we have incorporated references to the adoption of formulas and §§ 5.28 and 20.63 into the proposed regulations at §§ 19.116 and 19.132.

Changes in premises. The current regulation at § 19.190 refers to several sections of regulations relating to alternation of premises. DISCUS recommends the amendment of these references to ensure the accuracy of cross-references to other appropriate sections in part 19. The accuracy of cross-references is important so we propose to amend the references at proposed § 19.119 to reflect the new section numbers for alternation of premises.

Change in operations. The current regulation at § 19.191 requires that a DSP proprietor file an application to amend the registration and operating permit if the proprietor wishes to engage in a new business involving distilled spirits. This section also applies to conducting other businesses on DSP premises. DISCUS recommends the addition of language to the end of this section stating, "Applications may be approved as provided in Sec. 19.72."

In the proposed regulation at § 19.120, we now include a reference to § 19.55,

which is the section of regulations relating to other businesses.

Changes in construction or use of buildings and equipment. The current regulation at § 19.193 requires a DSP proprietor to submit a letterhead notice prior to a material change in construction or use of buildings or equipment and then incorporate the change into the next amendment of the notice of registration. DISCUS recommends the elimination of most of this section because it is redundant with the general instructions relating to applications for amended registration found at § 19.180.

We did not eliminate this section because we do not believe that it is redundant. Similar to the other sections in this subpart, it provides specific instructions for amending the registration. The provisions of current § 19.193 appear in the proposed regulations at § 19.122.

Procedures for alternation of proprietors. The current regulation at § 19.201 covers the procedures that proprietors must follow when DSP premises, or part of the premises, are alternated between different proprietors. Alternation of premises refers to the formal, legal transfer of operations from one proprietor to another proprietor. DISCUS proposes to amend this regulation by eliminating the requirement to provide a diagram of the area of the plant to be alternated. Further, DISCUS proposes that language be inserted into the regulation that would allow the proprietor's production, storage, and processing records to be used to document the alternation of proprietors.

We did not adopt this DISCUS proposal. Records of production, storage, and processing are used to record the details of production, storage, and processing activities at a plant. These records are not designed to officially document the alternation of plant premises from one proprietor to another proprietor. Further, such records would not identify the actual bonded areas of the plant that are alternated; only a diagram can provide this information. However, we did substantially rewrite this section of the regulations to clarify the procedure for alternating proprietors. In addition, the requirement to file Form 5110.34 has been replaced with the requirement to file a letterhead notice with TTB when such alternations occur. The proposed amended section appears at § 19.141.

Alternate operations. The current regulation at § 19.202 provides for the alternate use of plant premises and equipment for customs purposes whereby the premises of the plant are

converted from TTB bonded premises to Customs bonded premises. The current regulation also requires that the proprietor file a notice on Form 5110.34 whenever the plant premises are curtailed or extended for customs purposes. In Notice No. 870 ATF proposed to substitute a letterhead notice for the filing of Form 5110.34 each time that distilled spirits plant premises are alternated for customs purposes.

The current regulations at §§ 19.203 through 19.206 provide for the alternation of distilled spirits plant premises with bonded wine cellar premises, taxpaid wine bottling house premises, general premises, and premises for the manufacture of eligible flavors. The current regulations also require that the proprietor file a notice on Form 5110.34 whenever the premises are curtailed or extended for these purposes. In Notice No. 870, ATF proposed to simplify this requirement by amending §§ 19.203 through 19.206 to provide that after a proprietor has received approval for the alternation plan that defines the boundary of the premises to be alternated, the alternation may take place pursuant to records kept in a logbook. In Notice No. 870, ATF listed the requirements for the proposed logbook record in a new section of regulations at § 19.781. In Notice No. 870, ATF also proposed to allow for the alternation of distilled spirits plant and brewery premises under the same conditions. Alternation of distilled spirits plant premises and brewery premises is not provided for in the current regulations.

In its comments on Notice No. 870, DISCUS expresses support for the proposal to eliminate the requirement to file Form 5110.34 each time that the premises are alternated. However, DISCUS does not support the proposal to require a proprietor to prepare a logbook containing the information required by proposed § 19.781 each time that the proprietor alternates premises. DISCUS states that “this proposal runs contrary to the objective of effective regulatory reform; [sic] to replace formal recordkeeping requirements with reliance upon commercial business records maintained in the ordinary course of business.” Further, DISCUS contends that the proposal does not eliminate the requirements for prior submission and prior approval or the requirement to physically segregate products by type (wine, beer, spirits, or flavors). It asserts that the requirement in the regulations to segregate products is burdensome and that companies can track, distinguish, and identify products and operations by computer. DISCUS

also asserts that “‘constructive segregation’ of product by computerized records protects BATF’s regulatory objectives, without the inefficient use of space and time and effort inherent in requiring physical separation.”

DISCUS recommends that the regulations allow alternation under §§ 19.202 through 19.206 if the distilled spirits plant proprietor files a letterhead notice reporting the alternation within 30 days after the alternation takes place. It also proposes that the proprietor’s ordinary business records be used to substantiate the alternation and that we eliminate the requirement to physically separate products as currently required.

For the reasons discussed earlier in this notice, TTB is not adopting these recommendations regarding dependence upon company records for segregation of goods and reliance upon “constructive segregation.” As stated earlier, the IRC does not provide for the separation of premises solely by records. Further, the bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by commercial records.

Therefore, in this current notice we propose a new section of regulations at § 19.142 to provide for the alternation of premises for customs purposes whereby proprietors will file a letterhead notice with TTB prior to any alternation of premises. We have also eliminated the requirement to file Form 5110.34. We do not agree with the DISCUS proposal that would allow notices to be filed up to 30 days after the fact. Thus, the proposed regulation at § 19.142 will require that the letterhead notice must be filed prior to alternation of premises for customs purposes.

In addition, we propose a new, single section of regulations at § 19.143 that will provide for extension and curtailment of distilled spirits plant bonded premises with either general premises, an adjacent bonded wine cellar, an adjacent taxpaid wine bottling house, an adjacent brewery, or facilities for the manufacture of eligible flavors. Under our proposed regulations, proprietors will document such alternations in the record prescribed in proposed § 19.627 at the time the alternation occurs, and we will not require the filing of a letterhead notice with TTB or the filing of form TTB F 5110.34. The record prescribed in proposed § 19.627 will allow for the use of commercial records, when the commercial records provide the same information required by § 19.627 and are retrievable and available for inspection by TTB officers. Because of the variability of commercial records,

we believe that there is a need to provide minimum standards for the commercial records that document alternation of premises. Further, the proposed regulation at § 19.143 will still require the segregation of products. We disagree with the DISCUS recommendation that would allow for the “constructive segregation” of products based on computerized records. This is not an actual segregation of product as required by law at 26 U.S.C. 5178(a)(1)(B) and 5612 and could result in the commingling of taxpaid and non-taxpaid product.

Subpart F—Bonds and Consents of Surety

Proposed subpart F covers the bonding of distilled spirits plants. For the most part, this subpart contains the same information found in current regulations at subpart H, except that the proposed regulations are written in plain language.

However, the proposed regulation at § 19.163 will allow persons who operate more than one distilled spirits plant serviced by TTB’s National Revenue Center to give TTB a single area operations bond that covers the operations of two or more distilled spirits plants and adjacent bonded wine cellars located within the same geographic area. For practical purposes this means that, since TTB’s National Revenue Center services the entire United States, a proprietor’s operations bond may cover all of the proprietor’s plants in the United States.

DISCUS did not recommend any substantive changes to these regulations in its comments on part 19. However, it did recommend that the requirement to execute a bond under penalties of perjury be deleted. This recommendation is not being considered in this proposed rule for the reasons discussed earlier in this notice.

Subpart G—Construction, Equipment, and Security Requirements

Under the current regulations in part 19, construction, equipment, and security issues are covered at subpart I. In the regulations proposed by this notice, those issues will be covered in the new proposed subpart G. The following is a discussion of the changes we that propose in the new subpart G.

Construction of buildings. The current regulation at § 19.271, Construction of buildings, will not be included in the proposed regulations. We found that it simply repeats requirements already found in §§ 19.281(a) and 19.281(b).

Equipment. The current regulation at § 19.272, Equipment, will also be deleted. We found that it simply repeats

requirements found in several other sections of the current regulations including: §§ 19.152(h), 19.152(k), 19.153, 19.166, and 19.281(a), (c), and (d).

Tanks. DISCUS recommends that the requirement to permanently mount scale tanks on scales should not apply to tanks that do not exceed a 55-gallon capacity. This proposal is reasonable because such small tanks are intended to be portable and there is no need to mount them permanently on scales. Therefore, we adopted this recommendation in the proposed regulation at § 19.183(b).

Continuous distilling system. We propose to eliminate the current regulation at § 19.275, Continuous distilling system, from the regulations in the new proposed subpart G. The requirement for a continuous distilling system is already covered in the proposed regulations at Subpart L, Production of Distilled Spirits, and we found § 19.275 of the current regulations to be redundant.

Meters. During the course of certain operations at distilled spirits plants, proprietors are required to measure the volume of distilled spirits. When measuring spirits for purposes other than tax determination, the regulations require that the spirits be measured in a tank or a conveyance using calibration charts. The current regulation at § 19.277 also allows for the use of meters when measuring spirits for purposes other than tax determination. However, in order to use a meter, the proprietor must first submit an application to TTB, along with technical data regarding the meter they intend to use. TTB must approve the meter prior to its use at a plant.

In its petition and markup of part 19, DISCUS proposes the elimination of the prior approval requirement for meters. DISCUS states that this requirement imposes unnecessary and time-consuming burdens on TTB resources and the industry and serves only to delay operations at a DSP. DISCUS states that the proprietor should be responsible for using and maintaining accurate equipment.

After careful consideration of this proposal, TTB has decided to propose significant changes in the new proposed regulations whereby a proprietor may use mass flow meters for all required bulk gauges at a distilled spirits plant, including bulk tax determination gauges, if the meters meet certain criteria for accuracy. This will reduce the burden on industry members and TTB while ensuring the accuracy of bulk measurements.

Accordingly, the proposed regulation at § 19.188(c) provides that a proprietor may use a mass flow meter for tax determination of bulk spirits if the meter is certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.1\%$. For all other required gauges of bulk spirits at a distilled spirits plant, a proprietor may use a mass flow meter if it is certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.5\%$. For both tax determination gauges and all other required gauges, the proprietor must make corrections for the temperature of the spirits being measured in conjunction with the volumetric measurement of spirits by mass flow meter. The proprietor must also test mass flow meters at least every 6 months to ensure that they are accurate within the required tolerances.

Miscellaneous changes. In addition to the changes proposed above, TTB also proposes to make several editorial changes in subpart G that will make the regulations easier to understand. For example, the current regulation at § 19.273, Tanks, has been divided into several shorter sections covering: (a) The general requirements for tanks, (b) scale tanks, (c) graduation of scale tanks, and (d) testing for accuracy. The proposed, shorter sections are found at §§ 19.182, 19.183, 19.184, and 19.185.

Subpart H—Special (Occupational) Tax

On October 22, 2004, the President signed into law the American Jobs Creation Act of 2004 (the Act), Public Law 108-357, 118 Stat. 1418. Section 246 of the Act amended the IRC by providing that, during the 3-year period from July 1, 2005 through June 30, 2008, the rate of special (occupational) tax imposed under IRC sections 5081, 5091, 5111, 5121, and 5131 is zero. The effect of this provision is that proprietors of distilled spirits plants, including alcohol fuel plants and certain other proprietors, are not subject to special (occupational) tax during the suspension period. However, although the tax rate for the occupations affected by the suspension is zero during the suspension period, the IRC still requires that persons engaging in those occupations must register annually and comply with all applicable recordkeeping requirements. On October 31, 2005, TTB issued Treasury decision T.D.TTB-36 (70 FR 62238) which implemented this provision of the Act by amending the special (occupational) tax regulations in part 19 and other affected parts.

On August 10, 2005, the President signed into law the Safe, Accountable, Efficient Transportation Equity Act: A

Legacy for Users, Public Law 109-59, 119 Stat. 1144. Section 11125 of this act repeals the special (occupational) tax applicable to proprietors of distilled spirits plants. This provision will become effective on July 1, 2008.

The special (occupational) tax regulations proposed in this notice are located in proposed subpart H and are based upon the American Jobs Creation Act of 2004. Thus, they provide for a suspension of the special (occupational) tax through June 30, 2008. However, prior to the effective date of section 11125 of the Safe, Accountable, Efficient Transportation Equity Act, TTB intends to develop and issue regulations for all parts in title 27 of the Code of Federal Regulations that are affected by the special tax repeal provisions of that act. Therefore, the regulatory text in the final rule associated with this notice of proposed rulemaking will reflect the statutory provisions that are in effect when that final rule is published.

Subpart I—Distilled Spirits Taxes

Under the current regulations, information regarding payment of the distilled spirits taxes is found in two separate subparts, Subpart C, Taxes, and Subpart P, Transfers and Withdrawals. Subpart C contains much of the basic information about distilled spirits taxes, plus the methods for calculating tax credits under the IRC at 26 U.S.C. 5010. Information regarding determination of taxes and the filing of tax returns is located in subpart P.

Logically, all information associated with distilled spirits taxes should appear in the same subpart. Therefore, the proposed regulations consolidate all of the information relating to distilled spirits taxes currently found in subparts C and P plus several other miscellaneous tax provisions currently located in other subparts into a new proposed Subpart I, Distilled Spirits Taxes.

General sections. In addition to consolidating the tax information currently found in subpart C and P, we have created several new general sections within the proposed subpart I. These new sections discuss issues such as deferred payment and prepayment of taxes, and the tax credits provided under 26 U.S.C. 5010. These general sections are intended to give the reader a brief introduction to some of the more complex subject matter within proposed subpart I.

Gallage taxes. In its comments on part 19, DISCUS recommends the elimination of several sections of the current Subpart C regulations that appear under the heading “gallage taxes.” This includes §§ 19.21, 19.22,

19.23, 19.24, 19.25, and 19.26. DISCUS states that these sections are redundant with the IRC.

TTB agrees that many of these sections of regulations repeat provisions of the IRC. However, as stated earlier in this notice, we intend that the regulations in part 19 provide users with a comprehensive and complete guide to the requirements for operating a distilled spirits plant, and where appropriate, we will repeat certain statutory requirements in the regulations. We do not wish to unnecessarily require readers of these regulations to reference both the IRC and the regulations when researching an issue. Therefore, we propose to retain most of the information provided in current §§ 19.21, 19.22, 19.23, 19.24, 19.25, and 19.26 in proposed Subpart I.

Inventory reserve account. In its markup of part 19, DISCUS also proposes the deletion of § 19.38, which provides for an inventory reserve account. The inventory reserve account is one of the optional methods that a proprietor may use for applying effective tax rates under the IRC at 26 U.S.C. 5010. DISCUS offers no explanation for deleting this section. In the proposed regulations, we retained this section in order to provide industry members with another option in determining the method for applying effective tax rates.

Subpart J—Claims

Under the current regulations in part 19, the subject of “Claims” is covered as a subcategory of subpart C, Taxes. In these proposed regulations, we have relocated the regulations related to claims into a new, separate subpart J. Most of the changes to the regulations in proposed subpart J are relatively minor and are intended to improve the language and thereby make the regulations easier to comprehend.

Under the current regulations governing claims, only distilled spirits that were withdrawn from a domestic distilled spirits plant may be returned to a distilled spirits plant and a claim filed. We propose to amend the language of the regulations in proposed Subpart J, Claims, and in Subpart Q, Return of Spirits to Bonded Premises and Voluntary Destruction, to reflect the fact that imported bottled spirits that were taxpaid or tax determined when imported into the United States may be returned to a distilled spirits plant and a claim filed. This change reflects an amendment to the law at 26 U.S.C. 5008(c), which became effective on April 1, 1998.

Subpart K—Gauging

We propose to establish a new subpart K that will amend and consolidate gauging instructions that are currently located in several different subparts within part 19 at §§ 19.84, 19.91, 19.92, 19.93, 19.319, and 19.503.

We believe that placing gauging issues within a single subpart will assist the reader in locating gauging information that was formerly located within administrative and miscellaneous subparts. We have also restructured several of the sections relating to gauging to make them easier to understand. We also propose to amend several of the regulations relating to gauging.

Meters. Under the current regulations at § 19.277(c), TTB may authorize proprietors to use a meter for measuring quantities of spirits for purposes other than tax determination. In order to receive authorization to use a meter for this purpose, § 19.277 requires that the proprietor make an application to the appropriate TTB officer that includes technical data about the meter such as make, model, and the accuracy tolerance. TTB must then evaluate the data to determine whether the meter is suitable for the intended use before approving its use. The current regulations do not provide for the use of meters for bulk tax determination gauges.

Under the proposed regulations at § 19.284, TTB would allow for the use of mass flow meters for both bulk tax determination gauges and all other bulk gauges that must be performed at a distilled spirits plant. Further, the proprietor's use of mass flow meters would not be subject to prior approval by TTB. Instead, the proposed regulations establish standards of accuracy that a mass flow meter must meet for use in bulk tax determination gauges and a separate standard of accuracy for all other bulk gauges. As proposed, a mass flow meter used for tax determination gauges must be certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.1\%$. A mass flow meter used for all other required gauges must be certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.5\%$.

In its comments on part 19, DISCUS recommends amending the current regulation at § 19.319(a) by deleting the requirement to use an “approved meter” for volume determinations in the production gauge. We propose to change this requirement by substituting the term “accurate mass flow meter” for the term “approved meter.” Thus, the

volume determination on the production gauge can be made using an “accurate mass flow meter.” This change appears in the proposed regulations at § 19.289.

For several years, TTB has seen an increased interest in the use of meters by proprietors of distilled spirits plants. Further, manufacturers of meters have improved the accuracy of their mass flow meters. The proposed regulations will give proprietors the opportunity to take advantage of the improved performance of mass flow meters and modernize operations at their plants without the need to seek prior approval from TTB.

Spirits in receiving tanks. DISCUS recommends the deletion of a sentence from the current regulation at § 19.319(a) that states, “Spirits in each receiving tank shall be gauged before reduction in proof and both before and after each removal of spirits therefrom.” We did not adopt this recommendation because we need accurate measurements of spirits removed from production, including a measurement of the spirits before and after removal from the receiving tank. This provision is found in the proposed regulations at § 19.289(a).

Gauge record for packages filled. DISCUS also recommends the deletion of the requirement for a gauge record for each lot of packages filled, found in the current regulation at § 19.319(d). We did not adopt this recommendation. We continue to need this type of information and we will continue to require a gauge record for each lot of packages filled. This provision is now found in the proposed regulations at § 19.289(d).

Other industry proposals. DISCUS also recommends that gauges no longer be required when spirits are filled into packages from storage tanks and when spirits are transferred between operational accounts. We did not adopt these changes in the proposed regulations. We believe that these gauges are still an important means of accounting for spirits within the plant.

The current regulation at § 19.91(b) covers the gauging of alcoholic flavoring materials when dumped. The regulation states that when proof of the flavoring materials is determined from a label or the manufacturer's statement, the proprietor must periodically test a sufficient number of samples and record the results in the gauge record. DISCUS recommends the elimination of the requirement to record those results in a gauge record. TTB has adopted this recommendation in the proposed regulations at § 19.287. This is a relatively minor gauging requirement,

and we see no reason to require a record for such gauges.

In its comment on Notice No. 870, Equistar Chemicals asks that the requirement in the current regulations at § 19.503 and § 30.43 be clarified. The company states that the existing regulations appear to require the establishment of a separate tare for each package individually gauged. The term "tare" refers to the weight of an empty package. They propose that TTB allow for an average tare in order to facilitate packaging by reducing the time involved in recording a gauge and tare for each package. We did not adopt this recommendation. TTB requires an accurate gauge of spirits that are withdrawn from bonded premises. A package (drum, barrel, or similar container; see § 19.1 definition) is so large that the variance in tare can be significant. This means that the proprietor must establish the actual tare of each package to be withdrawn from bond. This requirement appears in the proposed regulations at § 19.288.

Subpart L—Production of Distilled Spirits

Under the current regulations in part 19, production of distilled spirits is covered at subpart J. In the regulations proposed by this notice, production issues will be covered in proposed subpart L. In its comments on part 19, DISCUS recommends several changes affecting the regulations that govern production of distilled spirits. Below is a summary of the recommended changes and TTB's evaluation of those recommendations. Also discussed is a proposed change to a regulation based on an amendment to the IRC at section 5222(b)(2).

Notices. The current regulation at § 19.311 requires a proprietor to file a notice on Form 5110.34 with the appropriate TTB officer prior to commencing, resuming, or suspending production operations. DISCUS recommends that the proprietor simply file a letterhead notice for such actions. This recommendation is reasonable because the filing of a letterhead notice accomplishes the same objective as the filing of a form. We adopted this recommendation in the proposed regulations at § 19.292.

Suspension of reports. DISCUS recommends that during periods when production operations are suspended, the regulations should not require proprietors to file reports of production under current subpart W. This recommendation is reasonable because TTB does not need to receive reports of no activity, and we adopted this

recommendation in the proposed regulations at §§ 19.292(c) and 19.632.

Record of fermenting material. DISCUS recommends amendment of the current regulation at § 19.314 by the deletion of the requirement to maintain a record of fermenting material removed from or used on bonded premises for other purposes. We did not adopt this recommendation. The IRC at 26 U.S.C. 5207(a)(1)(A) specifically requires that the proprietor maintain records of the receipt of materials intended for use in the production of distilled spirits, and the use thereof.

Unfinished spirits. The current regulation at § 19.316 discusses the requirements for a continuous distillation system and redistillation of unfinished spirits. DISCUS recommends amendment of this section of regulation by the deletion of the requirement to determine the quantity and proof of unfinished spirits produced from distilling materials. We did not adopt this recommendation because this type of record is required by the IRC at 26 U.S.C. 5207(a)(1)(C).

Entry gauge. DISCUS recommends amendment of the current regulation at § 19.321 by the insertion of language that would allow the production gauge to be used as the entry gauge when spirits are deposited for storage or processing at the same plant and entered for redistillation at the same plant. This is a reasonable recommendation because a single gauge will be sufficient as the production gauge and the entry gauge and we adopted this recommendation in the proposed regulation at § 19.306.

Record of tests. DISCUS also recommends that the current regulation at § 19.326 be amended by deleting a requirement to maintain a record of tests for the spirits content of chemicals produced by the production process. We did not adopt this recommendation. The proprietor is required by this section of regulations to test chemicals for spirits content. We believe that it is reasonable that the proprietor keep a record of such tests in order to document that the spirits content of chemicals removed from the premises does not exceed the 10 percent by volume limit imposed by the proposed regulation at § 19.308.

Production inventories. DISCUS recommends amendment of the current regulation at § 19.329 by changing the requirement to conduct an inventory from a quarterly to an annual basis. We did not adopt this recommendation. For inventories that involve bulk liquids in tanks, one inventory per year is not adequate to accurately keep track of quantities on hand and detect losses in a timely manner. The shorter time

period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue. This requirement has been retained in the proposed regulations at § 19.312.

Receipts of beer. The current regulation at § 19.312 provides that fermented material to be used in the production of spirits may include beer if it is produced at a brewery contiguous to the distilled spirits plant. Thus, under current regulations beer may only be received at a distilled spirits plant from a brewery that is contiguous to the plant. However, in 1997, Public Law 105–34 amended the IRC at 26 U.S.C. 5222(b)(2) by removing the requirement that beer may only be received from contiguous brewery premises. Instead, 26 U.S.C. 5222(b)(2) now provides that fermented material to be used in the production of distilled spirits may include beer conveyed without payment of tax from brewery premises and beer which has been lawfully removed from brewery premises upon determination of tax. This provision has been incorporated into the proposed regulations at § 19.296.

Subpart M—Storage of Distilled Spirits

Under the current regulations in part 19, the storage of distilled spirits is covered at subpart L. In these proposed regulations, issues related to the storage of distilled spirits will be covered under subpart M.

In its comments on part 19, DISCUS recommends several changes to the regulations that govern the storage of distilled spirits. Below is a summary of the recommended changes and TTB's evaluation of those recommendations.

Tanks. The current regulation at § 19.342(b) states that if "spirits or wines are being deposited in a partially filled tank in storage on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits or wines into and out of the tank is being measured by meters or other devices approved by the appropriate TTB officer which permit a determination of the quantity being deposited and the quantity being removed." DISCUS recommends that this subparagraph be deleted. We agree, and we have deleted this subparagraph from the proposed regulations because we consider this to be a common-sense issue rather than an issue that needs to be spelled out in the regulations. In addition, we believe that the requirement to conduct proper gauging is sufficiently covered in the proposed Subpart K, Gauging.

Filling packages from tanks. The current regulation at § 19.344 states that

spirits or wines in a tank must be gauged before and after filling packages from the tank on bonded premises. DISCUS recommends that this section of regulations be deleted. We disagree with this recommendation. This type of gauge is needed in order to properly account for spirits in the storage account and thereby protect the revenue.

Packages dumped for mingling. The current regulation at § 19.347 states that when packages are dumped for mingling, the proprietor must record such mingling on a tank record or tank summary record. DISCUS recommends that this section be eliminated. We disagree because the mingling of spirits needs to be documented on a record in order to properly account for spirits in the storage account and thereby protect the revenue.

Mingling spirits or wines held in tanks. The current regulation at § 19.349 states that when spirits of less than 190° of proof or wines are mingled in a tank, the proprietor must perform a gauge and record the gauge on the tank record. DISCUS recommends that this section be deleted. We disagree because the result of such mingling needs to be gauged and documented on a record in order to account for spirits in the storage account.

Storage inventories. The current regulation at § 19.353 requires each warehouseman to take a physical inventory of all spirits and wines in tanks at the close of each calendar quarter. DISCUS recommends that this requirement be changed to an annual inventory. We did not adopt this recommendation. One inventory per year is not adequate to accurately keep track of the quantity of spirits and wines on hand and detect losses in a timely manner. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue.

Subpart N—Processing of Distilled Spirits

Under the current regulations, processing operations other than denaturation and manufacture of articles is covered at subpart M. In these proposed regulations, the processing of distilled spirits will be covered under proposed subpart N. Denaturation of spirits and manufacture of articles will be covered under proposed subpart O.

In its comments on part 19, DISCUS recommends several changes to the regulations that govern the processing of distilled spirits. Below is a summary of its recommended changes and TTB's evaluation of those recommendations.

Receipt of spirits. DISCUS recommends amendment of the current regulation at § 19.372(b) by adding a sentence allowing the shipper's gauge for bulk spirits to be used as the receiving gauge. We did not adopt this proposal. This suggested change would eliminate the receiving gauge for transfers in bond of bulk spirits and there would be no basis for determining whether a loss of spirits occurred during the shipment, thereby posing a jeopardy to the revenue.

Bottling tanks. The current regulation at § 19.382 requires that spirits be bottled from bottling tanks. However, TTB can authorize bottling from original packages or special containers if the proprietor files a notice with TTB explaining such need. DISCUS recommends that language be inserted into this section that would allow liqueurs to be bottled from a tank truck or tote without our prior approval. TTB has previously approved several requests for the bottling of liqueurs directly from tank trucks or totes because this is a reasonable method for handling products such as liqueurs and we adopted this recommendation in the proposed regulation at § 19.352.

Alcohol content and fill. The current regulation at § 19.386 requires that proprietors conduct proof and fill checks of bottled spirits at regular intervals and record the results of those tests. These tests are conducted to ensure that the actual proof and fill of bottled spirits agree with the alcohol content and quantity stated on the label. DISCUS recommends that proprietors no longer be required to record the results of those tests as required by § 19.386(c). We did not adopt this recommendation in the proposed regulations. We believe that the recording of the proof and fill checks is important because it documents whether the proprietor is properly conducting the tests as required by the regulation.

Completion of bottling. The current regulation at § 19.387 requires that when the contents of a bottling tank are not completely bottled at the end of the day, the proprietor must make entries on the bottling and packaging record covering the total quantity bottled that day. DISCUS recommends that this requirement be deleted from the regulations. We did not adopt this recommendation. The bottling and packaging record represents a record of bottling and packaging activity at the plant and the record should reflect the bottling and packaging activity that takes place on a daily basis.

Bottles on the bottling line at the end of the work day. In its comments on part

19, DISCUS states that when the bottling of a particular product run is not completed by the end of the day and is to be resumed on the following work day, § 19.388(a)(1) requires removal of all bottles on the line and packing them in cases that must be sealed. DISCUS recommends that TTB allow proprietors to keep filled bottles on the line at the end of the work day, if the same sized product will be produced on the next bottling shift. DISCUS states that proprietors can save substantial amounts of money if this proposal is adopted in the regulations. After careful consideration, we believe that this proposal is reasonable because it will save both time and expense for proprietors without jeopardizing the revenue. Therefore, we are proposing this change in the proposed regulation at § 19.358(b).

Remnants. The current regulation at § 19.389 covers remnant bottles that remain after the completion of bottling. Remnants are the few bottles that may remain after completion of bottling. This regulation requires that notations be made on the bottling record regarding remnant bottles. In their proposal, DISCUS recommends that we delete some of the recordkeeping provisions that relate to remnant bottles. Their suggestion is reasonable because it will eliminate paperwork for the proprietor without jeopardizing the revenue. We are proposing this change in the proposed regulation at § 19.359.

Filling packages. The current regulation at § 19.390 requires that spirits filled into packages on processing premises be gauged and the results recorded on a package gauge record. DISCUS recommends that this requirement be eliminated. We did not adopt this recommendation because without such a gauge, there would be no record of the amount of spirits filled into packages.

Daily summary record. The current regulation at § 19.400 requires that a daily summary record of bottling and packaging be prepared as required by § 19.751. DISCUS recommends that this section be deleted. While no specific reason was given, this recommendation to delete § 19.400 appears to be part of the general proposal by DISCUS to eliminate all daily records. We did not adopt this recommendation. Our reasons for maintaining daily records are explained in our discussion of Subpart V, Records and Reports.

While we did not retain § 19.400 as a separate section in the proposed regulations, it has been combined with the current regulation at § 19.384, Preparation of bottling or packaging

record. The new combined section will now appear at § 19.354.

Bulk inventories. The current regulation at § 19.401 requires that the proprietor conduct a physical inventory of bulk wine and spirits in the processing account at the close of each calendar quarter. DISCUS recommends that this requirement be changed to an annual inventory. We did not adopt this recommendation. One inventory per year is not adequate to accurately keep track of the quantity of spirits and wines on hand and detect losses in a timely manner. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue.

Inventory of bottled and packaged spirits. The current regulation at § 19.402 requires that the proprietor conduct a physical inventory of bottled and packaged spirits twice each year. DISCUS recommends that this requirement be changed to once a year. We did not adopt this recommendation. There is already an allowance in the current regulation at § 19.402 whereby the proprietor may request permission to conduct a single inventory each year. TTB believes that a single inventory may be adequate for some plants, but it is not adequate for others. Approval to take a single inventory may be obtained provided the proprietor maintains accurate records and an annual inventory will not make protecting the revenue more difficult. To require only one inventory per year in all cases in the regulations would weaken TTB's control and protection of the revenue in those plants where more than one inventory per year is desirable.

Variations in fill. The current regulation at § 19.386 provides criteria for slight variations in the alcohol content and the fill of bottled distilled spirits that may occur during bottling operations. Acceptable variations in alcohol content (proof) are well defined and very specific in the regulation at § 19.386(b). However, this is not the case for variations in fill. As stated in § 19.386(b), the proprietor must rebottle, recondition, or relabel spirits if the bottle contents do not agree with the label, "except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled." We believe that this criteria could be improved and we propose to establish a standard whereby there must be approximately the same number of overfills and underfills for each lot bottled and in no case may the quantity in a bottle vary by more than plus or

minus two percent from the quantity stated on the label. This new clarification appears in the proposed regulation at § 19.356(b).

Subpart O—Denaturing Operations and Manufacture of Articles

Under the current regulations in part 19, denaturing operations are covered under subpart N. In these proposed regulations, denaturing operations will be covered under proposed subpart O. In their individual responses to Notice No. 870, DISCUS and Equistar Chemicals proposed changes to the regulations governing denaturation. Below is a discussion of the recommended changes and TTB's evaluation of those recommendations.

Gauge for denaturation. The current regulation at § 19.454 states that the measurement of spirits and denaturants shall be made by volume, weight, approved meter, or, when approved by the Director, by other devices or methods. In its markup of part 19, submitted in response to Notice No. 870, DISCUS recommends that the term "approved" meter be deleted. We believe it is important to still require that distilled spirits plants use measurement devices that are accurate, and although we propose deleting the word "approved" as recommended by DISCUS, we are proposing to change the regulation to allow for the use of an "accurate mass flow meter" in the proposed regulation at § 19.383. As discussed earlier in this notice, TTB proposes to allow for the use of "accurate mass flow meters," without prior approval by TTB, if they meet certain criteria for accuracy.

Denatured spirits inventory. DISCUS recommends the amendment of the regulation at § 19.464 by changing the requirement to conduct an inventory from quarterly to annually. We did not adopt this recommendation in the proposed rule. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile discrepancies and thereby protect the revenue.

Denaturation and article manufacture. In Notice No. 870, ATF advised that under § 19.454 gauging is required before and after denaturation. This prevents a distilled spirits plant from conducting denaturation and article manufacture in a single, unified process because the proprietor must gauge the spirits after denaturation and before making an article. In Notice No. 870, ATF proposed to amend the current regulation at § 19.454 to provide proprietors with greater flexibility to conduct denaturation and article manufacture in a single, unified process.

ATF also proposed to provide a prescribed method of computation to accurately determine the quantity of denatured spirits used and produced.

Equistar Chemicals wrote in support of the proposal to allow for a unified process for denaturation and article manufacture. However, the company suggested that the regulations continue to allow for measurements by volume, meter, or other approved methods, and it suggested alternative language for § 19.454. Equistar's suggestion is included in these proposed regulations with some modification; i.e., we will not prescribe a weight calculation as the sole means for determining the quantity of specially denatured alcohol produced when denaturation and article manufacture occur in a single process. These changes appear in the proposed regulations at § 19.383.

Filling containers from tanks. In its comments on Notice No. 870, Equistar recommends amendment of the current regulation at § 19.462, Filling of containers from tanks. This regulation requires companies to record a gauge measurement both before and after withdrawing spirits from a tank. Equistar suggests that the regulations eliminate the requirement for the first gauge measurement and simply allow the second, after-withdrawal gauge measurement to serve as the starting measurement for the second withdrawal. This proposal is reasonable because a single gauge may serve both purposes, and we are proposing to amend the regulations at § 19.389 to reflect that change.

Subpart P—Transfers, Receipts, and Withdrawals

Proposed subpart P will cover several issues, including transfers in bond, receipts from customs custody, withdrawals without payment of tax, withdrawal free of tax, samples of spirits, and securing of conveyances. Sections of the current regulations related to withdrawal on determination and payment of tax have been moved to proposed Subpart I, Distilled Spirits Taxes. Below is a discussion of several changes to the regulations that we are proposing in the new subpart P.

General. We propose to add a new "General" section to the regulations that will identify the subject matter covered in the new subpart P. This new section appears in the proposed regulations at § 19.401.

Consignee premises. The current regulation at § 19.510, Consignee premises, contains several references to Form 703. The Form 703 was formerly used for the transfer in bond of wine, but it is now obsolete. References to the

Form 703 have been removed from the proposed regulations at § 19.407, Consignee premises.

Receipt of Transfers in Bond by Consignees. The current regulation at § 19.510 requires that when spirits, denatured spirits, or wines are received by transfer in bond, the consignee is required, among other things, to examine the conveyance, check the seals for tampering, gauge, and record the receipt of the shipment. TTB has always interpreted this section to mean that when the shipment arrives at the consignee premises or the carrier has completed its transportation of the shipment, such as when a rail carrier delivers a tank car to a rail siding on or adjacent to the plant premises, the transfer in bond is complete and the consignee must gauge and record the shipment as received.

However, during the course of some recent on-site field audits, TTB has discovered a number of instances in which distilled spirits plant proprietors failed to timely gauge and record the receipt of bulk distilled spirits transferred in bond. Some proprietors have chosen to apply an alternate interpretation to the term, “received,” as used in the regulation, and they believe that they can delay required gauges and recordkeeping until after testing and formally accepting title to the spirits, which may take several weeks or longer after the date of actual delivery. In other words, some industry members have decided that the physical arrival of a shipment does not constitute receipt of the shipment, and they believe that they may decide when the shipment is “received.”

TTB believes that the meaning of the current regulation is clear and that the term “received” means that the shipment has physically arrived at its destination. In fact, the language of the current regulation also uses the phrase “upon arrival at his premises”.

However, in order to further clarify the meaning of the regulation, the proposed regulation at § 19.407, which governs actions to be taken by a consignee upon receipt of a shipment, has been amended to emphasize the “arrival” of a shipment at the consignee’s plant or at a location which represents the final destination for the carrier. Thus, it should be clear that shipments that physically arrive at the consignee’s plant or rail sidings at or near the consignee’s plant have been received and must be recorded as such. As proposed, the amended regulation at § 19.407 will use the following phrase to describe the time when the shipment is received, “[U]pon arrival of an in bond shipment at the consignee’s premises or

at the destination point specified in the carrier’s transportation documents, the consignee must * * *.” TTB believes that this amended language will clarify the current meaning of the regulation.

Determination of tare. The current regulation at § 19.503 discusses determination of tare when packages are to be individually gauged for withdrawal from bonded premises. In the proposed regulations, this section has been moved to Subpart K, Gauging, and now appears at § 19.288.

Disposition of excess spirits. In the current regulation at § 19.539, there are instructions for Government agencies regarding the disposition of excess spirits that were withdrawn from a distilled spirits plant free of tax. This section has been deleted from the proposed regulations because these instructions are properly covered in 27 CFR 20.246 and 22.176.

Securing of Conveyances. The current regulation at § 19.96 requires that securing devices used on conveyances in which spirits are transferred in bond, or withdrawn free of tax or withdrawn without payment of tax, require approval by the appropriate TTB officer before use. However, securing devices that meet the criteria described in § 19.96 do not require prior approval by TTB. Currently, the securing devices that do not require prior approval by TTB include cap seals and ball-strap-type (railroad) seals. The proposed regulation at § 19.441 has been amended to also allow for the use of locking security cables without prior approval by TTB.

Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction

Under the current regulations in part 19, issues relating to the return of spirits to bonded premises and voluntary destruction are covered under subpart U. In these proposed regulations, these subjects will be covered in a new subpart Q. Below is a discussion of several changes to the regulations that we are proposing in the new subpart Q.

Imported spirits. The Taxpayer Relief Act of 1997 amended the IRC at 26 U.S.C. 5008(c)(1) by allowing a credit or refund of tax to be granted for imported bottled spirits that are returned to a distilled spirits plant. The proposed regulation at § 19.452 provides that a proprietor may return tax paid or tax determined spirits to bonded premises that were tax paid upon importation through U.S. Customs and Border Protection. As discussed earlier in this notice, conforming changes were also made in Subpart J, Claims.

Returns to bond. The new subpart Q has been substantially revised to make

clearer the types of spirits, denatured spirits, and articles that may be returned to bonded premises. In addition, we propose to replace several sections of regulations with a chart for easier reference and use. We have incorporated §§ 19.683 through 19.686 of the current regulations into the proposed chart at § 19.454.

Voluntary destructions. In its suggested changes to part 19, DISCUS recommends that the section of regulations dealing with voluntary destructions at § 19.691 include a subparagraph that references the filing of claims. We did not include this recommendation in the proposed regulations because the filing of claims is already covered in the new subpart J of the proposed regulations.

Subpart R—Losses and Shortages

Under the current regulations in part 19, losses and shortages are covered in subpart Q. In the proposed regulations, these subjects will be covered in a new subpart R. In its comments on part 19, DISCUS recommends several changes affecting the regulations governing losses and shortages. Below is a summary of the suggested DISCUS changes and TTB’s evaluation of those recommendations.

Losses in general. DISCUS recommends the elimination § 19.561 of the current regulations because it is redundant with the statute. TTB agrees that this section of the regulations repeats provisions covered in the IRC. However, the regulations in part 19 are intended to provide users with a comprehensive and complete guide to the requirements for operating a distilled spirits plant. TTB does not consider it appropriate to require readers of these regulations to reference both the IRC and the regulations when seeking guidance on an issue. Therefore, the information provided in the current regulations at § 19.561 will appear in the proposed regulations at § 19.461.

Determination of losses in bond, loss of spirits from packages. DISCUS recommends that the current regulations at §§ 19.562 and 19.563 be moved to the claims subpart within part 19. We disagree with this suggestion. These sections deal with the determination of losses in bond and are appropriately located in the subpart for losses and shortages.

Loss of spirits from packages. DISCUS recommends amendment of the current regulation at § 19.563 by replacing a reference to the regulation at § 19.561(b) with a reference to the IRC at 26 U.S.C. 5008(a)(1)(A). Apparently, they recommended this change because they had earlier proposed to eliminate

§ 19.561 from the regulations altogether. Since we did not eliminate § 19.561, (now proposed § 19.461), there is no need to replace the reference to it with a reference to the statute.

Losses after tax determination. DISCUS recommends elimination of § 19.564, Losses after tax determination, because it is redundant with the statute and other rules, and it recommends the transfer of part of the text to § 19.43, Claims relating to spirits lost after tax determination. In the proposed regulations, we have retained this section at § 19.464; however, we have substantially shortened it, and it now refers to subpart J where claims for losses after tax determination are covered. TTB proposes to continue this provision because it is inappropriate to require readers of these regulations to reference both the IRC and the regulations when seeking guidance on an issue.

Subpart S—Containers and Marks

Proposed subpart S covers requirements for containers and marks that are covered in the current regulations at subpart R. In the new subpart S, much of the information regarding containers and marks has been rearranged and put into a more logical order. In addition, we propose several amendments to the regulations governing containers and marks.

Industrial versus nonindustrial. The current regulations in subpart R list requirements that apply to spirits for “industrial” use and separate requirements that apply to spirits for “nonindustrial” use. However, the terms “industrial” use and “nonindustrial” use are not explained within subpart R. The proposed regulations in subpart S define those terms in a new section which appears at § 19.472.

Tanks, pipelines. In its comments on part 19, DISCUS proposes that the current regulations at § 19.586, Tanks, and § 19.587, Pipelines, be deleted because they are redundant with other sections of the regulations. We agree that they are redundant, and propose such deletion in the proposed regulations.

Filling containers. In the current regulation at § 19.582, there is a limitation on filling containers during processing operations. This regulation limits filling to containers of not more than 10 gallons. We deleted this limitation in the proposed regulation at § 19.474 because we foresee instances where a processor may have a need to fill containers in excess of 10 gallons. In addition, the current regulation at § 19.583, imposes a 10-gallon limitation

for the filling of containers with Specially Denatured Alcohol (SDA). We are not aware of any reason for this limitation, and in the proposed regulation at § 19.475 we propose deleting the size reference because SDA may be filled into containers with a larger capacity.

Marks on packages of tax-paid industrial spirits. In Notice No. 870, ATF proposed to amend the regulation in § 19.605 by requiring that proof, tare, and proof gallons be marked on packages of spirits withdrawn on determination of tax. In its response to Notice No. 870, DISCUS opposes this proposal because it would be burdensome on proprietors that ship to manufacturers of nonbeverage products. DISCUS also states that the information required in ATF’s proposed § 19.605 is already required under § 19.749, Bottling and packaging record, and § 19.769, Package gauge record. After consideration of the DISCUS comments, we did not include this proposal from Notice No. 870 in this new proposed rule.

Subpart T—Liquor Bottle, Label, and Closure Requirements

Under the current regulations in part 19, issues relating to liquor bottles and label requirements are found in subpart S and issues relating to closure requirements are found in subpart T. In the proposed regulations, these subjects will be covered in the new subpart T. Below is a summary of the changes that we propose to make in the new regulations.

Scope. The current regulation at § 19.631, Scope, states that the regulations in §§ 19.632 through 19.639 only apply to bottles with a capacity of 200 ml or more unless it is specifically stated that the section applies to bottles of less than 200 ml. In our revision of the subpart, we deleted several sections of regulations, and the only sections that remain apply to all bottle sizes. Therefore, the “scope” section of the proposed regulations at § 19.631 is no longer needed and has been deleted.

Bottles authorized. The current regulation at § 19.632 states that liquor bottles, including bottles of less than 200 ml, must conform to the standards of fill in 27 CFR part 5. This section was rewritten and deletes the reference to 200 ml because there are no special rules that apply to bottles of less than 200 ml. As proposed, the new regulation at § 19.511 simply states that all liquor bottles for domestic purposes must conform to the standards of fill at 27 CFR part 5.

Distinctive liquor bottles. We have rewritten the current regulation at

§ 19.633 to remove the reference to bottle sizes less than 200 ml. The requirements of this section apply to all bottle sizes and now appears in the proposed regulations at § 19.513.

Receipt and storage of liquor bottles. The current regulation at § 19.634 provides rules for the receipt and storage of liquor bottles. We could find no consumer or revenue protection reason to retain this section, and we deleted it from the proposed regulations.

Bottles to be used for display purposes. The current regulation at § 19.635 provides recordkeeping rules for those instances in which liquor bottles are provided for display purposes. We could find no reason to treat these bottles differently than others so we are proposing to delete this provision from the proposed subpart. Records of receipt and use of all liquor bottles are covered in the proposed regulation at § 19.603.

Bottles for testing purposes. We propose to delete the current regulation at § 19.636. As stated above, we could find no reason to retain this as a separate section of regulations. Records of receipt and use of liquor bottles are covered in the proposed regulation at § 19.603.

Bottles not constituting approved containers. We rewrote the current regulation at § 19.637 to remove the reference to bottle sizes less than 200 ml because there are no special rules that apply to bottles of less than 200 ml. This section applies to all bottle sizes and now appears at proposed § 19.512.

Disposition of stocks of liquor bottles. We deleted the current regulation at § 19.638 in the proposed regulations. We could find no consumer or revenue protection reason to retain this as a separate section. Records of receipt, use, and disposition of liquor bottles are covered in the proposed regulation § 19.603.

Use and resale of liquor bottles. We deleted the current regulation at § 19.639 in the proposed regulations. We could find no consumer or revenue protection reason to retain this as a separate section. Records of receipt, use, and disposition of liquor bottles are covered in the proposed regulation § 19.603.

Statements required on labels under an exemption from label approval. The current regulation at § 19.642 contains a general requirement whereby labels that are exempt from label approval must contain certain items of information. The regulations at §§ 19.643 through 19.650 discuss those specific items of information. Further, most of the text in

§§ 19.643 through 19.650 mirrors text found in 27 CFR part 5.

In our proposed regulation at § 19.517, we have merged most of the information in the current regulations at §§ 19.642 through 19.650 and created a section which lists the specific information that must appear on a label exempt from label approval. Further, we propose to no longer publish in one part of the regulations identical provisions from other parts of the regulations. Thus, we propose stating that the mandatory information under § 19.517 must conform to specific, cited sections of 27 CFR part 5 and § 19.518 of part 19 without duplicating the actual text of those regulations in § 19.517.

Closures. The current regulations at §§ 19.661 and 19.662 contain the closure requirements that apply to each bottle or container of spirits having a capacity of one gallon or less. Under the current regulations, distilled spirits containers must have a closure that leaves a portion of the closure on the container when opened. In addition, the closure must be constructed in such a manner that it must be broken to gain access to the contents. These regulations implement the IRC at 26 U.S.C. 5301(d). DISCUS proposes that the closure requirement at § 19.662 be amended to allow for closures that are removed completely if the closure shows when it has been subject to tampering.

In our proposed regulation at § 19.523, we require that the container have a closure that must be broken to gain access to the contents. However, we have deleted the requirement that a portion of the closure remain on the container when opened. This particular feature of the current regulation is not a requirement of the IRC at 26 U.S.C. 5301(d). Further, we have received several requests for an alternate method or procedure from this particular requirement, and we see no continued need for this feature on the closure.

Labels for export and Puerto Rico. In the current regulations at §§ 19.395 and 19.396, we discuss the label requirements that apply to spirits for export and spirits for shipment to Puerto Rico. These requirements have been incorporated into our proposed regulations at §§ 19.519 and 19.520.

Subpart U—Reserved

We propose to reserve subpart U for possible future use.

Subpart V—Records and Reports

The current regulations in part 19 require that the proprietor of a distilled spirits plant maintain a comprehensive system of records relating to operations at the plant. The primary aim of this

records system is to account for all taxable spirits and products that are produced, received, stored, processed, and removed from the plant. Further, the regulations require that the proprietor account for taxable products by maintaining a system of records arranged into separate accounts within each plant. Depending on the scope of operations conducted at the plant, this records system may include a production account, a storage account, a processing account, and a denaturation account. In addition, there are a number of daily records and summary records prescribed for activities occurring within each account. These recordkeeping requirements are based on the IRC at 26 U.S.C. 5146, 5201, 5207, 5211, 5291, 5555, 5603, 6001, 6011, and 6061.

Under the current regulations, recordkeeping and report requirements are covered in subpart W. In the proposed regulations, these subjects will be covered in a new subpart V.

We are proposing several amendments to the regulations covering recordkeeping and reporting requirements for distilled spirits plants. Some of the proposed amendments are based on recommendations made by DISCUS. Other proposed amendments are the result of TTB's internal review of the current recordkeeping and report requirements for distilled spirits plants.

DISCUS Recommendations. The following is a summary of the recordkeeping changes proposed in the petition submitted by DISCUS.

- **Commercial records.** DISCUS recommends an increased reliance on the commercial records that are maintained by distilled spirits plants as opposed to the detailed government records that are currently required in subpart W. In its petition for the revision of part 19, DISCUS asserts:

The Bureau's responsibility to protect the revenue can be fulfilled by reliance on commercial records maintained by DSPs in the ordinary course of business or summaries of such records, typically computerized, which show "what goes in" and "what goes out" of the plant.

Further, in its markup of part 19, DISCUS proposes the deletion of a substantial number of the records currently required by subpart W.

- **Elimination of separate accounts.** Closely related to its proposal to increase the use of commercial records, DISCUS also proposes the elimination of the three separate accounts currently required in subpart W. DISCUS asserts:

Records of activities not impacting upon "what goes in" and "what goes out" are unnecessary and thus would not be required.

These include, *inter alia*, records of gauges, measurements of product, and movements at each interim step of the plant's operations.

In support of this proposal, DISCUS submitted numerous proposed amendments to the recordkeeping requirements in subpart W involving the elimination of many of the current recordkeeping requirements and replacing those requirements with a recordkeeping system based on a single DSP account for all spirits.

- **Daily versus monthly records.** Under the current recordkeeping regulations, a distilled spirits plant proprietor is required to record each activity or transaction as it occurs, summarize those activities on a daily basis, and then report those activities in a monthly summary report. DISCUS proposes that DSPs no longer be required to record information on a daily basis. Instead, they propose that information be recorded on a monthly basis. In its petition, DISCUS states:

Other unnecessary and burdensome recordkeeping regulations also would be modified. For example, ordinary business records and summaries used for Part 19 compliance would not be required to show information on a daily basis, but instead generally on a monthly basis.

DISCUS asserts that these changes would not have an adverse effect on TTB's ability to audit operations at DSPs.

- **Format, storage, and reproduction.** In regard to the format, storage, and reproduction of records, DISCUS states:

Under this modernized regulatory scheme, proprietors no longer would be required to maintain information in any prescribed format, would be able to store records at any of the proprietor's facilities, and would not need prior approval from the Bureau to reproduce records.

DISCUS recommends that the regulations governing format, storage, and reproduction of records at 27 CFR 19.721 and 19.723 be amended.

TTB's Proposed Changes to the Regulations. In response to the recommendations made by DISCUS and based on TTB's analysis of the current recordkeeping requirements, we propose several amendments to the regulations in the new proposed subpart V.

- **Restructuring and plain language changes.** One of the first changes that we propose is to restructure and reorder much of the information in subpart V. For example, recordkeeping information that was contained within some of the longer sections within the subpart has been divided-up into shorter, individual sections within the subpart. We believe this change will make for easier reader

access. We have also incorporated plain language principles into our rewriting of the subpart to make the revised regulations easier to read and understand.

- *Commercial records.* As a general principle, TTB agrees with increased reliance on the commercial records maintained by a DSP, as opposed to records that are specifically created to satisfy government recordkeeping requirements. We also agree that the proprietor's commercial records should contain most of the information necessary to track the receipt and disposition of spirits as well as certain key transactions within the plant. With this principle in mind, we state in the proposed regulation at § 19.572 that required records may consist of documents created in the ordinary course of business rather than records created to expressly to meet the requirements of this part, if those documents:

(1) Contain all of the details that this part requires;

(2) Are consistent with the general standards of clarity and accuracy; and

(3) Can be readily understood by TTB personnel.

- *Separate accounts.* The current regulations require that a proprietor maintain a system of records arranged into separate accounts. This may include a production account, a storage account, a processing account, and a denaturation account, as applicable. DISCUS recommends that the recordkeeping regulations be substantially abbreviated and provide for a single account at the DSP.

In our review of the IRC requirements regarding the "records" that must be maintained by a DSP under 26 U.S.C. 5207, we find that a DSP must keep records of "production activities," "storage activities," "denaturation activities," and "processing activities." Also, 26 U.S.C. 5207 provides a list of required records that must be maintained for each of these activities. Thus, we modeled the current DSP recordkeeping regulations after 26 U.S.C. 5207, and we propose to continue to require that records be maintained with a separate account for each activity.

Further, the requirement to maintain separate accounts within a DSP is specifically addressed in the legislative history of the Trade Agreements Act of 1979 (Pub. L. 96-39), which implemented the current system for operating distilled spirits plants. The legislative history of the Trade Agreements Act of 1979 states in part:

The new all-in-bond system will substantially simplify the qualification and

use of distilled spirits plant premises, by eliminating the requirement that separate facilities, for the various distilling operations be established and maintained within a plant. Since the tax under the all-in-bond system will be determined at the conclusion of the distilled spirits operations, there is no longer any need for these physical delineation and separation requirements. Under the all-in-bond system, these separate activities will be accounted for only by recordkeeping accounts such as for production, storage, processing and finished goods. Tanks, vats, rooms or buildings may be used for multiple purposes, with the type and identification of the spirits being maintained by the appropriate records.

Thus, the legislative history of the Trade Agreements Act of 1979 clearly shows that while Congress established the all-in-bond system with its efficiencies, Congress intended to maintain a system of separate recordkeeping accounts for the different operations within a distilled spirits plants.

Based on the language of the IRC and the legislative history of the Trade Agreements Act of 1979, we propose to continue the requirement to establish separate accounts within the DSP. However, we also propose to eliminate any current recordkeeping requirements and items of information that are not necessary for the protection of the revenue or that do not aid in the tracking of spirits for consumer protection purposes.

- *Daily versus monthly records.* As discussed earlier, DISCUS recommends that proprietors no longer be required to show information in their records on a daily basis. Instead, DISCUS proposes that information be shown on a monthly basis. After careful consideration, we decided against making this proposal. TTB would be unable to audit activities at a plant if only monthly summaries of activities are available. To continue to audit activities at the plants, TTB needs access to the daily transaction records. Thus, daily records must continue to be maintained.

- *Format, storage, and reproduction.* The proposed regulations do not require that records be maintained in any particular format or media. Required records may be kept on paper, on microfilm or microfiche, or on a computer or other electronic media. The only requirement is that records must be readily retrievable in hard-copy format for review by TTB officers as necessary. Further, we have eliminated the requirement at § 19.725 to obtain TTB approval to reproduce required records.

- *Computer-generated reports and forms.* Over the past several years, TTB has approved several alternate methods or procedures that allow companies to

submit computer-generated paper reports and forms. DISCUS recommends that this option be extended to all DSPs. TTB has no objection to receiving computer-generated reports and transaction forms. Accordingly, the proposed regulation at § 19.634 states that TTB will accept both computer-generated reports of operations and transaction forms that are made using a computer printer on plain white paper and that match the TTB report or form. Further, use of these reports and forms will not have to be pre-approved by TTB if they conform to the following standards:

(1) The computer-generated report or form must approximate the physical layout of the corresponding TTB report or form, although the typeface may vary;

(2) The text on the computer-generated report or form and each line entry must exactly match the official TTB report or form; and

(3) Each penalty of perjury statement specified for the TTB report or form must be produced in its entirety.

- *Electronic submission of forms.* Closely related to the subject of computer-generated reports is the matter of electronic submission of forms and electronic signatures. We addressed this issue in a separate rulemaking action. On October 10, 2003, TTB issued Treasury decision T.D. TTB-5 (68 FR 58600, October 10, 2003) in which we allow for the submission of certain forms to TTB electronically through a TTB-approved electronic document receiving system. We believe that by providing this option to submit certain forms electronically, we can substantially reduce the costs associated with submitting and maintaining paper documents.

- *Location of records.* Formerly, the IRC at 26 U.S.C. 5207 required that records be kept on the premises of the distilled spirits plant where the operations covered by the records are conducted. This section of law was amended in 1997 by Public Law 105-34 and IRC section 5207 no longer requires that records be maintained at the plant. Accordingly, the proposed regulation at § 19.573 allows required records to be maintained at either the distilled spirits plant where operations or transactions occur or a central recordkeeping location. However, when records are to be kept at a central recordkeeping location, the proposed regulations at § 19.574 will require that they be made available at the plant premises during inspections and audits.

- *Transfer record for shipments from customs custody.* Notice No. 870 advised that the transfer record for spirits being received from customs

custody is mentioned in § 19.770 in a way that implies that the transfer record would be prepared under § 19.770. However, 27 CFR 27.138 prescribes the information for the transfer record covering such transfers, and that information is different in several ways from the information required for domestic transfers by § 19.770. Notice No. 870 proposed to amend § 19.770 to clarify that the record required for transfer of spirits from customs custody must be prepared in accordance with § 27.138.

DISCUS does not comment on this proposal, and we incorporated this proposed change into the new, proposed regulation at § 19.621(c).

- *Miscellaneous changes.* In its part 19 mark-up, DISCUS proposes the elimination of § 19.775, Record of securing devices, and § 19.776, Record of scale tests. We agree with this recommendation, and these sections have been deleted from the proposed regulations. In addition, we propose to eliminate § 19.726, Authorized abbreviations to identify spirits. We see no need to prescribe the abbreviations used by proprietors on forms or records.

- *Reports.* Currently, distilled spirits plant proprietors submit monthly reports of operations. These reports include: Monthly Report of Production Operations, TTB F 5110.40; Monthly Report of Storage Operations, TTB F 5110.11; Monthly Report of Processing Operation, TTB F 5110.28; and Monthly Report of Processing (Denaturing) Operations, TTB F 5110.43. DISCUS recommends that the monthly reports be changed to quarterly reports and also suggested that three of the reports be merged into a single report.

We disagree with this recommendation. Our Office of Field Operations (FO) relies on monthly submission of detailed information for its pre-audit analysis and monitoring of plant operations. FO finds that having separate reports, rather than a merged report, is in the best interests of protecting the revenue because its staff is better able to assess specific operations within the distilled spirits plant and identify specific operations for particular attention during an audit. In addition, TTB recently simplified the submission of monthly report data with the implementation of TTB Pay.gov, and this simplification should address some of the concerns raised by DISCUS.

Subpart W—Production of Vinegar by the Vaporizing Process

Under the current regulations, production of vinegar by the vaporizing process is covered at subpart X. In these proposed regulations, we cover the

production of vinegar under proposed subpart W. DISCUS does not recommend any changes to the regulations in this subpart, and we did not make any substantive changes to these regulations.

Subpart X—Distilled Spirits for Fuel Use

Under the current regulations, distilled spirits for fuel use is covered in subpart Y. In these proposed regulations, this subject will be covered under a new subpart X. Proposed subpart X will cover the requirements for establishing and operating a distilled spirits plant that will produce, process, store, use, or distribute distilled spirits exclusively for fuel use.

DISCUS does not propose any changes to this subpart. However, TTB proposes to make several changes to the regulations in subpart X. Similar to the changes made in other subparts, we have rearranged the information in subpart X into a more logical order. Also, we combined some sections to provide more clarity, added new sections, and renumbered the regulations within this subpart.

Definitions. We amended the definitions that appear in the current regulations at § 19.911, Meaning of terms, by deleting or replacing terms that no longer apply. We also deleted several terms that are defined in the proposed regulations at § 19.1, Definitions. The definitions for this subpart appear in the proposed regulations at § 19.662.

Letterhead applications. In the proposed regulations, we now include an allowance for letterhead applications and letterhead notices for changes affecting permits.

Bonds. In the proposed regulations at §§ 19.699 and 19.700, we provide information that explains bonds and sureties in more detail. We also provide an improved explanation of how the amount of the bond must be computed.

Bonds for some small plants. The IRC, at 26 U.S.C. 5181(c)(3), provides that no bond is required for an “eligible distilled spirits plant” and that such plants may nonetheless receive shipments of spirits “in bond” under 26 U.S.C. 5212. An “eligible distilled spirits plant” is defined in 26 U.S.C. 5181(c)(4) as “a plant which is used to produce distilled spirits exclusively for fuel use and the production from which does not exceed 10,000 proof gallons per year.” This definition requires a plant to produce distilled spirits in order to be an “eligible distilled spirits plant.”

Although the Bureau formerly interpreted 26 U.S.C. 5181(a)(1) to

require that all alcohol fuel plants must produce distilled spirits, this interpretation has been amended, and the Bureau now holds that a person may establish an alcohol fuel plant solely for the receipt and processing of distilled spirits for fuel use. Nevertheless, such a plant does not meet the definition of “eligible distilled spirits plant” quoted above. Therefore, a plant that would only receive and process distilled spirits and has no production capability must have a bond, regardless of size in order to be eligible to receive spirits “in bond” under 26 U.S.C. 5212. The proposed regulations at §§ 19.673, 19.699, and 19.700 will now provide for the bonding of small alcohol fuel plants that do not produce distilled spirits for fuel use.

Importing spirits. TTB allows persons qualified as an alcohol fuel producer under the 26 U.S.C. 5181 to receive imported alcohol from customs custody. However, such importations are not covered in the current regulations in subpart Y. In the proposed regulations, we added a new section at § 19.742 that covers the transfer of spirits from customs custody to an alcohol fuel plant. This new section incorporates the procedures for importation of spirits that were discussed in Notice No. 870 and Industry Circular 80–6, “Distilled Spirits for Fuel Use”.

Application for transfer of spirits in bond. 26 U.S.C. 5212 provides for the transfer in bond of bulk distilled spirits between bonded premises without payment of tax. In addition, 26 U.S.C. 5005(c)(1) provides that the consignee proprietor of a distilled spirits plant is liable for the tax on all distilled spirits that are in transit to the consignee’s premises from the time of removal from the consignor’s premises pursuant to an application made by the consignee of the shipment.

Based upon the provision within IRC section 5005(c)(1), which assigns liability for the shipment to the consignee based upon an application made by the consignee, distilled spirits plant proprietors qualified under 26 U.S.C. 5171 are required to file an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5110.16 and receive authorization from TTB prior to the transfer of spirits in bond. This requirement appears in the current regulations at § 19.506.

The application by the consignee proprietor on TTB F 5100.16 is filed in triplicate with TTB’s Director, National Revenue Center. If the application is approved, the Director of our National Revenue Center will complete Part II on all copies of the form, retain one copy of the form, and return the remaining

copies to the applicant. The applicant will deliver one of the approved copies to the consignor and retain one copy for his files. The approved application remains in effect until the bond terminates or where there is less than a maximum bond, the approved application will terminate when the penal sum of the bond is changed.

TTB's current regulations governing alcohol fuel plants do not require that the consignee proprietor submit an application to receive spirits in bond on form TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond. This appears to be an oversight in the current regulations and represents a jeopardy to the revenue because the law at 26 U.S.C. 5005(c)(1) assigns tax liability for the shipment to the consignee only when the spirits are shipped "pursuant to an application made by him."

Therefore, we propose to amend the regulations governing transfers in bond involving alcohol fuel plants and require that the proprietor of an alcohol fuel plant who wishes to receive spirits by transfer in bond must file an application with TTB on form TTB F 5100.16 and receive approval from TTB prior to the transfer. This requirement appears in the proposed regulations at §§ 19.403, 19.405, 19.406, 19.733, 19.734, and 19.735.

Authorized materials. The listing of materials authorized for rendering spirits unfit for beverage use is found in the current regulations at § 19.1005. This listing has been updated to include several additional denaturants and is located in the proposed regulations at § 19.746, Authorized materials.

Subpart Y—Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns control numbers to our information collection requirements. Subpart Y is a listing of those sections of the proposed 27 CFR part 19 regulations that impose an information collection requirement along with the assigned OMB control number.

II. Derivation Table for Proposed Part 19

The following table shows the derivation of the new sections of regulations. It is cross-referenced between the new section numbers in the proposed 27 CFR part 19 regulations contained in this notice and the old section numbers in the current part 19 regulations.

Requirements of proposed section:	Are derived from current section:
19.0	19.1

Requirements of proposed section:	Are derived from current section:
Subpart A	
19.1	19.11
19.2	19.2
19.3	19.3
19.4	19.57
19.5	19.58

Requirements of proposed section:	Are derived from current section:
Subpart B	
19.11	19.81
19.12	19.86
19.13	19.75
19.14	19.4
19.15	19.61
19.16	19.724
19.17	19.82
19.18	19.83
19.19	19.79
19.20	19.77
19.26	19.62
19.27	19.62
19.28	19.73
19.29	19.70, 19.74
19.31	19.63
19.32	19.65
19.33	19.66
19.34	19.71
19.35	19.71
19.36	19.67
19.37	19.67
19.38	19.78
19.45	19.100

Requirements of proposed section:	Are derived from current section:
Subpart C	
19.51	New
19.52	19.131
19.53	19.132
19.54	19.133
19.55	19.68, 19.72
19.56	19.134
19.58	19.97
19.59	19.98
19.60	19.99

Requirements of proposed section:	Are derived from current section:
Subpart D	
19.71	19.151
19.72	19.151
19.73	19.152
19.74	19.168
19.75	19.166
19.76	19.153
19.77	19.170, 19.324
19.78	19.156
19.79	19.169
19.80	19.154
19.81	19.155
19.91	19.157
19.92	19.158
19.93	19.167
19.94	19.165
19.95	19.159
19.96	19.161
19.97	19.162
19.98	19.160
19.99	19.163

Requirements of proposed section:	Are derived from current section:
Subpart E	
19.111	New
19.112	19.180
19.113	19.182

Requirements of proposed section:	Are derived from current section:
19.114	19.184
19.115	19.185
19.116	19.186, 19.187
19.117	19.188
19.118	19.189
19.119	19.190
19.120	19.191
19.121	19.192
19.122	19.193
19.123	19.153(b)
19.126	19.180
19.127	19.181
19.128	19.182
19.129	19.183
19.130	19.184
19.131	19.185
19.132	19.186, 19.187
19.133	19.188
19.134	19.189
19.135	19.191
19.141	19.201
19.142	19.202
19.143	19.203 through 19.206
19.144	19.207
19.147	19.211

Requirements of proposed section:	Are derived from current section:
Subpart F	
19.151	19.231, 19.232
19.152	19.231
19.153	19.233
19.154	19.234
19.155	19.235
19.156	19.236
19.157	19.237
19.161	19.231, 19.232
19.162	19.241
19.163	19.242
19.164	19.243
19.165	19.244
19.166	19.245
19.167	19.246
19.168	19.247, 19.248
19.169	19.248
19.170	19.249
19.171	19.250
19.172	19.251
19.173	19.252

Requirements of proposed section:	Are derived from current section:
Subpart G	
19.181	New
19.182	19.273
19.183	19.273
19.184	19.273
19.185	19.273
19.186	19.276
19.187	19.274
19.188	19.277
19.189	19.278
19.190	19.279
19.191	19.280
19.192	19.281
19.193	19.282

Requirements of proposed section:	Are derived from current section:
Subpart H	
19.201	19.49(a)
19.202	19.50
19.203	19.50
19.204	19.49
19.205	19.49(c) and (d)

Requirements of proposed section:	Are derived from current section:	Requirements of proposed section:	Are derived from current section:	Requirements of proposed section:	Are derived from current section:
19.206	19.49(b)(2)	19.297	19.313	19.396	19.451
19.207	19.51	19.301	19.316	Subpart P	
19.208	19.51	19.302	19.317	19.401	New
19.209	19.51	19.303	19.318	19.402	19.505
19.210	19.52	19.304	19.319	19.403	19.506
19.211	19.53	19.305	19.320	19.404	19.507
19.212	19.54	19.306	19.321	19.405	19.508
19.214	19.54	19.307	19.322	19.406	19.509
Subpart I		19.308	19.326	19.407	19.510
19.221	New	19.309	19.327	19.409	19.481
19.222	19.21 through 19.23	19.310	19.328	19.410	19.482
19.223	19.24	19.312	19.329	19.411	19.483
19.225	19.25, 19.515, 19.526	19.314	19.331	19.414	19.484
19.226	19.517	19.315	19.332	19.415	19.485
19.227	19.515	19.316	19.333	19.418	19.531
19.229	New	Subpart M		19.419	19.532
19.230	19.515(b), 19.522(b)	19.321	19.341	19.420	19.533
19.231	19.516	19.322	19.342	19.421	19.534
19.233	19.522(c), 19.523(b)	19.324	19.344	19.424	19.536
19.234	19.522(a), 19.523(a)	19.325	19.345	19.425	19.537
19.235	19.522, 19.523	19.326	19.346	19.426	19.538
19.236	19.523	19.327	19.347	19.427	19.540
19.237	19.523	19.328	19.348	19.428	19.541
19.238	19.525	19.329	19.349	19.431	19.502
19.239	19.519	19.331	19.343	19.434	19.701
19.240	19.524	19.333	19.353	19.435	19.702
19.242	19.520	Subpart N		19.436	19.703
19.243	19.521	19.341	19.371	19.437	19.704
19.245	New	19.342	19.372	19.441	19.96
19.246	19.34	19.343	19.373	Subpart Q	
19.247	19.35	19.344	19.374	19.451	New
19.248	19.36	19.346	19.376	19.452	19.681, 19.682
19.249	19.37	19.348	19.378	19.453	New
19.250	19.38	19.351	19.381	19.454	19.683 through 19.686
19.253	19.31	19.352	19.382	19.455	19.687
19.254	19.32	19.353	19.383	19.457	19.688
19.256	19.26	19.354	19.384, 19.400	19.459	19.691
19.257	19.518	19.355	19.385	Subpart R	
19.258	19.486	19.356	19.386	19.461	19.561
Subpart J		19.357	19.387	19.462	19.562
19.261	New	19.358	19.388	19.463	19.563
19.262	19.44	19.359	19.389	19.464	19.564
19.263	19.41	19.360	19.390	19.465	19.565
19.264	19.42	19.361	19.391	Subpart S	
19.265	19.43	19.362	19.392	19.471	New and 19.581
19.266	19.45	19.363	19.393	19.472	New
19.267	19.46	19.364	19.394	19.473	19.581
19.268	19.76	19.365	19.397	19.474	19.582
19.269	19.487	19.366	19.398	19.475	19.583
Subpart K		19.371	19.401	19.476	19.584
19.281	New	19.372	19.402	19.477	19.585
19.282	19.84	Subpart O		19.478	19.588
19.283	19.92	19.381	19.451	19.479	19.589
19.284	19.91, 19.92(a), 19.93	19.382	19.452	19.482	19.592
19.285	19.92(a)	19.383	19.454	19.483	19.595
19.286	19.91(a)	19.384	19.451, 19.456	19.484	19.596(a) and (c)
19.287	19.91(b)	19.385	19.455	19.485	19.593
19.288	19.503	19.386	19.457	19.486	19.599
19.289	19.319	19.387	19.453	19.487	19.597
Subpart L		19.388	19.461	19.488	19.596(b) and (c)
19.291	New	19.389	19.462	19.489	19.607
19.292	19.311	19.390	19.463	19.490	19.594
19.293	19.312	19.391	19.459	19.491	19.601
19.294	19.314	19.392	19.460	19.492	19.602
19.295	19.315	19.393	19.458	19.493	19.604
19.296	19.312	19.394	19.464		
		19.395	19.471		

Requirements of proposed section:	Are derived from current section:
19.494	19.605
19.495	19.606
19.496	19.608
19.497	19.610
19.498	19.611
19.499	19.612
Subpart T	
19.511	19.632
19.512	19.637
19.513	19.633
19.516	19.641
19.517	19.642 through 19.650
19.518	19.645
19.519	19.395
19.520	19.396
19.523	19.661, 19.662
19.525	19.663

Subpart U—Reserved

Subpart V

19.571	19.721
19.572	19.721, 19.731
19.573	19.723(a)
19.574	19.723(a) and (b)
19.575	19.723(c)
19.576	19.723(b)
19.577	19.721(c), 19.723(c)
19.578	19.721(d)
19.580	19.731
19.581	19.731(b), 19.732
19.582	19.722
19.584	19.736
19.585	19.736
19.586	19.736
19.590	19.740
19.591	19.741
19.592	19.742
19.593	19.743
19.596	19.746
19.597	19.747
19.598	19.748
19.599	19.749
19.600	19.750
19.601	19.751
19.602	19.748(b)
19.603	19.747
19.604	19.747
19.606	19.752
19.607	19.753
19.611	19.761
19.612	19.762
19.613	19.763
19.614	19.764
19.615	19.765
19.616	19.766
19.617	19.767
19.618	19.768
19.619	19.769
19.620	19.770
19.621	19.770
19.622	19.773
19.623	19.774
19.624	19.778
19.625	19.779
19.626	19.780
19.627	New
19.631	19.791
19.632	19.792

Requirements of proposed section:	Are derived from current section:
19.634	New
Subpart W	
19.641	19.821
19.643	19.822
19.644	19.823
19.645	19.824
19.646	19.825
19.647	19.826
19.648	19.827
19.649	19.828
19.650	19.829
19.651	19.830

Subpart X

19.661	New and 19.901
19.662	19.907
19.663	19.901, 19.902
19.665	19.903
19.666	19.903
19.667	19.904
19.669	19.905
19.670	19.906
19.672	New
19.673	19.910, 19.912, 19.913, 19.918
19.674	19.913
19.675	19.910, 19.914, 19.918
19.676	19.910, 19.915 through 19.918
19.677	19.916
19.678	19.911
19.679	19.910
19.680	19.910
19.683	19.919
19.684	19.920
19.685	19.921
19.686	19.922
19.687	19.923
19.688	19.924
19.689	19.925
19.690	19.926
19.692	19.930
19.693	19.930
19.695	19.945
19.697	19.950
19.699	19.955, 19.958, 19.959
19.700	19.956, 19.957
19.703	19.965
19.704	19.966, 19.967
19.706	19.970
19.709	19.980
19.710	19.981
19.714	19.982
19.715	19.982
19.716	19.987
19.717	19.982
19.718	19.982, 19.984, 19.985, 19.986
19.719	19.983
19.720	19.988
19.722	19.990
19.723	19.990
19.724	19.990
19.726	19.1002
19.727	19.995
19.728	19.996
19.729	19.997
19.733	19.998

Requirements of proposed section:	Are derived from current section:
19.734	19.999
19.735	19.1000
19.736	19.1001
19.739	19.998
19.742	New
19.746	19.1005
19.747	19.1006
19.749	19.1007
19.752	19.1008

Subpart Y

19.761	19.1010
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III. Public Participation

Comments Invited

TTB requests comments on the proposed amendments to our regulations discussed in this notice from anyone interested. Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number (Notice No. 83) and your name and mailing address. Your comments must be legible and written in English in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Submitting Comments

You may submit comments on this notice by one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB-2008-0004 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 83 on the TTB Web site at http://www.ttb.gov/spirits/spirits_rulemaking.shtml. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on “User Guide” under “How to Use this Site.”
 - *Postal Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.
 - *Hand Delivery/Courier in lieu of Mail:* You may hand deliver comments to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.
- If you are commenting on behalf of an association, business, or other entity, your comment must include the entity’s name as well as your name and position

title. If you comment via <http://www.regulations.gov>, please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice and any comments we receive about this proposal within Docket No. TTB-2008-0004 on the Federal e-rulemaking portal, www.regulations.gov, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at http://www.ttb.gov/spirits/spirits_rulemaking.shtml under Notice No. 83. You may also reach the relevant docket through the www.regulations.gov search page at <http://www.regulations.gov>. For instructions on how to use www.regulations.gov, visit the site and click on "User Guide" under "How to Use this Site."

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments or other materials.

IV. Regulatory Analyses and Notices

Paperwork Reduction Act

The collections of information contained in the regulations proposed by this notice have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of

1995 (44 U.S.C. 3507) under control numbers: 1513-0013, 1513-0014, 1513-0020, 1513-0030, 1513-0038, 1513-0039, 1513-0040, 1513-0041, 1513-0044, 1513-0045, 1513-0046, 1513-0047, 1513-0048, 1513-0049, 1513-0051, 1513-0052, 1513-0056, 1513-0080, 1513-0081, 1513-0083, 1513-0088, and 1513-0113. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, provides that whenever a Federal agency proposes regulations that may have a significant economic impact on a substantial number of small entities, the agency must prepare a regulatory flexibility analysis.

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to notices of proposed rulemaking when a final rule would not have a significant economic impact on a substantial number of small entities. This proposed rulemaking proposes to restate existing regulations in plain language, to make certain variations currently granted to individual plants available to all plants, and to adopt certain suggestions made by industry associations to reduce the burdens of regulatory compliance. This proposed rulemaking proposes to reduce the burden on members of the distilled spirits industry, including small businesses. Accordingly, it is hereby certified that a final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

We have submitted a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f).

Executive Order 12866

We have determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that

have federalism implications." We certify that this proposed rule does not have federalism implications. This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government.

V. Drafting Information

This notice was written by Daniel J. Hiland of the Regulations and Rulings Division, along with several other employees of the Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 19

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

VII. Authority and Issuance

For the reasons explained in the preamble, TTB proposes to amend chapter I of title 27 of the Code of Federal Regulations as follows:

PART 19—DISTILLED SPIRITS PLANTS

Par. 1. Title 27 Code of Federal Regulations part 19 is revised to read as follows:

PART 19—DISTILLED SPIRITS PLANTS

Sec.
19.0 Scope.

Subpart A—General Provisions

- 19.1 Definitions.
- 19.2 Territorial extent of these regulations.
- 19.3 Related regulations.
- 19.4 Recovery and reuse of denatured spirits in manufacturing processes.
- 19.5 Manufacturing products unfit for beverage use.

Subpart B—Administrative and Miscellaneous Provisions

- 19.11 Right of entry and examination.
- 19.12 Furnishing facilities and assistance.
- 19.13 Assignment of officers and supervision of operations.
- 19.14 Delegation of the Administrator's authorities to the appropriate TTB officer.
- 19.15 Forms prescribed.

- 19.16 Modified forms.
- 19.17 Detention of containers.
- 19.18 Samples for the United States.
- 19.19 Discontinuance of storage facilities.
- 19.20 Installation of meters, tanks, and other apparatus.

Alternate Methods or Procedures and Experimental Operations

- 19.26 Alternate methods or procedures.
- 19.27 Application for and use of alternative method or procedure.
- 19.28 Emergency alternate methods or procedures.
- 19.29 Exemptions for national defense and disasters.
- 19.31 Pilot operations.
- 19.32 Experimental distilled spirits plants.
- 19.33 Application to establish experimental plants.
- 19.34 Experimental or research operations by scientific institutions and colleges of learning.
- 19.35 Application by scientific institutions and colleges of learning for experimental or research operations.
- 19.36 Spirits produced in industrial processes.
- 19.37 Application for industrial processes waiver.
- 19.38 Approval of required documents.

“Penalty of Perjury” Declaration

- 19.45 Execution under penalty of perjury.

Subpart C—Restrictions on Production, Location, and Use of Plants

- 19.51 Home production of distilled spirits prohibited.

Rules for Location and Use of a DSP

- 19.52 Restrictions on location of plants.
- 19.53 Continuity of plant premises.
- 19.54 Use of distilled spirits plant premises.
- 19.55 Other businesses.
- 19.56 Bonded warehouses not on premises qualified for production of spirits.

Conveyance of Spirits or Wines on Plant Premises

- 19.58 Taxpaid spirits or wines on bonded premises.
- 19.59 Conveyance of untaxed spirits or wines within a distilled spirits plant.
- 19.60 Spirits in customs custody.

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

- 19.71 Registration and permits in general.

Requirements for Registering a Plant

- 19.72 General requirements for registration.
- 19.73 Information required in application for registration.
- 19.74 Description of the plant.
- 19.75 Major equipment.
- 19.76 Statement of plant security.
- 19.77 Statement of production procedure.
- 19.78 Power of attorney.
- 19.79 Registry of stills.
- 19.80 Approved notice of registration.
- 19.81 Maintenance of registration file.

Requirements for an Operating Permit Under the IRC

- 19.91 Operating permit.
- 19.92 Information required in application for operating permit.

- 19.93 Applicant organization documents.
- 19.94 Trade names.
- 19.95 Issuance of operating permits.
- 19.96 Denial of permit.
- 19.97 Correction of permit.
- 19.98 Duration of permit.
- 19.99 Suspension or revocation of permit.

Subpart E—Changes to Registrations and Permits

- 19.111 Scope.

Rules for Amending a Registration

- 19.112 General rules for amending a registration.
- 19.113 Change in name of proprietor.
- 19.114 Changes in stockholders or persons with interest.
- 19.115 Change in officers, directors, members or managers.
- 19.116 Change in proprietorship.
- 19.117 Partnerships.
- 19.118 Change in location.
- 19.119 Change in premises.
- 19.120 Change in operations.
- 19.121 Change in production procedure.
- 19.122 Change in construction or use of buildings and equipment.
- 19.123 Statement of plant security.

Rules for Amending an Operating Permit

- 19.126 General rules for amending an operating permit.
- 19.127 Automatic termination of permits.
- 19.128 Change in name of proprietor.
- 19.129 Change in trade name.
- 19.130 Changes in stockholders or persons with interest.
- 19.131 Changes in officers, directors, members or managers.
- 19.132 Change in proprietorship.
- 19.133 Partnerships.
- 19.134 Change in location.
- 19.135 Change in operations.

Alternation of Plant Proprietors

- 19.141 Procedures for alternation of proprietors.

Conduct of Alternate Operations at a Plant

- 19.142 Alternate use of premises and equipment for customs purposes.
- 19.143 Alternation for other purposes.
- 19.144 Alternation of distilled spirits plant and volatile fruit-flavor concentrate plant premises.

Discontinuance of Operations

- 19.147 Notice of discontinuance of operations.

Subpart F—Bonds and Consents of Surety

Bonding Requirements for a DSP

- 19.151 General.
- 19.152 Types of bonds.
- 19.153 Bond guaranteed by a corporate surety.
- 19.154 Bond guaranteed by deposit of securities.
- 19.155 Consent of surety bond terms—consent of surety.
- 19.156 Power of attorney for surety.
- 19.157 Disapproval of bonds and consents of surety.

Requirements for Operations and Withdrawal Bonds

- 19.161 Operations bond.
- 19.162 Operations bond for distilled spirits plant and adjacent bonded wine cellar.
- 19.163 Area operations bond.
- 19.164 Withdrawal bond.
- 19.165 Unit bonds.
- 19.166 Required penal sums.
- 19.167 Increase of bond coverage.
- 19.168 Superseding bonds.
- 19.169 Effect of failure to furnish a superseding bond.
- 19.170 Termination of bonds.
- 19.171 Surety notice of relief from bond liability.
- 19.172 Relief of surety from bond liability.
- 19.173 Release of pledged securities.

Subpart G—Construction, Equipment, and Security Requirements

- 19.181 General.

Tank Requirements

- 19.182 Tanks—general requirements.
- 19.183 Scale tanks.
- 19.184 Scale tank minimum graduations.
- 19.185 Testing scale tanks for accuracy.

Package Scale and Pipeline Requirements

- 19.186 Package scales.
- 19.187 Pipelines.

Measuring and Proofing Equipment Requirements

- 19.188 Measuring devices and proofing instruments.

Other Plant Requirements

- 19.189 Identification of structures, areas, apparatus, and equipment.
- 19.190 Office facilities for TTB use.
- 19.191 Signs.
- 19.192 Security.
- 19.193 Breaking Government locks.

Subpart H—Special (Occupational) Tax

- 19.201 Liability for special (occupational) tax.
- 19.202 Special (occupational) tax rates.
- 19.203 Eligibility for the reduced rate.
- 19.204 Exemption for alcohol fuel producers.
- 19.205 Locations subject to tax.
- 19.206 Liability as a wholesale or retail dealer.
- 19.207 Special tax returns.
- 19.208 Multiple locations and multiple tax classes.
- 19.209 Signing special tax returns.
- 19.210 Employer identification number.
- 19.211 Issuance, distribution, and examination of special tax stamps.
- 19.212 Change in name.
- 19.213 Change in proprietorship.
- 19.214 Change in location.

Subpart I—Distilled Spirits Taxes

- 19.221 Scope.

Basic Provisions of Tax Law Affecting Spirits

- 19.222 Basic tax law provisions.
- 19.223 Persons liable for tax.

Requirements for Gauging and Tax Determination

- 19.225 Requirement to gauge and tax determine spirits.
- 19.226 Gauges for tax determination.
- 19.227 Determination of the tax.

Rules for Deferred Payment and Prepayment of Taxes

- 19.229 Deferred payment and prepayment of taxes.
- 19.230 Conditions requiring prepayment of taxes.
- 19.231 Accounting for bond coverage.

Requirements for Filing Tax Returns

- 19.233 Filing prepayment returns.
- 19.234 Filing deferred payment returns.
- 19.235 Deferred payment return periods—quarterly and semimonthly.
- 19.236 Due dates for returns.
- 19.237 Special rule for semimonthly filers for the month of September.
- 19.238 Payment by mail.
- 19.239 Form of payment.
- 19.240 Payment of tax by electronic fund transfer.

Requirements for Employer Identification Numbers

- 19.242 Employer identification number.
- 19.243 Application for employer identification number.

Effective Tax Rates

- 19.245 Tax credits under 26 U.S.C. 5010.
- 19.246 Computing the effective tax rate for a product.
- 19.247 Use of effective (actual) tax rates.
- 19.248 Standard effective tax rate.
- 19.249 Average effective tax rate.
- 19.250 Inventory reserve account.

Assessment of Taxes by TTB

- 19.253 Assessment of tax on spirits not accounted for or reported.
- 19.254 Assessment of tax for losses or unauthorized removals.

Additional Tax Provisions

- 19.256 Tax on wine.
- 19.257 Imported spirits.
- 19.258 Additional tax on nonbeverage spirits.

Subpart J—Claims

- 19.261 Scope.

Requirements for Filing Claims

- 19.262 General requirements for filing claims.
- 19.263 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond—specific requirements.
- 19.264 Claims on spirits returned to bonded premises—specific requirements.
- 19.265 Claims relating to spirits lost after tax determination.

Rules Regarding Credits, Abatement, Remission, or Refund

- 19.266 Claims for credit of tax.
- 19.267 Adjustments for credited tax.
- 19.268 Allowance of remission, abatement, credit, or refund of tax.

Rules for Puerto Rican and Virgin Islands Spirits

- 19.269 Puerto Rican and Virgin Islands spirits.

Subpart K—Gauging

- 19.281 Scope.
- 19.282 General requirements for gauging and measuring equipment.

Required Gauges

- 19.283 When gauges are required.
- 19.284 Quantity determination of bulk spirits.
- 19.285 Proof determination of distilled spirits.
- 19.286 Gauging of spirits in bottles.
- 19.287 Gauging of alcoholic flavoring materials.
- 19.288 Determination of tare.
- 19.289 Production gauge.

Subpart L—Production of Distilled Spirits

- 19.291 General.

Notification of TTB When Beginning or Suspending Production Operations

- 19.292 Notice of operations.

Rules for Receipt, Use, and Disposal of Materials

- 19.293 Receipt of materials.
- 19.294 Removal of fermenting material.
- 19.295 Removal or destruction of distilling material.
- 19.296 Fermented materials.
- 19.297 Use of materials in production of spirits.

Rules for Production of Spirits

- 19.301 Distillation.
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Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.0 Scope.

This part concerns the operation of distilled spirits plants in the United States. Topics covered in this part include: Permits and registration procedures; bond requirements; payment of taxes; filing of claims; production, storage, and processing operations; and maintenance of records.

Subpart A—General Provisions**§ 19.1 Definitions.**

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning, or a different definition is prescribed for a particular subpart, section, or portion of this part:

Accurate mass flow meter. A mass flow meter for making volume determinations of bulk distilled spirits. A mass flow meter used for tax determination of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.1\%$. A mass flow meter used for all other required volume

determinations of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.5\%$.

Administrator. The Administrator of the Alcohol and Tobacco Tax and Trade Bureau, the Department of the Treasury, Washington, DC., or a delegate or designee of the Administrator.

Alcoholic flavoring materials. Any nonbeverage product on which drawback has been or will be claimed under 26 U.S.C. 5131–5134, and any flavor imported free of tax which is unfit for beverage purposes. This term includes eligible flavors but does not include flavorings or flavoring extracts manufactured on the bonded premises of a distilled spirits plant as an intermediate product.

Application for registration. The application for registration of a distilled spirits plant that is required by 26 U.S.C. 5171(c).

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR part 19, Distilled Spirits Plants.

Article. A product containing denatured spirits, which was manufactured under this part or part 20 of this chapter.

Bank. Any commercial bank.

Banking day. Any day that a bank is open to the public to carry on substantially all of its banking functions.

Basic permit. The document that authorizes a person to engage in a designated business or activity under the Federal Alcohol Administration Act.

Bond. A bond is a formal guarantee for payment of monies due to TTB, including taxes imposed by 26 U.S.C. Chapter 51, and any related fines, penalties or interest that the proprietor of a distilled spirits plant may incur, up to an amount specified by the bond (the bond "penal sum").

Bonded premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which the conduct of distilled spirits operations defined in 26 U.S.C. 5002 is authorized.

Bottler. A proprietor of a distilled spirits plant qualified under this part as a processor who bottles distilled spirits.

Bulk container. Any container approved by TTB having a capacity in excess of one wine gallon.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or any other container approved by the

Administrator for the conveyance of comparable quantities of spirits, including denatured spirits and wines.

Bulk distilled spirits. Distilled spirits in a container having a capacity in excess of one wine gallon.

Business day. Any day, other than a Saturday, a Sunday, or a legal holiday (which includes any holiday in the District of Columbia and any statewide holiday in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed).

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

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits, denatured spirits, or wine in any manner for himself or others.

CFR. The Code of Federal Regulations.

Commercial bank. A bank, whether or not a member of the Federal Reserve system, which has access to the Federal Reserve Communications System or Fedwire (a communications network that allows Federal Reserve system member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York).

Container. A receptacle, vessel, or form of bottle, can, package, tank or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits and denatured spirits.

Denaturant or denaturing material. Any material authorized by part 21 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in part 21 of this chapter.

Director of the service center. A director of an internal revenue service center.

Distilled spirits operations. Any authorized distilling, warehousing, or processing operation conducted on the bonded premises of a plant qualified under this part.

Distilled spirits plant. An establishment which is qualified under this part to conduct distilled spirits operations.

Distiller. Any person who:

- (1) Produces distilled spirits from any source or substance;
- (2) Brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other

than making or using of mash, wort, or wash in the authorized production of wine or beer, or in the production of vinegar by fermentation);

(3) By any process separates alcoholic spirits from any fermented substance; or

(4) Making or keeping mash, wort, or wash, has a still in his possession or use.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of the Internal Revenue Service.

Effective tax rate. The net tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

Electronic fund transfer or EFT. Any transfer of funds effected by the proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Eligible flavor. A flavor which:

- (1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134;
- (2) Was not manufactured on the premises of a distilled spirits plant; and
- (3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Export or exportation. A separation of goods from the mass of goods belonging to the United States with the intention of uniting them with the goods belonging to a foreign country or any possession of the United States, including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam.

Fermenting material. Any material that will be subject to a process of fermentation in order to produce distilling material.

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

Fiscal year. The period October 1st of one calendar year through September 30th of the following calendar year.

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

General premises. Any business office, service facility, or other part of the premises described in the notice of registration other than bonded premises.

In bond. When used to describe spirits, denatured spirits, articles, or wine, this term refers to spirits, denatured spirits, articles, or wine held under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which those taxes have not been determined. The term also refers to such spirits, denatured spirits, articles, or wine on the bonded premises of a distilled spirits plant, and such spirits, denatured spirits, or wines that are in transit between bonded premises (including, in the case of wine, bonded wine cellar premises). In addition, the term refers to spirits in transit from customs custody to bonded premises, and spirits withdrawn without payment of tax under 26 U.S.C. 5214, and with respect to which relief from liability has not occurred under 26 U.S.C. 5005(e)(2).

Industrial use. When used with reference to spirits, the meaning given to the term in § 19.472.

Intermediate product. Any product manufactured according to an approved formula under part 5 of this chapter, intended not for sale as such but for use in the manufacture of a distilled spirits product.

IRC. The Internal Revenue Code of 1986, as amended.

Kind. Except as provided in § 19.597, when used with reference to spirits, this term means class and type as prescribed in part 5 of this chapter. When used with reference to wines, this term means the class and type of wine as prescribed in part 4 of this chapter.

Letterhead application. A letter on a company's letterhead or other piece of paper that clearly shows the company name from a company representative with signature authority. A letterhead application is subject to TTB approval prior to any change requested in the letter.

Letterhead notice. A letter on a company's letterhead or other piece of paper that clearly shows the company name from a company representative with signature authority. A letterhead notice does not require approval by TTB prior to the change.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Administrator to adequately protect the revenue.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters or 1,000

milliliters (ml) of alcoholic beverage, and equivalent to 33.814 fluid ounces.

Lot identification number. The package identification number described in 27 CFR 19.485.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

National Revenue Center: TTB's National Revenue Center, in Cincinnati, Ohio.

Nonindustrial use. When used with reference to spirits, the meaning given to the term in § 19.472.

Operating permit. The document issued pursuant to 26 U.S.C. 5171(d), that authorizes a person to engage in the business or operation described in the document.

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

Package identification number. The lot identification number described in 27 CFR 19.595.

Person. An individual, trust, estate, partnership, association, company, corporation, limited liability company, limited liability partnership, or other entity recognized by law as a person.

Plant or distilled spirits plant. An establishment qualified under this part for distilling, warehousing, processing, or any combination thereof.

Plant number. The number assigned to a distilled spirits plant by TTB.

Processor. Except as otherwise provided in 26 U.S.C. 5002(a)(6), any person qualified under this part who manufactures, mixes, bottles, or otherwise processes distilled spirits or denatured spirits or who manufactures any article.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percentage of ethyl alcohol by volume.

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

Proof of distillation. The composite proof of the spirits when the production gauge is made, or, if the spirits are reduced in proof prior to the production gauge, the proof of the spirits prior to that reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

Proprietor. The person qualified under this part to operate a distilled spirits plant.

Reconditioning. The dumping of distilled spirits products in bond after their bottling or packaging, for filtration, clarification, stabilization,

reformulation, or other purposes, other than destruction, denaturation, redistillation, or rebottling.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the denaturants for completely denatured alcohol, as provided in part 20 of this chapter.

Season. The period from January 1st through June 30th (spring season) or the period from July 1st through December 31st (fall season).

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

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Spirits residues. Residues, containing distilled spirits, of a manufacturing process related to the production of an article under part 20 of this chapter.

Tax-determined or determined. When used with reference to any distilled spirits to be withdrawn from bond on determination of tax, that the taxable quantity of spirits has been established.

Taxpaid. When used with reference to distilled spirits, all applicable taxes imposed by law on those spirits have been determined or paid as provided by law.

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

Transfer in bond. The removal of spirits, denatured spirits and wines from one bonded premises to another bonded premises.

Treasury Account. The General Account of the Department of the Treasury at the Federal Reserve Bank of New York.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

TTB bond. The internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

TTB officer. An officer or employee of TTB authorized to perform any function relating to the administration or enforcement of the provisions of this part.

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Warehouseman. A proprietor of a distilled spirits plant qualified under this part to store bulk distilled spirits.

We. TTB and TTB officers.

Wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Wine spirits. Spirits authorized for use in wine production by 26 U.S.C. 5373.

§ 19.2 Territorial extent of these regulations.

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

§ 19.3 Related regulations.

Other regulations relating to distilled spirits and distilled spirits plants are listed below:

- 27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.
- 27 CFR part 4—Labeling and Advertising of Wine.
- 27 CFR part 5—Labeling and Advertising of Distilled Spirits.
- 27 CFR part 16—Alcoholic Beverage Health Warning Statement.
- 27 CFR part 17—Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products.
- 27 CFR part 20—Distribution and Use of Denatured Alcohol and Rum.
- 27 CFR part 21—Formulas for Denatured Alcohol and Rum.
- 27 CFR part 22—Distribution and Use of Tax-Free Alcohol.
- 27 CFR part 24—Wine.
- 27 CFR part 25—Beer.
- 27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
- 27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer.
- 27 CFR part 28—Exportation of Alcohol.
- 27 CFR part 29—Stills and Miscellaneous Regulations.
- 27 CFR part 30—Gauging Manual.
- 27 CFR part 31—Alcohol Beverage Dealers.
- 27 CFR part 71—Rules of Practice in Permit Proceedings.
- 31 CFR part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties.

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

Certain activities involving distilled spirits are not covered by this part. Instead, manufacturers who engage in any of the activities listed below are required to comply with the regulations in part 20 of this chapter relating to the use and recovery of spirits or denatured spirits. Those activities are:

(a) Use of denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered;

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

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

(26 U.S.C. 5273)

§ 19.5 Manufacturing products unfit for beverage use.

(a) *General.* Except as provided in paragraph (b) of this section, apothecaries, pharmacists, or manufacturers who manufacture or compound any of the following products using tax paid or tax determined distilled spirits are not required to register and qualify as a distilled spirits plant (processor):

(1) Medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula does not need to be submitted if drawback is not desired;

(2) Patented and proprietary medicines that are unfit for use for beverage purposes;

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

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

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

(b) *Exception for beverage products.* Products identified in part 17 of this chapter as being fit for beverage use are alcoholic beverages. Bitters, patent medicines, and similar alcoholic preparations that are fit for beverage purposes, although held out as having certain medicinal properties, are also alcoholic beverages. These products are subject to the provisions of this part and must be manufactured on the bonded premises of a distilled spirits plant.

(c) *Submission of formulas and samples.* When requested by the appropriate TTB officer or when the manufacturer wishes to ascertain

whether a product is unfit for beverage use, the manufacturer will submit the formula and a sample of the product to the appropriate TTB officer for examination. TTB will determine whether the product is unfit for beverage use and whether manufacture of the product is exempt from qualification requirements.

(d) *Change of formula.* If TTB finds that a product manufactured under paragraph (a) of this section is being used for beverage purposes, or for mixing with beverage spirits other than by a processor, TTB will notify the manufacturer to stop manufacturing the product until the formula is changed to make the product unfit for beverage use and the change is approved by the appropriate TTB officer. However, the provisions of this paragraph will not prohibit products which are unfit for beverage use from use in small quantities for flavoring drinks at the time of serving for immediate consumption.

(26 U.S.C. 5002, 5171)

Subpart B—Administrative and Miscellaneous Provisions

§ 19.11 Right of entry and examination.

A TTB officer may enter any distilled spirits plant, any other premises where distilled spirits operations are carried on, or any structure or place used in connection with distilled spirits operations, at any time of day or night. A TTB officer may examine materials, equipment, and facilities, and make any gauges and inventories. Whenever a TTB officer states his or her name and office and demands admittance but is not admitted into the premises or place, the TTB officer is authorized to use all necessary force to gain entry.

(26 U.S.C. 5203)

§ 19.12 Furnishing facilities and assistance.

The proprietor is required to provide TTB officers with the necessary facilities and assistance in order to gauge spirits in any container, or to examine any apparatus, equipment, containers, or materials, at the distilled spirits plant. Also, when requested by a TTB officer, the proprietor must:

(a) Open any doors and open for examination any containers on the plant premises; and

(b) Provide the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot and the locations (that is, buildings, rooms, or areas) where spirits in cases are stored.

(26 U.S.C. 5202, 5203)

§ 19.13 Assignment of officers and supervision of operations.

(a) *General.* TTB may assign TTB officers to a distilled spirits plant and utilize controls, such as Government locks and seals, if TTB decides that those measures are necessary to effectively supervise the operations. If TTB decides that such supervision is necessary:

(1) The proprietor must obtain approval of the plant's hours of operations from the appropriate TTB officer;

(2) TTB may require the proprietor to submit a schedule of operations to a TTB officer; and

(3) TTB may require the proprietor to delay any distilled spirits operation until the proprietor can conduct it in the presence of a TTB officer.

(b) *Notification of supervision.* If TTB determines that supervision of plant operations is necessary, TTB will notify the proprietor of the extent to which TTB intends to supervise those operations. If TTB determines later that TTB supervision is no longer necessary, the appropriate TTB officer will notify the proprietor of that fact.

(26 U.S.C. 5201, 5202, 5553)

§ 19.14 Delegation of the Administrator's authorities to the appropriate TTB officer.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR Part 19, Distilled Spirits. Interested persons may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 19.15 Forms prescribed.

(a) TTB prescribes and makes available all forms required by this part. Persons completing forms must furnish all of the information required by each form, as indicated by the headings and instructions on the form or as required by these regulations. Each form must be filed in accordance with this part and the instructions for the form.

(b) Persons may request forms from the TTB National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, Ohio 45202, or by accessing them on the TTB Web site (<http://www.ttb.gov>).

(26 U.S.C. 5207)

§ 19.16 Modified forms.

If a proprietor wishes to modify a form prescribed by these regulations, the proprietor must submit an application for approval of an alternate method or procedure (see §§ 19.26 and 19.27) to the appropriate TTB officer. The proprietor may not use a modified form until TTB approves the application. The application to modify a form must be accompanied by:

(a) A copy of each proposed form with typical entries; and

(b) A statement explaining the need to use a modified form.

(26 U.S.C. 5207)

§ 19.17 Detention of containers.

(a) *General.* A TTB officer may detain any container containing, or supposed to contain, spirits when the appropriate TTB officer believes that the required tax on those spirits has not been paid or determined that the removal of the container is in violation of law or the provisions of this part. The appropriate TTB officer will hold the container at a safe place until it is determined whether the detained property is subject to forfeiture.

(b) *Limitation.* A detention under paragraph (a) of this section may not exceed 72 hours without process of law or intervention of the appropriate TTB officer. However, the detained container may be kept on the premises beyond the 72-hour period without process of law or intervention if the person possessing the container immediately before its detention executes a waiver of this 72-hour limitation on detention of the container.

(26 U.S.C. 5311)

§ 19.18 Samples for the United States.

TTB officers are authorized to take samples of spirits, denatured spirits, articles, wines, or other materials from a distilled spirits plant for analysis, testing, or to determine whether the product complies with the law and regulations. When TTB removes a sample from a plant, TTB will give the proprietor a receipt for the sample.

(26 U.S.C. 5201, 5203, 5214, 5362)

§ 19.19 Discontinuance of storage facilities.

If TTB determines that a proprietor's bonded storage facility for spirits is unsafe or unfit for use, or causes excessive waste or loss of spirits, TTB can require that the proprietor discontinue using the facility. Further, TTB can require the transfer of the spirits stored in the facility to another storage facility. The transfer will take place at such time and under such

supervision as TTB may require, and will be at the expense of the owner or warehouseman of the spirits. If the owner or warehouseman fails to transfer the spirits within the prescribed time or to pay the expense of the transfer, as ascertained and determined by the appropriate TTB officer, the spirits may be seized and sold. TTB will first apply the proceeds of such sale to the payment of the taxes due on the spirits and then to the cost and expense of the sale and removal, and the remaining balance, if any, will be paid over to the owner or warehouseman.

(26 U.S.C. 5236)

§ 19.20 Installation of meters, tanks, and other apparatus.

The appropriate TTB officer may require the proprietor to install meters, tanks, pipes, or any other apparatus at the proprietor's plant if that officer decides that the equipment is necessary for the protection of the revenue. If the proprietor refuses or fails to install any such apparatus when instructed to do so, the proprietor will not be permitted to conduct business as a distilled spirits plant.

(26 U.S.C. 5552)

Alternate Methods or Procedures and Experimental Operations**§ 19.26 Alternate methods or procedures.**

(a) *General.* The appropriate TTB officer may approve the use of an alternate method or procedure that varies from the regulatory requirements in this part if the proprietor shows good cause for its use and the alternate method or procedure:

(1) Is not contrary to law;

(2) Will not have the effect of waiving an existing regulatory requirement;

(3) Is consistent with the purpose and effect of the method or procedure prescribed in this part;

(4) Provides equal security to the revenue; and

(5) Will not cause an increase in cost to the Government and will not hinder TTB's administration of this part.

(b) *Exceptions.* TTB will not authorize the use of an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(26 U.S.C. 5552, 5556)

§ 19.27 Application for and use of alternate method or procedure.

(a) *Application.* If a proprietor wishes to use an alternate method or procedure as described in § 19.26, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval. The application

must identify the method or procedure specified in the regulation, must describe the proposed alternate method or procedure in detail, and must explain why the alternate method or procedure is needed.

(b) *Approval and use.* The proprietor may not use an alternate method or procedure until the appropriate TTB officer has in writing approved the proprietor's application. During the period that the proprietor is authorized to use the alternate method or procedure, the proprietor must comply with any conditions imposed on its use by TTB. TTB may withdraw the approval to use the alternate method or procedure if TTB finds that the revenue is jeopardized, that the alternate method or procedure hinders effective administration of the laws or regulations, that the proprietor has violated any of the conditions imposed by TTB, or that the circumstances that gave rise to the need for the alternate method or procedure no longer exist.

(c) *Retention.* The proprietor must retain each alternate method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(26 U.S.C. 5552, 5556)

§ 19.28 Emergency variations from requirements.

(a) *Application.* A proprietor may request emergency approval of the use of a method or procedure relating to construction, equipment, and methods of operation that represents a variance from the requirements of this part. When a proprietor wishes to use an emergency method or procedure, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval; the proprietor may send the application via regular mail, e-mail, or facsimile transmission. The application must describe the proposed emergency method or procedure and the emergency situation it will address. For purposes of this section, an emergency is considered to exist only if it results from a weather or other natural event or from an accident or other event not involving an intentional act on the part of the proprietor.

(b) *Approval.* The appropriate TTB officer may approve in writing the use of an emergency method or procedure if the proprietor demonstrates that an emergency exists and the proposed method or procedure:

- (1) Is not contrary to law;
- (2) Is necessary to address the emergency situation;

(3) Will afford the same security and protection to the revenue as intended by the regulations; and

(4) Will not hinder the effective administration of this subpart.

(c) *Terms of emergency method or procedure approval and use.*

(1) The proprietor may not use an emergency method or procedure until the application has been approved by TTB except when the emergency method or procedure requires immediate implementation to correct a situation that threatens life or property. In a situation involving a threat to life or property, the proprietor may implement the corrective action while concurrently notifying the appropriate TTB officer by telephone of the action and filing the required written application. Use of the emergency method or procedure must conform to any conditions specified in the approval.

(2) The proprietor must retain the emergency method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(3) The emergency method or procedure will automatically terminate when the situation that created the emergency no longer exists. TTB may withdraw the approval to use the emergency method or procedure if TTB finds that the revenue is jeopardized, that the emergency method or procedure hinders effective administration of the laws or regulations, or that the proprietor has failed to follow any of the conditions specified in the approval. When use of the emergency method or procedure terminates, the proprietor must revert to full compliance with all applicable regulations.

(26 U.S.C. 5178, 5556)

§ 19.29 Exemptions for national defense and disasters.

Whenever TTB finds it is necessary to meet the requirements of national defense or necessary or desirable by reason of disaster, TTB may temporarily exempt the proprietor from any provisions of the internal revenue laws and the provisions of this part relating to distilled spirits, except those requiring the payment of tax.

(26 U.S.C. 5561, 5562)

§ 19.31 Pilot operations.

Except for the filing of any bond or the payment of any tax provided for in 26 U.S.C. Chapter 51, TTB may waive any regulatory provision in this part for temporary pilot or experimental operations for the purpose of facilitating the development and testing of

improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the appropriate TTB officer may, with the approval of the proprietor thereof, designate any plant for such operations. Any waiver granted under this section must be in writing and signed by the appropriate TTB officer. The waiver will identify the provisions of law and/or regulations waived and the period of time during which the waiver will be effective. The appropriate TTB officer may terminate the waiver if he or she determines that the waiver jeopardizes the revenue.

(26 U.S.C. 5554)

§ 19.32 Experimental distilled spirits plants.

(a) *General.* The appropriate TTB officer may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of:

- (1) Sources of materials from which spirits may be produced;
- (2) Processes by which spirits may be produced or refined; or
- (3) Industrial uses of spirits.

(b) *Waiver.* The appropriate TTB officer may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) and of this part (other than § 19.33) to the extent necessary to effectuate the purposes of 26 U.S.C. 5312(b) as outlined in paragraph (a) of this section. However, TTB will not waive the payment of any tax on spirits removed from an experimental plant.

(c) *Applicability of special tax.* An experimental distilled spirits plant established under this section is subject to the registration requirement for special (occupational) tax prescribed under subpart H of this part.

(26 U.S.C. 5312)

§ 19.33 Application to establish experimental plants.

(a) *Application requirements.* Any person who wishes to establish an experimental plant for the purposes specified in § 19.32 must submit a written application to the appropriate TTB officer and obtain approval of the proposed experimental plant. The application must:

- (1) State the nature, extent, and purpose of the operations to be conducted;
- (2) Describe the operations and equipment;
- (3) Describe the location of the plant (including the proximity to other premises or operations subject to the provisions of 26 U.S.C. Chapter 51); and

(4) Describe the security measures to be provided.

(b) *Bond.* The applicant must file a bond with the application in such form and penal sum as required by the appropriate TTB officer.

(c) *Approval of application.* Before approving the application, the appropriate TTB officer may require that the applicant submit additional information if necessary. TTB will not approve the application and permit operations until the plant conforms to the specifications stated in the application and the applicant complies with provisions of 26 U.S.C. Chapter 51 and with any provisions in this part that are not specifically waived.

(26 U.S.C. 5312)

§ 19.34 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The appropriate TTB officer may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than in organoleptic tests) or sale, in quantities as may be reasonably necessary for those purposes.

(b) *Waiver.* For purposes of this section, the appropriate TTB officer may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) or this part (other than this section and § 19.35) to the extent necessary to effect the purposes of 26 U.S.C. 5312(a). However, TTB will not waive the payment of any tax on distilled spirits removed from any university, college, or institution.

(c) *Applicability of special tax.* A person conducting experimental or research operations authorized under this section is subject to the registration requirement for special (occupational) tax prescribed under subpart H of this part.

(26 U.S.C. 5312)

§ 19.35 Application by scientific institutions and colleges of learning for experimental or research operations.

(a) *Application requirements.* A university, college, or institution that wants to conduct any of the experimental or research operations mentioned in § 19.34, must submit a written application to the appropriate TTB officer and obtain approval for the proposed operations. The application may be submitted on letterhead. The application must:

(1) State the nature, extent, and purpose of the operations to be conducted;

(2) Describe the operations and equipment;

(3) Describe the location where the operations will be conducted (including identification of the building or buildings, or the portions thereof to be used); and

(4) Describe the security measures to be provided.

(b) *Bond.* The applicant must file a bond with the application in such form and amount as required by the appropriate TTB officer.

(c) *Approval of application.* Before approving the application, the appropriate TTB officer may require that the applicant submit additional information. The applicant may not commence operations until authorized by the appropriate TTB officer.

(d) *Records and reports.* Any university, college, or institution authorized to conduct experimental or research operations must maintain records of the quantities of spirits produced, received, and used each day and must make these records available for inspection by TTB officers. Universities, colleges, or institutions authorized to conduct experimental or research operations are not required to submit reports of operations to TTB unless specifically required by the appropriate TTB officer.

(e) *Discontinuance of operations.* When operations authorized under this section are discontinued, the university, college, or institution must destroy all remaining spirits and notify the appropriate TTB officer that operations are discontinued.

(26 U.S.C. 5312)

§ 19.36 Spirits produced in industrial processes.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, any person who produces distilled spirits in an industrial process, including spirits produced as a byproduct in connection with chemical or other processes, is considered to be a distiller and therefore is required to qualify as a distilled spirits plant and is subject to the registration requirement for special (occupational) tax under the provisions of 26 U.S.C. Chapter 51 and this part.

(b) *Waiver.* TTB may waive application of any provision of 26 U.S.C. Chapter 51, or of this part, involving the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification (except the registration requirement for special [occupational] tax) if the mixture is produced:

(1) For transfer to the bonded premises of a distilled spirits plant for completion of distilling; or

(2) As a by-product which would require expensive and complex equipment for the recovery of spirits, and the mixture:

(i) Would be destroyed on the premises where produced; or

(ii) Would contain a minimum quantity of spirits, taking into account the procedure employed, would not be subjected to further operations solely for the purification or recovery of spirits, and would be found by TTB to be as nonpotable and as difficult to recover as completely denatured alcohol.

(26 U.S.C. 5201)

§ 19.37 Application for industrial processes waiver.

(a) *Application for waiver.* If the producer of a nonpotable chemical mixture containing spirits, as described in § 19.36, wishes to obtain a waiver from the provisions of 26 U.S.C. Chapter 51, or of this part, the producer must submit a written waiver application to the appropriate TTB officer. The application must include the following information, as applicable:

(1) The name and address of the producer;

(2) Chemical composition and source of the nonpotable mixture;

(3) Approximate percentages of chemicals and spirits in the mixture;

(4) Method of operation proposed;

(5) Bonded premises where the mixture will be distilled; and

(6) Any other pertinent information required by the appropriate TTB officer.

(b) *Approval of waiver.* The appropriate TTB officer may approve the waiver if it will not jeopardize the revenue and will not hinder supervision of the operations. Approval of the application may be subject to such terms and conditions, and to the furnishing of any bond, that the appropriate TTB officer determines is necessary.

(26 U.S.C. 5201)

§ 19.38 Approval of required documents.

Except as otherwise provided in this part, the appropriate TTB officer is authorized to approve all documents, bonds, and consents of surety required by this part.

(26 U.S.C. 5171, 5172, 5173, and 5551)

“Penalty of Perjury” Declaration

§ 19.45 Execution under penalty of perjury.

(a) *Declaration.* When TTB requires under this part that a document be executed under penalty of perjury, the document must contain the following declaration:

I declare under the penalties of perjury that this [insert type of document, such as report, or claim], including supporting documents, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(b) *Signing.* The declaration in paragraph (a) of this section must bear the signature and title of the proprietor or a duly authorized representative.

(26 U.S.C. 6065)

Subpart C—Restrictions on Production, Location, and Use of Plants

§ 19.51 Home production of distilled spirits prohibited.

A person may not produce distilled spirits at home for personal use. Except as otherwise provided by law, distilled spirits may only be produced by a distilled spirits plant registered with TTB under the provisions of 26 U.S.C. 5171. All distilled spirits produced in the United States are subject to the tax imposed by 26 U.S.C. 5001.

(26 U.S.C. 5001, 5601, and 5602)

Rules for Location and Use of a DSP

§ 19.52 Restrictions on location of plants.

A person who intends to establish a distilled spirits plant may not locate it in any of the following places:

- (a) In any residence, shed, yard, or enclosure connected to a residence;
- (b) On any vessel or boat;
- (c) Where beer or wine is produced;
- (d) Where liquors are sold at retail; or
- (e) Where any other business is conducted except as provided in

§ 19.54.

(26 U.S.C. 5178)

§ 19.53 Continuity of plant premises.

As a general rule, the premises of a distilled spirits plant must be continuous except for separations by public waterways, roads, or carrier rights-of-way. However, the appropriate TTB officer may approve the registration of the plant where there are separations of the plant premises and all parts of the plant are in the same general location if:

(a) There is no jeopardy to revenue caused by the separation of premises; and

(b) The separation of premises does not create administrative problems for TTB.

(26 U.S.C. 5178)

§ 19.54 Use of distilled spirits plant premises.

(a) *General.* A person may not conduct any business or operation on the premises of a distilled spirits plant unless the business or operation is

authorized by the notice of registration on file with TTB or authorized under § 19.55.

(b) *Bonded premises.* The proprietor must use the bonded premises of a distilled spirits plant exclusively for distilled spirits operations. The proprietor must store packaged spirits, cases of spirits, or portable containers of spirits in a room or building on bonded premises. TTB may approve another method of storage as an alternate method or procedure. However, the proprietor must apply for, and receive approval for another method of storage from the appropriate TTB officer in accordance with § 19.27 before using that method.

(c) *General premises.* General premises are any portion of the distilled spirits plant described in the notice of registration other than bonded premises. A person may not use the general premises of a distilled spirits plant for any operation required under the provisions of this part to be conducted on bonded premises.

(26 U.S.C. 5178)

§ 19.55 Other businesses.

(a) The appropriate TTB officer may authorize the conduct of a business other than that of a distiller, warehouseman, or processor on the premises of a distilled spirits plant if:

(1) The business is not prohibited by 26 U.S.C. 5601(a)(6);

(2) The business will not jeopardize the revenue;

(3) The business will not hinder TTB's effective administration of this part; and

(4) The business will not be contrary to law.

(b) A person who wishes to conduct another business at a distilled spirits plant must apply for such authorization in accordance with §§ 19.73(b) or 19.120(b) and receive approval from the appropriate TTB officer before operating the other business. The approval will specify whether the other business may be conducted on the bonded premises or on the general premises.

(26 U.S.C. 5178)

§ 19.56 Bonded warehouses not on premises qualified for production of spirits.

(a) *Criteria for establishment.* As a general rule, if a person intends to establish a bonded warehouse, other than one established on the bonded premises of a distilled spirits plant qualified for the production of spirits or contiguous to such premises, the proposed warehouse must have a minimum capacity of 250,000 wine gallons of bulk spirits and the need for such a warehouse must be clearly

shown. TTB may consider an application to establish a bonded warehouse with less capacity provided a need is clearly shown.

(b) *Application.* The applicant must submit a separate written request along with the application for registration explaining the need for the bonded warehouse. TTB may approve the application for registration if:

(1) The proposed location for the warehouse will not jeopardize the revenue; and

(2) The applicant provides evidence showing sufficient need for establishing such a warehouse.

(c) *Special conditions.* Based on the application and request, TTB may limit the type of operations that may be conducted at the bonded warehouse. The proprietor of a warehouse approved for a limited type of operation may not expand or change the operation to include any other type of operation without application to and approval of the appropriate TTB officer.

(26 U.S.C. 5171 and 5178)

Conveyance of Spirits or Wines on Plant Premises

§ 19.58 Taxpaid spirits or wines on bonded premises.

The proprietor may move tax paid or tax determined spirits or wines across bonded premises. However, tax paid or tax determined spirits or wines may not be stored or allowed to remain on the bonded premises. The proprietor must keep tax paid or tax determined spirits or wines separate from spirits or wines on which tax has not been paid or determined. Spirits returned to bonded premises under the provisions of 26 U.S.C. 5215 may remain on bonded premises.

(26 U.S.C. 5201 and 5612)

§ 19.59 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.

(a) The proprietor may move untaxpaid spirits or wines:

(1) Between different portions of the bonded premises at the same distilled spirits plant or across any other premises of that plant;

(2) Over any public thoroughfare by uninterrupted transportation; or

(3) Over a private roadway by uninterrupted transportation. The owner or lessee of the private roadway must agree in writing to allow TTB officers access to the roadway to perform their duties.

(b) The conveyance of untaxpaid spirits or wines under paragraph (a) of this section is subject to the following conditions. The proprietor:

(1) May not store or allow the untaxpaid spirits or wines to remain on

any premises other than the bonded premises;

(2) Must keep the untaxpaid spirits or wines separate from spirits on which the tax has been paid or determined;

(3) Must submit to the appropriate TTB officer a description of the means, route of the conveyance, and the areas of the distilled spirits plant, public thoroughfare or roadways across which spirits or wines will be conveyed, and a copy of any agreement with the owner or lessee of a private roadway. The appropriate TTB officer must approve the proposed means and route of conveyance and any agreement; and

(4) Must provide a consent of surety on the operations or unit bond (TTB F 5000.18) extending the terms of the bond to cover the conveyance of the spirits or wines.

(26 U.S.C. 5201 and 5601)

§ 19.60 Spirits in customs custody.

A proprietor may move distilled spirits that are in customs custody across distilled spirits plant premises if the proprietor:

(a) Submits to the appropriate TTB officer a description of the means and route of the conveyance and the areas of the distilled spirits plant across which spirits will be conveyed and receives approval from the appropriate TTB officer for the method of movement;

(b) Does not store or allow the spirits to remain on the premises of the distilled spirits plant;

(c) Moves the spirits expeditiously, and keeps the spirits separate and apart from other spirits on the premises; and

(d) Provides a consent of surety on the operations or unit bond (TTB F 5000.18) extending the terms of the bond to cover the conveyance of the spirits.

(26 U.S.C. 5201)

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

§ 19.71 Registration and permits in general.

Except as otherwise provided in this part, a person may only conduct operations as a distiller, warehouseman, or processor of distilled spirits on the bonded premises of a distilled spirits plant. In order to establish a distilled spirits plant, a person must register the plant with TTB and obtain an operating permit and/or a basic permit. This subpart covers the requirements for registering a plant and obtaining an operating permit under the IRC. Part 1 of this chapter covers the requirements for obtaining a basic permit under the Federal Alcohol Administration Act.

(26 U.S.C. 5171)

Requirements for Registering a Plant

§ 19.72 General requirements for registration.

(a) *Establishment.* A person who wishes to establish a distilled spirits plant must intend to conduct operations as a distiller, as a warehouseman, or both. A person cannot establish a distilled spirits plant solely for the processing of spirits.

(b) *Registration.* Before beginning operations as a distilled spirits plant, a person must submit an application for registration and receive approval from TTB. The following rules apply to an application for registration:

(1) The applicant must apply for registration on form TTB F 5110.41, Registration of Distilled Spirits Plant, and submit the application to the appropriate TTB officer;

(2) TTB will consider all written statements, affidavits, and other documents supporting the application as part of the application;

(3) If the appropriate TTB officer determines that the original application for registration cannot be approved because it contains incomplete or incorrect information, TTB may require that the applicant file an additional form TTB F 5110.41, or submit other documentation to complete or correct the original application; and

(4) The applicant must file any additional forms or submit any other documentation within 60 days of the appropriate TTB officer's request.

(26 U.S.C. 5171, 5172)

§ 19.73 Information required in application for registration.

(a) *General.* The application for registration on form TTB F 5110.41, Registration of Distilled Spirits Plant, must include the following information:

(1) The serial number;

(2) The name, principal business address, and location of the distilled spirits plant if different from the applicant's business address;

(3) The operations that will be conducted;

(4) The purpose for filing the application;

(5) A statement describing the type of business organization and the persons involved in the business in accordance with § 19.93. However, if any of this information is already on file with the appropriate TTB officer, the applicant may advise TTB that the information on file is part of the application for registration;

(6) A list of any operating permits, basic permits, operations bonds, withdrawal bonds, and/or unit bonds, including the amount of any bond(s) and the name of the surety on the bond;

(7) In the case of a corporation, a list of the offices and officers authorized by the articles of incorporation or the board of directors to sign or act on behalf of the corporation;

(8) A description of the plant in accordance with § 19.74;

(9) A list of major equipment in accordance with § 19.75;

(10) A statement of the maximum number of proof gallons that will be produced in the distillery during a period of 15 days, stored on the bonded premises, and in transit to the bonded premises. This statement is not required if the operations or unit bond is in the maximum amount;

(11) A statement that accounting records will be maintained in accordance with generally accepted accounting principles;

(12) A statement of plant security measures in accordance with § 19.76;

(13) The following information if the applicant intends to operate as a distiller:

(i) Total proof gallons of spirits that can be produced daily;

(ii) A statement of production procedures in accordance with § 19.77; and

(iii) A statement as to whether spirits will be redistilled;

(14) The following information if the applicant intends to operate as a warehouseman:

(i) A description of the storage system; and

(ii) Total amount of bulk wine gallons that can be stored; and

(15) The following information if the applicant intends to operate as a processor:

(i) A statement whether spirits will or will not be bottled, denatured, redistilled, and whether articles will be manufactured; and

(ii) A description of the storage system for spirits bottled and cased or otherwise packaged and placed in approved containers for removal from bonded premises.

(b) *Other business.* If the applicant intends to conduct any other business on the distilled spirits plant premises as authorized under § 19.55, the following information must be submitted with the application:

(1) A description of the business;

(2) A list of buildings and equipment that will be used; and

(3) A statement of the relationship of the business to the distilled spirits operations at the plant.

(c) *Additional information.* The applicant must furnish any additional information needed by TTB to determine if the application for registration should be approved.

(26 U.S.C. 5171, 5172, 6001)

§ 19.74 Description of the plant.

As required by § 19.73(a)(8), the application for registration must include a description of the distilled spirits plant. This information must:

- (a) Describe each tract of land covering the distilled spirits plant;
- (b) Clearly distinguish between the bonded premises and any general premises;
- (c) Provide directions and distances in enough detail to enable the appropriate TTB officer to readily determine the boundaries of the plant;
- (d) Describe each building and outside tank that will be used for production, storage, and processing of spirits and for denaturing spirits, articles, or wines. The description must include the location, size, construction, and arrangement with reference to each by a designated number or letter; and
- (e) Specify when only a room or floor of a building will be used for plant operations and provide the location and description of the building, floor, and room.

(26 U.S.C. 5172)

§ 19.75 Major equipment.

As required by § 19.73(a)(9), the application for registration must include a list of the major plant equipment. If the equipment is set up and used for the production, storage, or processing of distilled spirits, wine, denatured spirits, or articles, the list must provide the following information:

(a) The serial number and capacity of each tank in the plant. The list does not need to include any bulk containers having a capacity of less than 101 wine gallons on the plant premises if those containers do not meet the criteria of a tank under § 19.182 (perks, small totes, etc.);

(b) The serial number, kind, capacity, and intended use of each still in the plant. The capacity is the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or for column stills a statement of the diameter of the base and number of plates; and

(c) The serial number of each condenser.

(26 U.S.C. 5172, 5179)

§ 19.76 Statement of plant security.

As required by § 19.73(a)(12), the application for registration must include a statement of plant security. This statement must include the following information:

(a) A general description of plant security, including methods used to secure buildings or plant operations

located within a portion of a building and outdoor tanks;

(b) A statement regarding the use of guard personnel;

(c) A statement regarding the use of any electronic or mechanical alarm system;

(d) A statement certifying that locks used will meet the requirements of § 19.192(f); and

(e) A list of persons, by their position and title, who have the responsibility for the custody and access to keys for the locks.

(26 U.S.C. 5171, 5172)

§ 19.77 Statement of production procedure.

(a) As required by § 19.73(a)(13)(ii), the application for registration must include a statement of the step-by-step production procedure used to produce spirits from an original source. The statement must begin with the treating, mashing, or fermenting of the raw materials or substances and continue through each step of the distilling, purifying, and refining procedure to the production gauge. The statement must include the kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits that will be produced.

(b) If the applicant intends to redistill spirits in the production account, the applicant must submit and receive approval for such redistillation on form TTB F 5110.38, Formula for Distilled Spirits under the Federal Alcohol Administration Act.

(26 U.S.C. 5172, 5201, 5222, 5223, 5555)

§ 19.78 Power of attorney.

An applicant or proprietor of a distilled spirits plant must execute and submit to the appropriate TTB officer form TTB F 1534 (5000.8), Power of Attorney, for each person authorized to sign or to act on behalf of the applicant or proprietor unless the authority has been granted in the application for registration.

(26 U.S.C. 5172)

§ 19.79 Registry of stills.

Section 29.55 of this chapter requires that every person having possession, custody, or control of a still or distilling apparatus must register the still or distilling apparatus. When a person lists a still or distilling apparatus with the application for registration as required by § 19.75(b) and receives approval of the registration, that person has fulfilled the requirement to register the still or distilling apparatus. See § 29.55 of this chapter for additional provisions regarding stills and distilling apparatus.

(26 U.S.C. 5172, 5179)

§ 19.80 Approved notice of registration.

A person may not operate a distilled spirits plant unless a valid notice of registration has been approved by TTB authorizing the businesses and operations to be conducted at such plant. When approved by the appropriate TTB officer, the application for registration constitutes the notice of registration of the distilled spirits plant. A distilled spirits plant will not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or operations in which the applicant intends to engage. In any instance where a person is required to have a bond or permit and the bond or permit becomes invalid, then the notice of registration also becomes invalid. Another application for registration must be filed and a new notice of registration approved by TTB before the business or operation at such plant may be resumed. Reregistration of a plant is not required when a new bond or a strengthening bond is filed in accordance with §§ 19.167 or 19.168.

(26 U.S.C. 5171, 5172)

§ 19.81 Maintenance of registration file.

The proprietor must maintain the registration documents on the plant premises in a loose-leaf file that is current, complete, and readily available for inspection by the appropriate TTB officer.

(26 U.S.C. 5172)

Requirements for an Operating Permit Under the IRC

§ 19.91 Operating permit.

(a) Except as provided in paragraph (b) of this section, a person must obtain an operating permit under the IRC in order to:

- (1) Distill for industrial use;
- (2) Warehouse spirits for industrial use;
- (3) Denature spirits;
- (4) Warehouse spirits (without bottling) for non-industrial use;
- (5) Bottle or package spirits for industrial use;
- (6) Manufacture articles; or
- (7) Engage in any other distilling, warehousing, or processing operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204).

(b) *Exception.* The requirement to obtain an operating permit does not apply to an agency of a State, or

political subdivision of a State, or an officer or employee of, and acting for, such an agency.

(26 U.S.C. 5171, 5271)

§ 19.92 Information required in application for operating permit.

(a) In order to obtain an operating permit, a person must complete an application on form TTB F 5110.25, Application for Operating Permit Under 26 U.S.C. 5171(d). TTB will consider all written statements, affidavits and other documents submitted in support of the application as part of the application.

(b) The application on form TTB F 5110.25 must include the following information:

(1) The name and principal address of the business;

(2) The address of the plant if different from the business address;

(3) A description of the operation(s) to be conducted;

(4) A statement of the business organization and the persons involved in the business as required under § 19.93; and

(5) A list of trade names as required under § 19.94.

(c) A TTB officer may request that any person listed under § 19.93(a)(1)(ii), § 19.93(a)(3)(iii), § 19.93(b)(1) and § 19.93(b)(2) submit to TTB a statement as to whether that person has ever:

(1) Been convicted of a felony or misdemeanor under Federal or State law, other than a misdemeanor conviction for a traffic violation;

(2) Been arrested or charged with any violation of State or Federal law, other than an arrest or charge for a misdemeanor traffic violation; or

(3) Applied for, held, or been connected with a permit issued under Federal law to manufacture, distribute, sell or use spirits or products containing spirits, or held any financial interest in any business covered by any such permit, and if so, give the permit number, classification, period of operation and details regarding any denial, suspension, revocation or other termination.

(d) If any of the information required in paragraphs (b)(4) or (c)(3) of this section is on file with the appropriate TTB officer, the applicant may, by incorporation by reference, state that the information is made a part of the application for an operating permit.

(e) The applicant must provide any additional information that the appropriate TTB officer may request in order to determine whether the application should be approved.

(26 U.S.C. 5171, 5271)

§ 19.93 Applicant organization documents.

(a) *Supporting information.* Sections 19.73(a)(5) and 19.92(a)(4) require that the application for registration and the application for an operating permit include information about the business organization of the applicant. The applicant must provide the following information as applicable:

(1) If the applicant is a corporation—

(i) The corporate charter or other documentation that provides proof of corporate existence or incorporation;

(ii) Names and addresses of directors and officers;

(iii) Certified minutes, or extracts of board of directors meetings, that authorize specific individuals to sign for the corporation; and

(iv) A statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(2) If the applicant is a partnership, a copy of the articles of partnership or association, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(3) If the applicant is a limited liability company or limited liability partnership—

(i) A copy of the articles of organization;

(ii) A copy of the operating agreement; and

(iii) The names and addresses of all members and managers.

(b) *Statement of interest.*

(1) *Sole proprietorships and general partnerships.* In the case of an individual owner or a general partnership, the applicant must provide the name and address of each person having an interest in the business and a statement indicating whether the interest appears in the name of the interested person or in the name of another person.

(2) *Limited liability entities.* In the case of a corporation, limited liability partnership, limited liability company, or other legal entity in which some or all of the owners have limited personal liability for the activities of the entity, the applicant must provide the following information about persons having an interest in the business:

(i) The names and addresses of the 10 persons that have the largest ownership or other interest in each of the classes of ownership of the applicant and the nature and amount of ownership or other interest of each person.

(ii) The name of the person in whose name the interest appears. If the corporation is wholly owned or controlled by another corporation, the appropriate TTB officer may request the

same information regarding ownership for the parent corporation.

(26 U.S.C. 5172, 5271)

§ 19.94 Trade names.

(a) *Operating permits.* The applicant must include a list of any trade names used in the operation of the plant with form TTB F 5110.25, Application for Operating Permit Under 26 U.S.C. 5171(d). The applicant must show the operations for which the trade name will be used and identify the offices where the trade name is registered. The applicant must also submit copies of any certificate or other document filed or issued for each trade name.

(b) *Basic permits.* If the applicant is required to have a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204) for distilling, warehousing, or processing operations, then the applicant must follow the regulations under that Act for the approval and use of trade names.

(26 U.S.C. 5271)

§ 19.95 Issuance of operating permits.

TTB will issue only one operating permit for a distilled spirits plant. The permit will designate the operations that are authorized at the plant. The proprietor must post the permit at the distilled spirits plant and have it available for inspection by appropriate TTB officers.

(26 U.S.C. 5171, 5271)

§ 19.96 Denial of permit.

TTB will conduct proceedings for the denial of an application for an operating permit in accordance with the procedures set forth in part 71 of this chapter if the appropriate TTB officer has reason to believe that:

(a) 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 business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or the regulations issued thereunder;

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

(c) The premises where the applicant proposes to conduct the operations are not adequate to protect the revenue.

(26 U.S.C. 5271)

§ 19.97 Correction of permit.

If requested by the appropriate TTB officer, a proprietor must immediately return for correction any operating

permit that contains an error.

(26 U.S.C. 5271)

§ 19.98 Duration of permit.

The proprietor may conduct the operations authorized by the operating permit on a continuing basis unless:

- (a) The proprietor voluntarily surrenders the permit;
- (b) TTB suspends or revokes the permit pursuant to § 19.99; or
- (c) The permit is automatically terminated under its own terms or in accordance with § 19.127.

(26 U.S.C. 5271)

§ 19.99 Suspension or revocation of permit.

TTB will conduct proceedings for the revocation or suspension of an operating permit in accordance with the procedures set forth in part 71 of this chapter if the appropriate TTB officer has a reason to believe that the proprietor or any person associated with the operating permit:

- (a) Has not complied in good faith with the provisions of 26 U.S.C. Chapter 51, or the regulations issued thereunder;
- (b) Has violated the conditions of the permit;
- (c) Has made a false statement as to any material fact in the application for the permit;
- (d) Has failed to disclose any required material information;
- (e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor;
- (f) Has been convicted either of any offense under Title 26, U.S.C., punishable as a felony, or of any conspiracy to commit such an offense; or
- (g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

(26 U.S.C. 5271)

Subpart E—Changes to Registrations and Permits

§ 19.111 Scope.

This subpart explains the requirements for amending a distilled spirits plant registration and, if applicable, an operating permit. For information regarding amendments to a basic permit issued under the Federal Alcohol Administration Act, see part 1 of this chapter.

(26 U.S.C. 5171)

Rules for Amending a Registration

§ 19.112 General rules for amending a registration.

If there is a change in any of the information in the proprietor's current,

approved notice of registration, the proprietor must amend the registration within 30 days of the change unless another time period is specified in this subpart. To amend a registration the proprietor must submit in writing to the appropriate TTB officer any information necessary to make the registration file current and accurate.

(a) *TTB F 5110.41.* Except when a letterhead application or letterhead notice procedure is allowed under this subpart, the proprietor must submit an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, for changes that affect the registration. If the changes affect only parts or pages of the registration the proprietor only needs to submit the necessary pages or information that will make the registration file current.

(b) *Letterhead Applications.* For certain changes specified in this subpart the proprietor may submit a letterhead application for a change instead of an amended form TTB F 5110.41. The letterhead application must identify the distilled spirits plant to which the change applies and clearly identify the change. Any change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.41 if administrative difficulties occur as a result of the letterhead application.

(c) *Letterhead Notices.* For certain changes specified in this subpart only a letterhead notice is required. The letterhead notice must identify the distilled spirits plant to which the change applies and clearly identify the change. A letterhead notice does not require approval by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.41 if administrative difficulties occur as a result of the letterhead notice.

(26 U.S.C. 5171, 5172)

§ 19.113 Change in name of proprietor.

If the name of the of the proprietor changes, the proprietor may not conduct operations under the new name before TTB approves the amended registration. The proprietor must file either an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead application to reflect the change. However, the proprietor does not have to file a new bond or consent of surety.

(26 U.S.C. 5172, 5271)

§ 19.114 Changes in stockholders or persons with interest.

The proprietor must notify TTB of any changes in the list of stockholders or

persons with interest that was filed with TTB as required by § 19.93. If the change results in a change of control, the proprietor must file form TTB F 5110.41, Registration of Distilled Spirits Plant, within 30 days of the change. If the change does not cause a change of control the proprietor:

- (a) May file a letterhead notice to amend the registration;
- (b) May file the amended notice on May 1 of each year rather than within 30 days of the change, or on any other date that the appropriate TTB Officer may approve; and
- (c) Must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.41 filed.

(26 U.S.C. 5172, 5271)

§ 19.115 Change in officers, directors, members or managers.

(a) *General.* If there is a change in the list of officers, directors, members or managers that the proprietor filed as required by § 19.93 the following rules apply:

- (1) The proprietor must file an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead notice to reflect the change;
- (2) The proprietor must provide the name and address of each new officer, director, member or manager; and
- (3) The proprietor must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.41 filed.

(b) *Waiver.* The appropriate TTB officer may waive the requirement to amend the registration if the change only relates to corporate officers listed on the original or current registration who are no longer connected with the operations covered by the registration.

(26 U.S.C. 5171, 5172)

§ 19.116 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at a distilled spirits plant, the following requirements apply to the outgoing proprietor and to the incoming (successor) proprietor.

(1) *Outgoing proprietor.* An outgoing proprietor must comply with the requirements of § 19.147. An outgoing proprietor may transfer spirits to its successor in accordance with § 19.141.

(2) *Incoming proprietor.* A successor to the proprietorship of a plant that holds a registration:

- (i) Must file form TTB F 5110.41, Registration of Distilled Spirits Plant, and receive from TTB an approved notice of registration of the plant;
- (ii) Must file the required bonds; and
- (iii) May adopt the approved formulas of its predecessor in accordance with § 5.28 and § 20.63 of this chapter.

(b) *Fiduciary*. If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, the successor must comply with the provisions of paragraph (a)(2) of this section. The following rules also apply in this case:

(1) The fiduciary may furnish a consent of surety to extend the terms of the predecessor's bond instead of filing a new bond;

(2) The fiduciary may incorporate by reference in the application for registration on form TTB F 5110.41 any information contained in the predecessor's application for registration that is still current;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document showing the successor's qualification as fiduciary; and

(4) The effective date of the qualifying documents that the fiduciary files will be the date of the court order, the date specified in the order whereby the fiduciary assumes control, or if there is no court order, the date that the fiduciary assumed control.

(26 U.S.C. 5172)

§ 19.117 Partnerships.

(a) If there is a death or insolvency of a partner in the business registered under this part, the surviving partner or partners may continue to operate under the notice of registration if:

(1) The partnership is not terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have exclusive right to the control and possession of the partnership assets for purposes of liquidation and settlement; and

(3) A consent of surety is filed where the surety and the surviving partner or partners agree to remain liable on the operations or unit bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file as an incoming proprietor and receive an approved notice of registration of the plant in accordance with § 19.116(a).

(26 U.S.C. 5172)

§ 19.118 Change in location.

If the location of the plant changes, the proprietor must:

(a) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration;

(b) File a new bond or a consent of surety on form TTB F 5000.18; and

(c) Not begin operations at the new location prior to approval of the amended registration.

(26 U.S.C. 5172, 5271, 5173)

§ 19.119 Change in premises.

If the proprietor intends to extend or curtail any part of the plant premises, except under alternate operations that are covered by § 19.142 and § 19.143, the proprietor must file form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration. The proprietor must not extend or curtail any premises or equipment before the amended registration is approved.

(26 U.S.C. 5172)

§ 19.120 Change in operations.

(a) If the proprietor wishes to conduct additional operations involving spirits, other than those approved on the current registration, the proprietor must:

(1) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration; and

(2) Not engage in the additional operations prior to approval of the amended registration.

(b) If the proprietor wishes to engage in another business that is authorized under § 19.55 the proprietor must:

(1) File form TTB 5110.41 to amend the registration;

(2) Include the information required under § 19.73(b); and

(3) Not engage in the other business until approval of the amended registration is received.

(26 U.S.C. 5171, 5172, 5271)

§ 19.121 Change in production procedure.

If the proprietor plans to produce a new product or make a change to the production procedure that will affect the designation of the product or substantially affect the character of the product, the proprietor must:

(a) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration;

(b) Provide a new statement of production procedure as described in § 19.77; and

(c) Receive approval of the amended registration before implementing the change in the production procedure.

(26 U.S.C. 5172)

§ 19.122 Change in construction or use of buildings and equipment.

(a) The proprietor must submit a letterhead notice before making any material change in the construction or use of buildings or equipment at the plant other than changes covered by § 19.119, § 19.142 and § 19.143. The proprietor must:

(1) Describe the proposed change in detail;

(2) Keep a copy of the letterhead notice on file with the current notice of registration; and

(3) Incorporate the change in the next amendment to the registration submitted on form TTB F 5110.41, Registration of Distilled Spirits Plant, unless the appropriate TTB officer requires immediate submission of an amended form TTB F 5110.41.

(b) The proprietor may make emergency changes in construction or use of buildings and equipment without prior letterhead notice. However, the proprietor must promptly report any emergency change to the appropriate TTB officer.

(26 U.S.C. 5172)

§ 19.123 Statement of plant security.

If the proprietor makes changes to the personnel listed, or procedures contained in, the statement of plant security filed under § 19.76, the proprietor must:

(a) File a form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead application to amend the registration, in the case of any change in the description of plant security, employment of guard personnel, use of electronic or mechanical alarm system, or certification of required locks required under § 19.76 (a) through (d);

(b) File a letterhead notice for any change in personnel who have custody and access to keys for the required locks as provided under § 19.76(e); and

(c) Incorporate any changes filed by letterhead notice in the next amendment to the registration on form TTB F 5110.41 submitted, unless the appropriate TTB officer requires an immediate submission of form TTB F 5110.41.

(26 U.S.C. 5171, 5172)

Rules for Amending an Operating Permit

§ 19.126 General rules for amending an operating permit.

(a) *When and how to amend*. If there is a change in any of the information that the proprietor provided as part of the current approved application for an operating permit, the proprietor must amend the operating permit by submitting written documentation in accordance with this section to the appropriate TTB officer in writing within 30 days of the change unless another time period is specified in this subpart.

(1) *TTB F 5110.25*. Except when a letterhead application or letterhead notice procedure is allowed under this

subpart, the proprietor must amend the operating permit by submitting an amended form TTB F 5110.25, Application for Operating Permit Under 5171(d). If the changes only affect parts or pages of the application for an operating permit the proprietor only needs to submit the necessary pages or information that will make the permit file current.

(2) *Letterhead applications.* For certain changes specified in this subpart, the proprietor may submit a letterhead application instead of an amended form TTB F 5110.25. The letterhead application must identify the distilled spirits plant for which the application applies. The letterhead application change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.25 if administrative difficulties occur as a result of the letterhead application.

(3) *Letterhead notices.* For certain changes noted in this subpart only a letterhead notice is required. A letterhead notice does not require approval by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit amended application on form TTB F 5110.25 if administrative difficulties occur as a result of the letterhead notice.

(b) *FAA permits.* If there are changes that affect a basic permit issued under the Federal Alcohol Administration Act, the proprietor must amend the basic permit in accordance with the procedures set forth in part 1 of this chapter.

(26 U.S.C. 5171, 5172)

§ 19.127 Automatic termination of permits.

(a) *Operating Permits.* An operating permit is not transferable. The proprietor's operating permit will automatically terminate in the following circumstances:

(1) If the operations that are authorized by the permit are leased, sold or transferred;

(2) If the company is dissolved on a certain date by an event specified in the laws of the State where the company operates; or

(3) In the case of a corporation, if actual or legal control of the corporation changes, directly or indirectly, whether by reason of change in stock ownership or control, by operation of law, or in any other manner, the permit will terminate 30 days after the change in control. However, if an application for a new permit covering the operations is made within this 30 day period, then the operating permit may remain in effect until TTB takes final action upon the

new application. TTB's final action on the new application will automatically terminate the outstanding permit.

(b) *Basic Permits.* For provisions related to the automatic termination of an FAA Act basic permit, see part 1 of this chapter.

(26 U.S.C. 5271)

§ 19.128 Change in name of proprietor.

If the name of the proprietor changes, the proprietor must file a letterhead application to amend the operating permit. The proprietor may not conduct operations under the new name before TTB approves the amended operating permit. However, the proprietor does not have to file a new bond or consent of surety.

(26 U.S.C. 5172, 5271)

§ 19.129 Change in trade name.

If the proprietor intends to change or add a trade name that will be used in the operation of the plant, the proprietor must file a letterhead application to amend the operating permit. The proprietor may not conduct operations under the new trade name before TTB approves the amended operating permit. However, the proprietor will not be required to file a new bond or consent of surety.

(26 U.S.C. 5271)

§ 19.130 Changes in stockholders or persons with interest.

The proprietor must notify TTB of any changes in the list of stockholders or persons with interest that was filed with TTB as required by § 19.93(b). If the change results in a change of control, the proprietor must file form TTB F 5110.25, Application for Operating Permit Under 5171(d), within 30 days of the change. If the change does not cause a change in control the proprietor:

(a) May file a letterhead notice to amend the operating permit;

(b) May file the amended notice the May 1st following the change in control year rather than within 30 days of the change, or on any other date that the appropriate TTB Officer may approve; and

(c) Must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.25 filed.

(26 U.S.C. 5172, 5271)

§ 19.131 Changes in officers, directors, members or managers.

(a) *General.* If there is a change in the list of officers, directors, members or managers that the proprietor filed as required by § 19.93, the proprietor must:

(1) File form TTB F 5110.25 Application for Operating Permit Under

5171(d) or a letterhead notice to amend the operating permit;

(2) Provide the name and address for each new officer, director, member or manager; and

(3) Incorporate all changes submitted by letterhead notice in the next TTB F 5110.25 filed.

(b) *Waiver.* The appropriate TTB officer may waive the requirement to amend the operating permit if the changes relate to corporate officers listed on the original or current permit who are no longer connected with the operations covered by the permit.

(26 U.S.C. 5172, 26 U.S.C. 5171)

§ 19.132 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at a distilled spirits plant that holds an operating permit, the following requirements apply to the outgoing proprietor and to the incoming (successor) proprietor.

(1) *Outgoing proprietor.* An outgoing proprietor must comply with the requirements of § 19.147. An outgoing proprietor may transfer spirits to its successor in accordance with § 19.141.

(2) *Successor proprietor.* A successor to the proprietorship of a plant that holds an operating permit:

(i) Must file form TTB 5110.25 Application for Operating Permit Under 5171(d) and obtain an operating permit;

(ii) Must file the required bonds; and

(iii) May adopt the approved formulas of its predecessor in accordance with § 5.28 and § 20.63 of this chapter.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, the successor must comply with the provisions of paragraph (a)(2) of this section. The following rules also apply in this case:

(1) The fiduciary may furnish a consent of surety to extend the terms of the predecessor's bond instead of filing a new bond;

(2) The fiduciary may incorporate by reference in the Application for Operating Permit Under 5171(d) on form TTB F 5110.25 any information contained in the predecessor's application that is still current;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document showing the successor's qualification as fiduciary; and

(4) The effective date of the qualifying documents that the fiduciary files will be the date of the court order, the date specified in the order whereby the fiduciary assumes control, or if there is no court order, the date that the fiduciary assumed control.

(26 U.S.C. 5172)

§ 19.133 Partnerships.

(a) If there is a death or insolvency of a partner in a company that holds an operating permit under this part, the surviving partner or partners may continue to operate under the operating permit if:

(1) The partnership is not terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have exclusive right to the control and possession of the partnership assets for purposes of liquidation and settlement; and

(3) A consent of surety is filed where the surety and the surviving partner or partners agree to remain liable on the operations or unit bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file as an incoming proprietor and receive approval of the operating permit as required under § 19.132(a)(2).

(26 U.S.C. 5172)

§ 19.134 Change in location.

If the location of the plant changes, the proprietor must:

(a) File form TTB F 5110.25, Application for Operating Permit Under 5171(d), to amend the operating permit;

(b) File a new bond or a consent of surety on form TTB F 5000.18; and

(c) Not begin operations at the new location prior to approval of the amended operating permit.

(26 U.S.C. 5172, 5271, 5173)

§ 19.135 Change in operations.

If the proprietor wishes to conduct additional operations involving spirits, other than those already approved on the current operating permit, the proprietor must:

(a) File form TTB F 5110.25 Application for Operating Permit Under 5171(d) to amend the permit; and

(b) Not engage in the additional operation prior to approval of the amended permit.

(26 U.S.C. 5171, 5172, 5271)

Alternation of Plant Proprietors

§ 19.141 Procedures for alternation of proprietors.

(a) *General.* A proprietor may alternate use of a distilled spirits plant or part of the plant with one or more other proprietors. In order to do so, each proprietor must separately file and receive approval of the necessary registration, applications and bonds that

are required by subparts D and E of this part. Each proprietor must also conduct operations and keep records in accordance with the regulations in this part. Where operations by alternating proprietors will be limited to parts of the plant, each proprietor must include the following in the notice of registration:

(1) A description of the areas, rooms or buildings, or combination of rooms or buildings that will alternate between proprietors;

(2) The method that the proprietor will use to separate the alternated premises from any premises that will not be alternated; and

(3) Diagrams of the parts of the plant that will be alternated.

(b) *Letterhead notice.* After a proprietor receives approval to alternate use of the premises with another proprietor, the alternating proprietors must separately file letterhead notices each time they intend to alternate use of the premises. The proprietors may file a single notice if the notice is signed by each proprietor or an authorized representative of each proprietor. The proprietors must submit the letterhead notice to the appropriate TTB officer prior to the first day that alternation is to take place. Proprietors must include the following with the notice:

(1) The plant number and the name of the proprietor filing the notice;

(2) Identification of the outgoing proprietor and incoming proprietor (by name and plant number);

(3) The effective date and hour of the alternation;

(4) Identification of any applicable diagrams provided with the registration of each proprietor filed under paragraph (a) of this section, showing the portions of the premises involved in the alternation;

(5) The purpose of the alternation;

(6) If distilling materials, unfinished or finished spirits, denatured spirits, or wine will be transferred to the incoming proprietor, a statement to that effect; and

(7) If denatured spirits or articles will be retained in the processing account in locked tanks during the period of alternate proprietorship, a statement to that effect.

(c) *Alternation of production operations.* In the case of an outgoing proprietor who intends to alternate production operations with another proprietor, the outgoing proprietor must:

(1) Completely process all distilling materials and unfinished spirits in any bonded areas, rooms, or buildings that will alternate unless the outgoing

proprietor transfers them to the incoming proprietor; and

(2) Mark and remove all finished spirits in the name in which they were produced before a production gauge is made by the incoming proprietor.

(d) *Alternation of storage operations.* In the case of an outgoing proprietor who intends to alternate storage operations with another proprietor, the outgoing proprietor must:

(1) Transfer in bond any spirits or wines in any bonded areas, rooms, or buildings that will be alternated; and

(2) Execute a form TTB F 5000.18, Change of Bond (Consent of Surety), to continue in effect the operations or unit bond whenever operations of the areas, rooms, or buildings will be resumed by the outgoing proprietor following suspension of operations by the other proprietor.

(e) *Alternation of processing operations.* In the case of an outgoing proprietor who intends to alternate processing operations with another proprietor, the outgoing proprietor:

(1) Before the effective date and time of the alternation, must process to completion and remove from the affected area all spirits, denatured spirits, wines or articles located in any rooms, areas, or buildings that will alternate, or must transfer these spirits, wines and articles in bond to the incoming proprietor;

(2) Must execute a form TTB F 5000.18, Change of Bond (Consent of Surety), to continue in effect the operations or unit bond whenever operations of the areas, rooms, or buildings will be resumed by the outgoing proprietor following suspension of operations by the other proprietor; and

(3) May retain denatured spirits and articles in tanks locked with approved locks if the outgoing proprietor maintains custody and control of the locks and keys for the tanks. In this case, the outgoing proprietor must obtain a consent of surety on form TTB F 5000.18 to continue liability on the operations or unit bond for the tax on the denatured spirits or articles that retained in the locked tanks.

(f) *Records.* Each alternating proprietor must maintain its own records and submit its own reports. Records kept by an outgoing proprietor for spirits, wines, and alcoholic flavoring materials may be used by the incoming proprietor. All transfers of distilling materials, unfinished spirits, spirits, denatured spirits, and wines must be reflected in the records of each proprietor.

(26 U.S.C. 5172, 5271)

Conduct of Alternate Operations at a Plant

§ 19.142 Alternate use of premises and equipment for customs purposes.

(a) *General.* The proprietor may extend or curtail the distilled spirits plant premises or a part of those premises for temporary use by Customs and Border Protection officers for customs purposes. If the proprietor wishes to alternate the use of the premises for customs purposes, that use must be approved by the port director of customs and must be conducted in accordance with applicable customs laws and regulations.

(b) *Qualification.* Before alternating the plant premises for customs purposes, the proprietor must file and receive approval of the necessary registration, application and bonds as required by this part. The proprietor's application for registration must include the following:

(1) A description of the areas, rooms or buildings, or combination of rooms or buildings that will be alternated;

(2) A diagram of the parts of the plant that the proprietor will use for the alternation; and

(3) The method that the proprietor will use to separate the alternated premises from any premises not subject to alternation.

(c) *Letterhead notice.* After the proprietor receives approval to alternate premises for customs purposes, the proprietor must file a letterhead notice with the appropriate TTB officer each time the premises will be alternated. The notice must include the following information:

(1) The name and plant number of the proprietor filing the notice;

(2) The date and hour the alternation will take place;

(3) Identification of any applicable diagrams provided with the registration filed under paragraph (b) of this section, showing the portions of the premises involved in the alternation;

(4) The purpose of the alternation;

(5) If the alternation is for gauging or processing distilled spirits, a statement to that effect; and

(6) An indication of the class of temporary customs warehouse, if applicable.

(d) *Proprietor responsibilities.* Prior to the start of alternation for customs purposes, the proprietor must remove all spirits from the premises or equipment that will be involved in the alternation. However, upon release by customs, spirits in the process of being transferred to bonded premises under 26 U.S.C. 5232, may remain on the premises.

(e) *Exceptions.* The qualification requirements in paragraph (b) of this section and the notice requirements in paragraph (c) of this section will not apply where the proprietor solely intends to gauge bulk distilled spirits for transfer from customs custody to TTB bond.

(f) *Conveyance of spirits in customs custody.* If the proprietor intends to convey spirits in customs custody across the distilled spirits plant premises the proprietor must comply with § 19.60.

(26 U.S.C. 5172, 5178)

§ 19.143 Alternation for other purposes.

(a) *General.* The proprietor may temporarily extend or curtail the distilled spirits plant premises to allow for several other types of alternate uses. Premises may be alternately curtailed or extended to allow bonded premises to be used temporarily as general premises, or to allow general premises to be used as bonded premises. A curtailment or extension of distilled spirits plant premises may also allow for the use of the premises as:

(1) An adjacent bonded wine cellar;

(2) An adjacent taxpaid wine bottling house;

(3) An adjacent brewery; or

(4) Facilities for the manufacturer of eligible flavors.

(b) *Qualifying documents.* Before alternating the premises for a purpose listed in paragraph (a) of this section, the proprietor must file and receive approval of the necessary registration, application forms and attachments that relate to the proposed alternate use. Depending on the type of alternation involved, the proprietor must file one or more of the following qualification documents:

(1) *Registration.* For all alternate uses of the distilled spirits plant described in paragraph (a) of this section the proprietor must file a form TTB F 5110.41, Registration of a Distilled Spirits Plant, to cover the proposed alternation of premises.

(2) *Diagram.* For all alternate uses, the proprietor must provide a special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment that are to be subject to alternation, in their relative operating sequence.

(3) *Bond.* For all alternate uses, the proprietor must provide evidence of an existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(4) *Bonded wine cellar or taxpaid wine bottling house.* If the proprietor

intends to alternate the premises or part of the premises as a bonded wine cellar or taxpaid wine bottling house the proprietor must also file form TTB F 5120.25, Application to Establish and Operate Wine Premises.

(5) *Brewery.* If the proprietor intends to alternate the premises or part of the premises for a brewery operation the proprietor must file form TTB F 5130.10, Brewer's Notice.

(c) *Separation of premises.* The proprietor must separate the distilled spirits plant premises from the alternate use premises in accordance with the approved plan of alternation described in the qualifying documents.

(d) *Segregation of products.* When the proprietor alternates premises, the proprietor must segregate products as follows:

(1) *Wine operations.*

(i) Prior to alternation from distilled spirits plant premises to wine premises, the proprietor must remove all distilled spirits, denatured spirits, articles, and wine from the distilled spirits plant premises that will be alternated. However, the proprietor may keep spirits on the premises if they are being withdrawn for use in wine production under § 19.419, or for use in the production of nonbeverage wine or wine products under § 19.421. Further, the proprietor may keep wine on the premises if it is to be transferred in bond under § 19.402(b)(2).

(ii) Prior to alternation from wine premises to distilled spirits plant premises, the proprietor must remove all wine and spirits from the wine premises that will be alternated. However, the proprietor may keep wine on the premises if it is being transferred in bond under § 19.402(b)(1). Further, the proprietor may keep spirits on the premises if they are being returned from bonded wine cellar premises to distilled spirits plant bonded premises under § 19.454.

(2) *Brewery.* Prior to alternation from distilled spirits plant premises to operation of a brewery the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated to brewery premises. Prior to alternation of brewery premises to distilled spirits plant premises, the proprietor must remove all beer from the premises except beer that is being received for production of distilled spirits as provided in § 19.296.

(3) *General premises.* Prior to alternation between bonded and general premises, the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated. However, the proprietor may keep bonded spirits on portions of bonded

premises to be alternated to general premises if the spirits are taxpaid concurrently with the alternation. Also, the proprietor may keep taxpaid spirits on general premises that will be alternated to bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart Q of this part.

(4) *Manufacture of nonbeverage products.* Prior to alternation of the distilled spirits plant premises for use in the manufacture of eligible flavors, the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated. However, the proprietor may keep spirits on portions of the premises to be curtailed if the proprietor pays the tax concurrent with the alternation. Further, the proprietor may keep taxpaid spirits that have not been used in the manufacture of a nonbeverage product on parts of the premises to be included in the extension of the bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart Q of this part.

(e) *Records.* The proprietor must prepare the record of alternating premises prescribed by § 19.627 each time that the proprietor alternates premises.

(26 U.S.C. 5172, 5178)

§ 19.144 Alternation of distilled spirits plant and volatile fruit-flavor concentrate plant premises.

The proprietor may temporarily extend or curtail the distilled spirits plant premises for alternate use with the premises of a contiguous volatile fruit-flavor concentrate plant. If a proprietor wishes to use all or a portion of the premises alternately as a volatile fruit-flavor concentrate plant or vice-a-versa, the proprietor must comply with the requirements of §§ 18.39 and 18.41 through 18.43 of this title.

(26 U.S.C. 5172, 5178)

Discontinuance of Operations

§ 19.147 Notice of discontinuance of operations.

If the proprietor plans to permanently discontinue one or more of the operations listed on the notice of registration filed under subpart D of this part, the proprietor must notify the appropriate TTB officer by filing form TTB F 5110.41, Registration of Distilled Spirits Plant, to show discontinuance of operations. The proprietor must submit the following with form TTB F 5110.41:

(a) The permit covering each discontinued operation;

(b) A written request for cancellation of the permit(s);

(c) A written statement indicating whether or not—

(1) The proprietor has lawfully disposed of all spirits, denatured spirits, articles, wines, liquor bottles, and other pertinent items;

(2) There are any spirits, denatured spirits, wines, or liquor bottles in transit to the premises; and

(3) The proprietor has secured and returned to the appropriate TTB officer for cancellation all approved applications for transfer of spirits and denatured spirits to the premises; and

(d) A monthly operations report, as provided for under § 19.632, for each discontinued operation, with each report marked “Final Report”.

(26 U.S.C. 5172, 5271)

Subpart F—Bonds and Consents of Surety

Bonding Requirements for a DSP

§ 19.151 General.

(a) *Bond required.* Any person who plans to establish and operate a distilled spirits plant must provide TTB with one or more bonds on form TTB F 5110.56, Distilled Spirits Bond. TTB will not approve a registration or allow a person to operate a distilled spirits plant until the applicant has provided the necessary bonds. If a proprietor fails to pay any liability covered by the bond, TTB may seek payment from the proprietor, from the surety (see § 19.153) or from both the proprietor and the surety. The types and penal sums of bonds required will depend upon the type and size of the operations that the proprietor will conduct.

(b) *Bond terms and conditions.* The terms and conditions of a distilled spirits bond require that the proprietor comply with all provisions of law and regulations relating to activities covered by the bond, and to pay all taxes imposed by 26 U.S.C. Chapter 51, including taxes on unexplained shortages of bottled distilled spirits. The bond will further specify that the proprietor will pay all penalties incurred, or fines imposed, for violations of law and regulations relating to activities covered by the bond. The specific terms of the required bond(s) are stated on form TTB F 5110.56.

(c) *Corporations and controlled subsidiaries.* For purposes of this subpart, the term “corporation” includes a Limited Liability Company (LLC) in any jurisdiction where the law authorizes such a business organization to operate. Whenever used in this subpart, the term “controlled subsidiary” means a corporation (or

LLC) in which more than 50 percent of the voting power is controlled by a parent corporation.

(26 U.S.C. 5173, 5551)

§ 19.152 Types of bonds.

(a) *Basic Bonds.* There are two basic types of bonds: the operations bond, and the withdrawal bond.

(1) *Operations bond.* An operations bond covers the tax liability for a variety of operations at a distilled spirits plant, along with any penalties incurred and fines imposed for violation of the law and regulations relating to activities covered by the bond.

(2) *Withdrawal bond.* A withdrawal bond covers the tax liability for tax determined distilled spirits withdrawn from the bonded premises on a tax deferred basis.

(b) *Other bonds.* In addition to the basic operations and withdrawal bonds, several variations of these bonds are available:

(1) An adjacent wine cellar bond covers operations at a distilled spirits plant and an adjacent bonded wine cellar;

(2) An area bond covers operations at two or more distilled spirits plant and any adjacent bonded wine cellars; and

(3) A unit bond covers both operations and withdrawals at one or more distilled spirits plants and operations at any adjacent bonded wine cellars.

(26 U.S.C. 5173)

§ 19.153 Bond guaranteed by a corporate surety.

(a) *Corporate surety.* A company that issues bonds is called a “corporate surety.” Proprietors must obtain the surety bonds required by this subpart from a corporate surety approved by the Secretary of the Treasury.

(b) *How to find an approved surety.* The Department of the Treasury publishes a list of approved corporate surety companies in Treasury Department Circular No. 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies”. Circular 570 is published annually in the **Federal Register**. The most current edition of the circular is posted at the website of the Financial Management Service, Department of the Treasury at <http://www.fms.treas.gov/c570>. Printed copies of Circular 570 are available for purchase from the Government Printing Office.

(31 U.S.C. 9304, 9306)

§ 19.154 Bond guaranteed by deposit of securities.

(a) *General.* As an alternative to the corporate surety bond under § 19.153, a person can file a bond that guarantees payment of the liability by pledging one or more acceptable negotiable securities. These securities must have a par value (face amount) equal to or greater than the penal sums of the required bonds. The pledged securities are held in the Federal Reserve Bank in a safekeeping account with TTB as the pledgee. Should the proprietor fail to pay one or more of the guaranteed liabilities, TTB can take action to sell the deposited securities to satisfy the debt. Pledged securities will be released if there are no outstanding liabilities when the bond is terminated. (See § 19.170.)

(b) *Acceptable securities.* Only public debt obligations of the United States, the principal and interest of which are unconditionally guaranteed by the United States Government, are acceptable for the purpose described in paragraph (a) of this section. The Department of the Treasury and certain other United States Government agencies issue debt instruments that are acceptable as collateral, such as Treasury notes and Treasury bills. Savings bonds, certificates of deposit and letters of credit are not acceptable. A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Public Debt, Office of the Commissioner, Government Securities Regulations Staff. Current information and guidance from the Bureau of the Public Debt may be found at <http://www.publicdebt.treas.gov>.

(31 U.S.C. 9301, 9303)
(31 CFR Part 380)

§ 19.155 Change of surety bond terms-consent of surety.

In order to change the terms of an approved bond, both the principal and the surety company that guaranteed bond must agree to the change. TTB must also approve the change. All changes to the terms of a bond must be executed on form TTB F 5000.18, Change of Bond (Consent of Surety) by both the principal and the surety with the same formality and proof of authority as required for the original bond. The completed, executed form TTB F 5000.18 must be submitted to the National Revenue Center.

(26 U.S.C. 5173)

§ 19.156 Power of attorney for surety.

(a) *Requirement for power of attorney.* Every bond and every consent of surety filed with TTB in which an agent or officer executed the bond or consent on

behalf of the surety must be supported by a power of attorney authorizing the agent or officer to execute the bond or consent of surety. The power of attorney assures TTB that the person who signed the bond on behalf of the surety has the legal authority to obligate the surety.

(b) *Form of power of attorney and endorsement.* A power of attorney will be prepared on the surety's own form, and must be executed under the surety's corporate seal. If the power of attorney submitted is other than a manually signed original, it must be accompanied by a certification from the surety that the power of attorney is valid.

(c) *Additional documentation.* The appropriate TTB officer authorized to approve and accept the bond may require additional evidence of the authenticity of signatures and the authority of persons signing on behalf of the surety to execute the bond or consent.

(31 U.S.C. 9304, 9306)

§ 19.157 Disapproval of bonds and consents of surety.

(a) *Grounds for disapproval.* The appropriate TTB officer may disapprove any bond or consent of surety required by this part if the principal or any person having ownership, control or responsibility for actively managing the business has been previously convicted, in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of any law of the United States relating to internal revenue or customs taxation of spirits, wines, or beer, or if the offense was compromised by payment of penalties or otherwise, or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal.* If the appropriate TTB officer disapproves a bond or consent of surety, the person giving the bond may appeal the disapproval to the Administrator, who will hear the appeal. The decision of the Administrator will be final.

(26 U.S.C. 5551)

Requirements for Operations and Withdrawal Bonds**§ 19.161 Operations bond.**

(a) *General.* Any person who intends to establish a distilled spirits plant must furnish an operations bond (or a unit bond, see § 19.165) covering distilled spirits operations at such plant on TTB Form 5110.56 with the original

application to register the distilled spirits plant.

(b) *Approval of bond.* The appropriate TTB officer may require a statement, executed under the penalty of perjury, as to whether the principal, or any person owning, controlling, or managing the business has been convicted of, or has compromised any offense listed in § 19.157(a)(1), or has been convicted of any offense listed in § 19.157(a)(2). If the above statement contains an affirmative answer, the applicant must provide an additional detailed statement describing the circumstances surrounding each conviction or compromise. The appropriate TTB officer will decide whether to approve or disapprove the bond.

(26 U.S.C. 5173, 5551)

§ 19.162 Operations bond for distilled spirits plant and adjacent bonded wine cellar.

(a) *One bond satisfying two requirements.* A proprietor who operates a bonded wine cellar that is adjacent to the proprietor's distilled spirits plant, may file a single operations bond to cover the operations of the distilled spirits plant and the bonded wine cellar. A proprietor who files this type of bond satisfies the requirement in 26 U.S.C. 5173 for an operations bond covering the distilled spirits plant and the requirement in 26 U.S.C. 5354 for a bond covering wine and spirits possessed at, and in transit to, the bonded wine cellar. (The proprietor may still have to obtain a supplemental bond for the wine cellar to cover liabilities resulting from deferred payment of tax. See the second sentence of 26 U.S.C. 5354.)

(b) *One bond combining terms and coverage of separate bonds.* An operations bond filed under paragraph (a) of this section must contain the same terms and conditions that would be in separate bonds for the distilled spirits plant and for the bonded wine cellar. The proprietor may not allocate or divide the penal sum between the distilled spirits plant and the bonded wine cellar. The total amount of the bond must be available to satisfy any liability incurred under the terms of the bond at either facility.

(c) *Persons qualified for a single bond.* A proprietor may choose to file a single operations bond for a distilled spirits plant and adjacent bonded wine cellar only if:

(1) Such distilled spirits plant is qualified under subpart D of this part for the production of distilled spirits; and

(2) Such wine cellar and distilled spirits plant are operated by the same person (or in the case of a corporation,

by such corporation and its controlled subsidiaries).

(26 U.S.C. 5173, 5351, 5354)

§ 19.163 Area operations bond.

(a) *Area operations bond covering multiple locations.* A person who operates more than one distilled spirits plant within the geographical area serviced by the National Revenue Center, may submit to TTB an area operations bond covering the operations of any two or more such plants and any bonded wine cellars that are adjacent to such plants and which otherwise could be covered by an operations bond. Area operations bonds filed under this section will be in lieu of the operations bond requirements for single distilled spirits plants under §§ 19.161 and 19.166 and must contain the same terms and conditions as those contained in separate bonds filed for single distilled spirits plants. Any person who files an area operations bond may not allocate or divide the penal sum of the area operations bond between the separate locations and the total penal sum of the bond must be available to satisfy liability incurred at any of the covered locations.

(b) *Area operations bonds filed by corporations.* An area operations bond may only cover distilled spirits plants and adjacent bonded wine cellars that are operated by the same person. For purposes of this section, a corporation and its controlled subsidiaries are considered to be one person. Further, a controlled subsidiary is a corporation in which more than 50 percent of the voting power is controlled by the parent corporation. Consequently, an area operations bond may cover distilled spirits plants and adjacent bonded wine cellars operated by a parent corporation and one or more of its controlled subsidiaries. The name of each corporation that operates a covered facility must appear on the bond as a principal, whether the operating corporation is the parent or a subsidiary. The bond must bear an authorized signature for each operating corporation appearing on the bond.

(26 U.S.C. 5173)

§ 19.164 Withdrawal bond.

(a) *Requirement for a withdrawal bond.* If a person intends to withdraw spirits from a distilled spirits plant upon determination of the taxes due on the spirits but before payment of the tax,

the person must provide TTB with a withdrawal bond for the distilled spirits plant. The withdrawal bond must guarantee payment of any taxes due on distilled spirits withdrawn from bonded premises up to the amount of the bond. Such bond will be in addition to the operations bond, and if the distilled spirits are withdrawn under the withdrawal bond, the operations bond will no longer cover liability for payment of the tax on the spirits withdrawn. For purposes of this section, a person includes a corporation, together with all of its controlled subsidiaries, and a controlled subsidiary has the same meaning as in § 19.163(b).

(b) *One bond covering multiple plants.* A person who operates more than one distilled spirits plant within the geographical area serviced by the National Revenue Center, may submit to TTB a single withdrawal bond that covers withdrawals from all such distilled spirits plants within that geographic area.

(c) *Penal sum of bonds—(1) Penal sum of a bond covering a single plant.* A person who files a withdrawal bond for a single plant must compute the penal sum of such bond in accordance with § 19.166. If the penal sum of such bond is less than the maximum amount, withdrawals from the plant may not exceed the penal sum.

(2) *Penal sum of bond covering multiple plants.* A person who files one withdrawal bond to cover two or more distilled spirits plants must compute the required penal sum for each plant individually in accordance with § 19.166. The penal sum of the withdrawal bond must be equal to, or greater than, the total of the minimum amounts required for the individual plants. The bond must show the amount of coverage allocated to each individual plant as well as the total penal sum for all plants. If the portion of the penal sum allocated to a particular plant is less than the maximum amount prescribed in § 19.166 for a single plant, withdrawals from that plant must not exceed the amount of the penal sum allocated to that plant. The allocation of the penal sum notwithstanding, the entire penal sum of the bond must be available to satisfy all liability for tax on withdrawals from any and all of the covered plants.

(26 U.S.C. 5173)

§ 19.165 Unit bonds.

(a) *Unit bond covering operations and withdrawals.* If a person is otherwise required to file bonds for both operations at one or more distilled spirits plants and withdrawals from one or more distilled spirits plants, the person may instead submit a single unit bond that provides all of the guarantees that would otherwise be provided by separate operations and withdrawal bonds. The unit bond may also provide coverage for operations at adjacent bonded wine cellars.

For purposes of this section, a person includes a corporation, together with all of its controlled subsidiaries, and a controlled subsidiary has the same meaning as in § 19.163(b).

(b) *Required penal sum—(1) General.* A person must determine the penal sum for the unit bond by separately calculating in accordance with § 19.166, and then totaling, the amounts needed to cover operations and withdrawals at each individual plant covered by the bond. The penal sum for the unit bond must not be less than the sum of the minimum penal sums that would be required if each of the plants had its own bond.

(2) *Allocation between operations and withdrawals.* A unit bond must show separately the amount of coverage provided for operations (including operations at each adjacent bonded wine cellar if applicable) and for withdrawals at each distilled spirits plant covered by the bond.

(3) *Tax liability must not exceed allocated penal sum.* If the amount of the penal sum allocated to operations at, or withdrawals from, a particular plant is less than the maximum amount prescribed in § 19.166 for a single plant, the tax liability for operations at, or withdrawals from, that plant must not exceed that allocated amount.

(4) *Total penal sum available for each plant.* Even when the penal sum of a unit bond is allocated among multiple plants, the bond must provide that the total penal amount of the bond will be available to satisfy any liability incurred under the terms and conditions of the bond at any plant covered by the bond.

(26 U.S.C. 5173)

§ 19.166 Required penal sums.

A person must determine the penal sums for the various bonds required by this subpart according to the following table:

(a) Operations bond for a single plant operating as a:	Required penal sum represents:	The penal sum must be:	
		not less than—	and need not be more than—
(1) Distiller	The amount of tax on spirits produced during a 15-day period.	\$5,000	\$100,000
(2) Warehouseman, in general.	The amount of tax on spirits and wines deposited in, stored on, and in transit to, the bonded premises.	5,000	200,000
(3) Warehouseman limited to storage of spirits in packages to a total of not over 50,000 proof gallons.	The amount of tax on spirits and wines deposited in, stored on, and in transit to, the bonded premises.	5,000	50,000
(4) Distiller and warehouseman.	The amount of tax on spirits produced during a period of 15 days, plus the tax on spirits and wines deposited in, stored on, and in transit to the bonded premises.	10,000	200,000
(5) Distiller and processor ...	The amount of tax on spirits produced during a 15-day period, plus the amount of tax on spirits, denatured spirits, articles and wines deposited in, or stored on, and in transit to the bonded premises.	10,000	200,000
(6) Warehouseman and processor in general.	The amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to, the bonded premises.	10,000	250,000
(7) Warehouseman and processor, limited to storage of spirits or denatured spirits in packages to a total of not over 50,000 proof gallons, and processing of spirits or denatured spirits so stored.	The amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to, the bonded premises.	10,000	50,000
(8) Distiller, warehouseman and processor.	The amount of tax on spirits produced during a 15-day period, plus the amount of tax on spirits, denatured spirits, articles and wines deposited in, stored on, and in transit to, the bonded premises.	15,000	250,000
(9) Distiller with adjacent bonded wine cellar.	The amount required for a distiller (see (a) 1. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	6,000	150,000
(10) Distiller and warehouseman with adjacent bonded wine cellar.	The amount required for a distiller & warehouseman (see (a) 4. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	11,000	250,000
(11) Distiller and processor with adjacent bonded wine cellar.	The amount required for a distiller & processor (see (a) 5. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	11,000	250,000
(12) Distiller, warehouseman and processor with adjacent bonded wine cellar.	The amount required for a distiller-warehouseman-processor (see (a) 8. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	16,000	300,000
(b) Area operations bond for two or more plants whose combined required penal sums under paragraph (a) of this section:		Required penal sum is:	But need not be more than:
(1) Do not exceed \$300,000		100%	\$300,000
(2) Exceed \$300,000 but do not exceed \$600,000		\$300,000 plus 70% of the amount over \$300,000.	\$510,000
(3) Exceed \$600,000 but do not exceed \$1,000,000		\$510,000 plus 50% of the amount over \$600,000.	\$710,000
(4) Exceed \$1,000,000 but do not exceed \$2,000,000		\$710,000 plus 35% of the amount over \$1,000,000.	\$1,060,000
(5) Exceeds \$2,000,000.		\$1,060,000 plus 25% of the amount over \$2,000,000.	
(c) Withdrawal bond for:	Required penal sum represents:	The penal sum must be	
		not less than—	and need not be more than—
(1) One distilled spirits plant	The amount of tax which, at any one time, is chargeable against such bond, but has not yet been paid..	\$1,000	\$1,000,000

(c) Withdrawal bond for:	Required penal sum represents:	The penal sum must be	
		not less than—	and need not be more than—
(2) Two or more distilled spirits plants.	Sum of the penal sums for each plant calculated in (c)1 of this section.	(\$1,000) x (number of plants)	(Number of plants) x \$1,000,000

(d) Unit bond for:	Required penal sum represents:	The penal sum must be:	
		not less than—	and need not be more than—
(1) Operations at one distilled spirits plant (including any adjacent bonded wine cellar), and withdrawals from the bonded premises of the same plant.	An amount equal to the sum of the required penal sums of an operations bond and a withdrawal bond for the plant, if such bonds were obtained separately. (See (a) and (c)1 in this table.)	\$6,000	\$1,300,000
(2) Operations at two or more distilled spirits plants (including any adjacent bonded wine cellars), and withdrawals from the bonded premises of the same plants.	An amount equal to the sum of the penal sums of an area operations bond and withdrawal bonds needed for all of the covered plants, if such bonds were obtained separately. [Total penal sums of (b) and (c)(2) in this table.]	Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.	Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(26 U.S.C. 5173)

§ 19.167 Increase of bond coverage.

(a) *When required.* If the penal sum of a bond is less than the maximum amount specified by § 19.166, and liabilities increase to the point where they exceed the bond coverage, the proprietor must increase the amount of the bond to cover the increased liability. The proprietor must increase the bond coverage either by replacing the existing bond with a new, larger bond that covers the entire liability, or by supplementing the existing bond with a separate strengthening bond in accordance with paragraph (b) of this section.

(b) *Strengthening bonds.* A strengthening bond is a second bond with the same surety as on the original bond which covers the increased liability. A strengthening bond must show both its execution date and its effective date. TTB will not accept a strengthening bond if it contains any term or condition that is a release, or could be interpreted as a release, from liability under any former bond, or that limits the liability of any bond to less than its full penal sum.

(26 U.S.C. 5173)

§ 19.168 Superseding bonds.

(a) *General.* In any of the circumstances outlined in paragraphs (b) through (d) of this section, the proprietor must replace an existing bond with a new bond. A new bond that replaces another bond is called a superseding bond.

(b) *Surety company no longer acceptable.* The proprietor must file a superseding bond if the surety on the proprietor's current bond becomes insolvent or if the surety is removed from the list of approved sureties in Treasury Circular 570. TTB may also require the filing of a superseding bond if any other contingency affecting the validity or efficiency of the bond arises.

(c) *Change of control.* An executor, administrator, assignee, receiver, trustee, or other person acting in a fiduciary capacity, continuing or liquidating the business of the principal on a bond, must either provide TTB with a superseding bond, or obtain consent from the surety on each existing bond when assuming control of the business.

(d) *Termination of bond by surety.* If the surety applies to terminate a bond under § 19.171, and the proprietor wishes to continue the activity covered by the bond, the proprietor must file a superseding bond that becomes effective on or before the termination date of the existing bond. The superseding bond must show both its execution date and its effective date.

(26 U.S.C. 5173, 5175, 5176, 5551)

§ 19.169 Effect of failure to furnish a superseding bond.

(a) *Operations bond.* A person may not operate a distilled spirits plant without an operations bond. If a person does not submit an acceptable superseding operations bond when required to do so under § 19.168, the person must immediately discontinue

the activities to which the lapsed bond coverage relates upon lapse of the existing bond coverage.

(b) *Withdrawal bond.* A person who does not submit an acceptable superseding withdrawal bond when required to do so under § 19.168 may not withdraw distilled spirits from the bonded premises on a deferred basis. Upon lapse of the existing bond coverage the person must pay the tax at the time of withdrawal, except in the case of distilled spirits withdrawn free of tax or withdrawn without payment of tax under 26 U.S.C. 5214 or withdrawn exempt from tax under 26 U.S.C. 7510.

(c) *Unit bond.* A person who does not provide an acceptable superseding unit bond when required to do so under § 19.168 must immediately discontinue the business or distilled spirits operations to which the lapsed bond coverage relates. Upon lapse of the existing bond coverage the person must also pay the tax at the time of withdrawal, except in the case of distilled spirits withdrawn free of tax or withdrawn without payment of tax under 26 U.S.C. 5214 or withdrawn exempt from tax under 26 U.S.C. 7510.

(26 U.S.C. 5173, 5175, 5176)

§ 19.170 Termination of bonds.

Liability under operations bonds, withdrawal bonds, and unit bonds may be terminated for future withdrawals, future production, or future deposits as set forth below:

(a) *On application by the surety.* A surety may terminate a bond by filing a notice as provided in § 19.171;

(b) *By replacement of the bond.* A principal may terminate an existing bond by replacing it with a superseding bond approved by TTB;

(c) *By discontinuing withdrawals.* A principal may terminate a withdrawal bond by notifying TTB that the principal has stopped making withdrawals covered by the bond, if the bond was filed solely as a withdrawal bond; or

(d) *By discontinuing the business.* A principal may terminate a bond by notifying TTB that the principal has discontinued business.

(26 U.S.C. 5173)

§ 19.171 Surety notice of relief from bond liability.

(a) *Notice to principal.* A surety on a bond may, at any time, notify the principal in writing that the surety desires to be relieved of liability under the bond.

(b) *Notice to TTB.* A surety on a bond may, at any time, notify the appropriate TTB officer in writing that the surety desires to be relieved of liability under the bond. The notice must specify the date after which the surety desires to be relieved of liability. In the case of a withdrawal bond, the date specified in the notice must be at least ten days after the notice is received by the appropriate TTB officer. In the case of an operations bond or unit bond, the date specified in the notice must be at least 90 days after the notice is received by the appropriate TTB officer. When a surety files a termination notice with TTB, the surety must include either an acknowledgement from the principal that the principal is aware that the surety is terminating the bond or proof that the surety has served the principal with notice of its intent to terminate the bond.

(c) *Effect of notice.* The bond coverage will end as of close of business on the date specified in the notice, provided the surety timely filed a proper and complete termination notice, and the surety does not withdraw its termination notice in writing prior to the termination date. The surety will be released from future liability under the bond to the extent set forth in § 19.172.

(26 U.S.C. 5173, 5175, 5176)

§ 19.172 Relief of surety from bond liability.

A surety who has provided proper notice under § 19.171 will be relieved from liability under the bond in question as set forth below:

(a) *Operations or unit bond.* When a superseding bond is submitted, the surety will be relieved of future liability related to production and deposits that

take place after the effective date of the superseding bond. However, the surety remains liable for the tax on all distilled spirits or wines produced, or for other liabilities incurred, during the term of the bond. Further, if a superseding bond is not submitted, the surety will remain liable under the bond for all spirits or wines that are on hand or in transit to the bonded premises or bonded wine cellar on the date specified in the notice. The liability of the surety will continue until all such spirits or wines have been lawfully disposed of, or until a new bond has been submitted by the principal covering the spirits or wine.

(b) *Withdrawal or unit bonds.* The surety will be relieved from liability for withdrawals made after the date specified in the notice, or upon the effective date of a new bond if one is given.

(26 U.S.C. 5173, 5176)

§ 19.173 Release of pledged securities.

Securities that are pledged and deposited with TTB under § 19.154 will only be released by TTB in accordance with the provisions of 31 CFR Part 225. The appropriate TTB officer will not release pledged securities prior to termination of the liability under the bond for which they were pledged. When the appropriate TTB officer is satisfied that the pledged securities may be released, the official will set a date or dates on which a part or all of the securities may be released. At any time prior to the release of the securities, the appropriate TTB officer may extend the date of release for any additional length of time deemed necessary.

(31 U.S.C. 9301, 9303)

Subpart G—Construction, Equipment, and Security Requirements

§ 19.181 General.

The proprietor of a distilled spirits plant must apply certain construction, equipment, and security standards at the plant. These standards are intended to ensure the protection of untaxed spirits at the plant and to ensure proper measurement and accountability for products on bonded premises. This subpart prescribes those standards.

(26 U.S.C. 5178)

Tank Requirements

§ 19.182 Tanks—general requirements.

The proprietor of a distilled spirits plant must ensure that all tanks on the premises used to hold spirits, denatured spirits, or wines are:

(a) Used for the purpose listed on the application and plant registration;

(b) Equipped with accurate means for measuring their contents. If the means for measurement is not a permanent fixture on the tank, the proprietor must equip the tank with a fixed device for measuring the contents. However, tanks having a capacity of less than 101 gallons are not required to have permanent gauge devices;

(c) Accurately calibrated if used for any of the gauges described in this part. Further, if tanks or their gauging devices are moved in any manner subsequent to original calibration, the tanks shall not be used until recalibrated;

(d) Accessible through walkways, landings, and stairs that permit access to all parts of the tank;

(e) Equipped or situated so that they may be locked or secured; and

(f) Constructed to prevent access to the spirits or wines through vents, flame arresters or other safety devices.

(26 U.S.C. 5006, 5204, 5505)

§ 19.183 Scale tanks.

(a) Except as otherwise provided in paragraph (b) of this section, if the proprietor uses a tank to determine the distilled spirits tax imposed by 26 U.S.C. 5001, the tank must be mounted on scales and the contents of the tank must be determined by weight. The scale tank also must be equipped with a suitable device so that the volume of the contents can be quickly and accurately determined.

(b) The requirement to mount tanks on scales does not apply to tanks having a capacity of 55 gallons or less. Such tanks may be moved onto an accurately calibrated scale when a tax determination gauge needs to be made.

(26 U.S.C. 5006, 5204, 5505)

§ 19.184 Scale tank minimum graduations.

(a) The beams or dials on scale tanks used for tax determination must have minimum graduations not greater than the following:

Quantity to be weighed (pounds)	Minimum graduation (pounds)
Not exceeding 2,000	1/2
Between 2,000 and 6,000	1
Between 6,000 and 20,000	2
Between 20,000 and 50,000	5
Over 50,000	10

(b) For scales having a capacity greater than 2,000 pounds, the minimum quantity which may be entered onto the weighing tank scale for gauging for tax determination will be the greater of:

(1) 1,000 times the minimum graduation of the scale, or

(2) 5 percent of the total capacity of the weighing tank scale.

(c) The weighing of lesser quantities for determination of tax may be authorized by the appropriate TTB officer where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales are accurate at each graduation.

(d) Lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(26 U.S.C. 5006, 5204, 5505)

§ 19.185 Testing scale tanks for accuracy.

(a) A proprietor who uses a scale tank for tax determination must ensure the accuracy of the scale through periodic testing. Testing of the scale must be conducted at least every 6 months and whenever the scale is adjusted or repaired.

(b) A proprietor also must test, at least once a month, the gallonage represented to be in a scale tank against the gallonage indicated by volumetric determination of the contents of the tank. However, if the scale is not used during a month, it is only necessary to verify against the volumetric determination when the scale is next used. The proprietor must make the volumetric determination in accordance part 30 of this chapter. If the variation exceeds .5 percent of the quantity shown in the tank, the proprietor must take appropriate action to verify the accuracy of the scale.

(c) If the appropriate TTB officer determines that a scale may be inaccurate, the proprietor must test the accuracy of the scale.

(26 U.S.C. 5006, 5204, 5505)

Package Scale and Pipeline Requirements

§ 19.186 Package scales.

Proprietors must ensure that scales used to weigh packages are tested at least every 6 months and whenever they are adjusted or repaired. However, if a scale is not used during a 6-month period, it is only necessary to test the scale prior to its next use. Scales used to weigh packages that hold 10 wine gallons or less must indicate weight in ounces or hundredths of a pound.

(26 U.S.C. 5204)

§ 19.187 Pipelines.

All pipelines, including flexible hoses, that are used to transfer spirits, denatured spirits, articles, and wines must be constructed, arranged, and secured so as to ensure protection of the revenue and permit ready examination. The appropriate TTB officer may

approve pipelines that cannot be readily examined if they pose no jeopardy to the revenue.

(26 U.S.C. 5178)

Measuring and Proofing Equipment Requirements

§ 19.188 Measuring devices and proofing instruments.

(a) *General.* A proprietor of a distilled spirits plant must have accurate instruments and equipment at the plant for determining the proof and volume of spirits.

(b) *Instruments.* The hydrometers and thermometers that a proprietor uses to gauge spirits must show subdivisions or graduations of proof and temperature as specified in part 30 of this chapter. Proprietors must frequently test their hydrometers and thermometers to ensure their accuracy. If an instrument appears to be in error, the proprietor may not use the instrument until it is tested and certified as accurate by the manufacturer or another qualified person.

(c) *Meters.* A proprietor may use an accurate mass flow meter to measure the volume of bulk spirits. A mass flow meter used for tax determination of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $+ - 0.1\%$. A mass flow meter used for all other required gauges of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $+ - 0.5\%$. The proprietor must make corrections for the temperature of the spirits being measured in conjunction with the volumetric measurement of spirits by mass flow meter. The proprietor must also test mass flow meters at least every 6 months to ensure that they are accurate within the required tolerances.

(26 U.S.C. 5204)

Other Plant Requirements

§ 19.189 Identification of structures, areas, apparatus, and equipment.

(a) *Buildings.* The proprietor must mark each building at a distilled spirits plant where spirits, denatured spirits, articles, wine, or distilling or fermenting materials are kept with a distinguishing number or letter.

(b) *Tanks.* The proprietor must mark each tank or receptacle for spirits, denatured spirits, or wine to show a unique serial number and capacity.

(c) *Stills.* The proprietor must number and mark to show the use of each still, fermenter, cooker, and yeast tank.

(d) *Other major equipment.* The proprietor must identify the use of all other major equipment used for

processing or containing spirits, denatured spirits, wine, distilling or fermenting material, and all other tanks, unless the intended purpose is readily apparent.

(26 U.S.C. 5178)

§ 19.190 Office facilities for TTB use.

(a) When required by the appropriate TTB officer, the proprietor must provide a secure cabinet equipped for locking for use by TTB.

(b) If one or more TTB officers are assigned to a distilled spirits plant to supervise operations on a continuing basis, the proprietor must provide a suitable office at the plant for the exclusive use of the TTB officers in performing their duties. The appropriate TTB officer will determine if the office facilities are suitable.

(26 U.S.C. 5178)

§ 19.191 Signs.

The proprietor must place and keep a conspicuous sign on the outside of the place of business showing the name of the proprietor and the business, or businesses, in which engaged.

(26 U.S.C. 5180)

§ 19.192 Security.

(a) *General.* The proprietor of a distilled spirits plant must provide adequate security measures at the plant in order to protect the revenue.

(b) *Buildings.* The buildings, rooms, and partitions must be constructed of substantial materials. Doors, windows, or any other openings to the building must be secured or fastened during times when distilled spirits plant operations are not being conducted.

(c) *Outdoor tanks.* Outdoor tanks containing spirits, denatured spirits, or wine must be individually locked or locked within an enclosure when they are not in use.

(d) *Indoor tanks.* Indoor tanks containing spirits, denatured spirits, or wines, or the rooms or buildings in which such tanks are housed, must be equipped so that they may be secured.

(e) *Approved locks.* Locks meeting the specifications prescribed in paragraph (f) of this section must be used to secure:

(1) Outdoor tanks used to store spirits, or an enclosure around such tanks;

(2) Indoor tanks used to store spirits, or the door from which access may be gained from the outside to the rooms or buildings in which such tanks are housed; and

(3) Any doors from which access may be gained from the outside to rooms or buildings containing spirits stored in portable bulk containers.

(f) *Specifications for locks.* Locks meeting the specifications in this section or other locks that have been approved for use by the appropriate TTB officer are approved locks for the purpose of 26 U.S.C. 5682.

(1) *General.* The following are the specifications for approved locks:

- (i) A corresponding serial number on the lock and on the key, except for master key locking systems;
- (ii) A case hardened shackle at least one-fourth inch in diameter, with heel and toe locking;
- (iii) A body width of at least 2 inches;
- (iv) A captured key feature (the key may not be removed while the shackle is unlocked);
- (v) A tumbler with at least 5 pins; and
- (vi) A lock and key containing no biting data.

(2) *Other approved locks.* If the proprietor wishes to use locks of an unusual design, which do not meet the specifications in paragraph (f)(1) of this section, the proprietor must submit an example or prototype of the lock to the appropriate TTB officer, with a request that the lock be approved for use. The appropriate TTB officer will evaluate the lock and determine whether the lock should be approved for use.

(3) *Master key systems.* Master key locking systems using approved locks may be used at the option of the proprietor.

(g) *Additional security.* Whenever the appropriate TTB officer finds that the construction, arrangement, equipment, or protection is inadequate, additional security (such as fences, flood lights, alarm systems, and guard services) must be provided or changes in construction, arrangement, or equipment must be made to the extent necessary to protect the revenue.

(26 U.S.C. 5178, 5202, 5682)

§ 19.193 Breaking Government locks.

TTB may assign TTB officers to a distilled spirits plant and utilize controls, such as Government locks, if TTB determines that such measures are necessary to effectively supervise operations at the plant. The proprietor may not remove such Government locks without the authorization of the appropriate TTB officer, except when a person or property is in imminent danger from a disaster or other emergency. If the proprietor must remove Government locks under such circumstances, the proprietor must ensure that security measures are taken to prevent illegal removal of spirits. In addition, the proprietor must notify the appropriate TTB officer as soon as possible of the action taken and within 5 days of removing the locks submit a

written report describing the emergency and the action taken.

(26 U.S.C. 5202)

Subpart H—Special (Occupational) Tax

§ 19.201 Liability for special (occupational) tax.

(a) *General liability for tax.* Special tax is an occupational tax imposed by the IRC, and TTB is responsible for collecting this tax. A proprietor of a distilled spirits plant must file a special tax return and pay a special (occupational) tax at the rate specified in § 19.202. The proprietor must pay this tax on or before the date of commencing business as a distilled spirits plant, and thereafter every year on or before July 1. When a proprietor first commences business, the tax liability will be computed from the first day of the month in which the business starts through the following June 30. Thereafter, the tax must be computed for the entire year (July 1 through June 30).

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax referred to in paragraph (a) of this section is zero. However, the proprietor must still register by filing the special tax return on form TTB F 5630.5 during this suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before the proprietor commences business and on or before July 1 of each year thereafter.

(26 U.S.C. 5081, 5142, 5143)

§ 19.202 Special (occupational) tax rates.

During the period from July 1, 2005, through June 30, 2008, the rate of the tax is zero. At all other times, there are two rates of special tax for distilled spirits plants. The rate depends upon the gross receipts of the business. The annual rates are:

If—	Then the annual tax rate is—
the taxable-year gross receipts are less than \$500,000,	\$500
the taxable-year gross receipts are \$500,000 or more,	\$1,000

(26 U.S.C. 5081)

§ 19.203 Eligibility for the reduced rate.

(a) *General.* Except during the suspension period described in § 19.201(b) when the tax rate is zero, 26 U.S.C. 5081(b) provides for a reduced tax rate of \$500 per year for small proprietors. A proprietor is eligible to pay the reduced rate as a small

proprietor if the proprietor's total gross receipts for the income tax year that most recently ended are less than \$500,000. All gross receipts must be included, not just the gross receipts of the activity subject to special tax. Further, proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, may qualify for the reduced rate in the initial tax year if gross receipts for the business (or the entire controlled group, if the proprietor is a member of a controlled group) were under \$500,000 during the income tax year that most recently ended. If the proprietor is a member of a controlled group, the rules under paragraph (b) of this section will apply.

(b) *Controlled Group.* If the proprietor is a member of a controlled group, the controlled group will be treated as a single taxpayer for the purpose of determining gross receipts under paragraph (a) of this section. A controlled group is defined in subpart D of part 70 of this chapter.

(c) *Special rules for gross receipts.* For any taxable year shorter than 12 months, the proprietor must project annual gross receipts for a 12 month period. To make this projection, the proprietor must multiply gross receipts for the short period by 12 and divide the result by the number of months in the short period. Gross receipts for any taxable year will be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 19.204 Exemption for alcohol fuel producers.

Some alcohol fuel producers are exempt from special tax. For further information, see subpart X of this part. (26 U.S.C. 5081, 5181)

§ 19.205 Locations subject to tax.

(a) A proprietor must pay special (occupational) tax, or must register during the suspension period described in § 19.201(b), for each place of business at which an occupation subject to special tax is conducted. 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 premises are otherwise contiguous.

(b) A proprietor does not incur additional special tax liability, and is not required to register during the

suspension period described in § 19.201(b), for the sale of liquor made at a location other than the distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is the same place of business as described in paragraph (a) of this section.

(26 U.S.C. 5081, 5113, 5142, 5143)

§ 19.206 Liability as a wholesale or retail dealer.

(a) *General.* A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 31 of this chapter.

(b) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax, or to register during the suspension period described in § 19.201(b), as a wholesale or retail dealer in liquor because of sales at the principal place of business, or at the distilled spirits plant, of liquor that at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant may have only one exemption from a dealer's special tax payment or dealer's registration for each distilled spirits plant. The proprietor may designate, in writing to the appropriate TTB officer, that the principal place of business is exempt from dealer's special (occupational) tax or registration; otherwise, the exemption will apply to the distilled spirits plant.

(26 U.S.C. 5113)

§ 19.207 Special tax returns.

(a) *Form.* A proprietor must file TTB F 5630.5, Special Tax Registration and Return, in order to:

- (1) Pay special (occupational) tax when the tax is due, or
- (2) Register during the period July 1, 2005, through June 30, 2008, when the tax is suspended.

(b) *Information for the return or registration.* A proprietor must follow the instructions on the Special Tax Registration and Return, TTB F 5630.5 providing all the required information including:

- (1) The name as the taxpayer;
- (2) The trade name(s) (if any) of the business(es) subject to special tax;
- (3) The employer identification number (see § 19.210);
- (4) The exact location of the place of business, by name and number of building or street or if these do not exist, by some description in addition to the post office address. In the case of one

return for two or more locations, the address shown will be the principal place of business (or principal office, in the case of a corporate taxpayer);

(5) The class(es) of special (occupational) tax to which the proprietor is subject, or to which the registration relates during the suspension period referred to in paragraph (a)(2) of this section; and

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every other person having power to control the management and policies with respect to the activity subject to special tax. For purposes of this section, an owner includes every partner of a partnership and every person owning 10% or more of the stock of a limited liability company or corporation. However, the ownership and control information required by this paragraph does not need to be stated if the same information has been previously provided to TTB in connection with a permit application, and if the information previously provided is still current.

(26 U.S.C. 6151, 7011)

§ 19.208 Multiple locations and multiple tax classes.

A proprietor subject to special (occupational) tax, or required to register during the suspension period referred to in § 19.201(b), for the same period at more than one location or for more than one tax class, must:

- (a) Prepare, sign and file one special tax registration and return on TTB F 5630.5;
- (b) Include any applicable tax payment, to cover all locations and classes of tax;

(c) Prepare, in duplicate, a list identified with the proprietor's name, address (as shown on 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, or for which registration is being made during the suspension period described in § 19.201(b). The original of the list will be filed in accordance with instructions on the return, and the copy shall be retained at the proprietor's principal place of business (or principal office, in the case of a corporate taxpayer) for the period of three years from the last day of the return period.

(26 U.S.C. 6151, 7011)

§ 19.209 Signing special tax returns.

(a) *Ordinary returns.* The proprietor must sign all tax returns. The individual

must sign the return of an individual proprietor. A general partner must sign the return for a partnership. An officer of a corporation will sign the return for a corporation. In each case, the person signing the return will designate his or her capacity as "individual owner," "general partner," or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* A receiver, trustee, assignee, executor, administrator, or other legal representative who continues the business of a bankrupt, insolvent, deceased, or other person, must indicate the fiduciary capacity in which the person is acting.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature must 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 a power of attorney authorizing the agent to perform the act is filed with the TTB office with which the return is filed.

(d) *Perjury statement.* Form TTB F 5630.5 must contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6062, 6063, 6064, 6065)

§ 19.210 Employer identification number.

(a) *Requirement.* A proprietor must enter the employer identification number (EIN) assigned to the proprietor by the Internal Revenue Service on the special tax return, including any amended return, filed under this subpart. Failure to enter the assigned EIN on the return may result in a \$50.00 penalty for each occurrence as specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each proprietor who files a special tax return, who has not already been assigned an employer identification number, must file IRS Form SS-4 to apply for one. The proprietor will apply for and be assigned only one employer identification number, regardless of the number of places of business for which the proprietor is required to file a special tax return. The proprietor must apply for an employer identification number no later than 7 days after the filing of the taxpayer's first special tax return.

(26 U.S.C. 6109)

§ 19.211 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps—(1) General.* Except as provided in paragraph (a)(2) of this section, TTB will issue to the proprietor a special tax

stamp upon filing a properly executed TTB F 5630.5, Special Tax Registration and Return, along with any applicable tax. If the return covers multiple locations, TTB will issue one appropriately designated stamp for each location listed on the attachment that § 19.208 requires, but showing, as to name and address, only the name of the proprietor and the address of the proprietor's principal place of business (or principal office in the case of a corporate taxpayer).

(2) *Exception for suspension period.* During the suspension period described in § 19.201(b), when registration is required but no tax is due, TTB will not issue a special tax stamp.

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the proprietor will verify that there is one stamp for each location listed on the attachment to form TTB F 5630.5. The proprietor will designate one stamp for each location and will type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer will then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* The proprietor will keep all stamps denoting payment of special tax available at the location for which designated for inspection by appropriate TTB officers during business hours.

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

§ 19.212 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor will file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The proprietor will attach the special tax stamp for endorsement of the change in name except if the change occurs during the suspension period described in § 19.201(b).

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

§ 19.213 Change in proprietorship.

(a) *General.* Except as provided in paragraph (b) of this section, if there is a change in the proprietorship of a distilled spirits plant, the successor must file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in § 19.201(b) when no tax is due and no stamp is issued, the successor is only required to file a new special tax return.

(b) *Exception.* 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 (or for which registration was made during the suspension period described in § 19.201(b)), 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 form TTB F 5630.5, which shows the basis of succession.

(c) *Right of succession.* Under the conditions listed in paragraph (b) of this section, the right of succession will pass to certain persons as follows:

In the case of:	The following person may succeed to the tax stamp:
Death of the taxpayer.	The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer.
Succession of spouse.	A husband or wife succeeding to the business of a living spouse.
Insolvency	A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.
Withdrawal from partnership.	The partner or partners remaining after death or withdrawal of a member.

(d) *Failure to register.* Except during the suspension period described in § 19.201(b), a person who is a successor to a business for which the special tax has been paid and who fails to register the succession is liable for the special tax computed from the first day of the calendar month in which the successor began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

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

§ 19.214 Change in location.

(a) Except as provided in paragraph (b) of this section, if there is a change in location of a taxable place of business, the proprietor will, within 30 days after the change, file an amended special tax return covering the new location. The proprietor will attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax must be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor must file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(b) If the change in location occurs during the suspension period described in § 19.201(b) when no tax is due and

no special tax stamp is issued, the requirements of paragraph (a) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (a) of this section may result in a penalty under 26 U.S.C. 5603(b).

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

Subpart I—Distilled Spirits Taxes

§ 19.221 Scope.

This subpart covers the taxation of distilled spirits and the procedures for payment of taxes by proprietors of distilled spirits plants. Issues covered in this subpart include: tax rates, liability for tax, tax determination, return periods, filing of tax returns, forms of payment, electronic fund transfers, and credits under 26 U.S.C. 5010.

(26 U.S.C. 5001)

Basic Provisions of Tax Law Affecting Spirits

§ 19.222 Basic tax law provisions.

(a) *Distilled spirits tax.* 26 U.S.C. 5001 and 7652 impose a tax on all distilled spirits produced in, or imported into or brought into, the United States at the rate prescribed in section 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. For the current rate of tax see 26 U.S.C. 5001.

(b) *Products containing distilled spirits.* All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as distilled spirits.

(c) *Wines with high alcohol content.* Wines containing more than 24 percent of alcohol by volume are taxed as distilled spirits.

(d) *Attachment of the tax.* Under 26 U.S.C. 5001(b), the tax attaches to distilled spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(e) *Alcohol tax is a lien on spirits.* Under 26 U.S.C. 5004, the tax becomes a first lien on the distilled spirits from the time the spirits come into existence as such. The conditions under which the first lien terminates are described in 26 U.S.C. 5004.

(f) *Tax credit for eligible wines and eligible flavors.* Under 26 U.S.C. 5010, a

credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 on each proof gallon of alcohol derived from eligible wine, or from eligible flavors which do not exceed 2½% of the finished product on a proof gallon basis is allowed at the time the tax is payable as if it constituted a reduction in the rate of tax.

(g) *Effective tax rates.* Where credit against the tax is desired, the proprietor liable for the tax must establish an effective tax rate in accordance with § 19.246. The effective tax rate established will be applied to each withdrawal or other taxable disposition of the distilled spirits.

(26 U.S.C. 5001, 5004, 5010, 7652)

§ 19.223 Persons liable for tax.

(a) *Distilling.* Under 26 U.S.C. 5005, the distiller of spirits is liable for the tax and each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However, a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond are relieved of tax liability if:

(1) The proprietors of transferring and receiving distilled spirits plant premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(2) No person liable for the tax on transferred spirits retains any interest in the spirits.

(b) *Storage on bonded premises.* Under 26 U.S.C. 5005(c) each person operating bonded premises will be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits which are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are covered in subpart J of this part. Voluntary destruction of spirits in bond is covered in subpart Q of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C.

5214, will be liable for the tax on the spirits from the time of withdrawal. The person will be relieved of any liability at the time the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawn from customs custody without payment of tax.* Under 26 U.S.C. 5232(a) when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred will become liable for the tax on the spirits upon their release from customs custody, and the importer will thereupon be relieved of liability for the tax.

(26 U.S.C. 5005, 5066, 5232)

Requirements for Gauging and Tax Determination

§ 19.225 Requirement to gauge and tax determine spirits.

Before withdrawing distilled spirits from bond, the proprietor must gauge the spirits and determine the tax that is due on the spirits. This requirement applies to all spirits on which the tax will be either prepaid or deferred.

(26 U.S.C. 5006, 5204, 5213)

§ 19.226 Gauges for tax determination.

There are several acceptable methods that a proprietor may use when gauging spirits for tax determination.

(a) *Cases.* If spirits are withdrawn from the bonded premises in cases, the proprietor must gauge the spirits based on the contents of the cases. The proprietor will determine the number of proof gallons of spirits in cases as provided in part 30 of this chapter. The proprietor must convert metric units of measure to U.S. units according to § 19.579.

(b) *Packages.* If spirits are withdrawn from the bonded premises in packages on the basis of an individual package gauge, each package must be gauged unless the tax is to be determined on the production or filling gauge. When

gauging the packages, the proprietor must prepare a package gauge record as specified in § 19.619 and attach it to the record of tax determination that is required by § 19.611.

(c) *Tanks.* The proprietor must use weight, or an accurate mass flow meter and proof as prescribed in §§ 19.284 and 19.285, to gauge bulk spirits in tanks that are to be withdrawn on determination of tax. The proprietor must record the elements of the gauge on the record of tax determination. As an alternative, the proprietor may record gauge elements on a separate gauge record, and attach the gauge record to the record of tax determination.

(26 U.S.C. 5204, 5213)

§ 19.227 Determination of the tax.

After gauging, the proprietor must determine the tax on the spirits to be removed from the bonded premises. The proprietor must use the tax rate prescribed in 26 U.S.C. 5001 to calculate the tax, unless the product is eligible for a reduced effective tax rate as provided in 26 U.S.C. 5010. If the product is eligible for a reduced effective tax rate, the proprietor may use that rate to determine the tax. The proprietor must record the results of each tax determination in a record of tax determination as required by § 19.611.

(26 U.S.C. 5213)

Rules for Deferred Payment and Prepayment of Taxes

§ 19.229 Deferred payment and prepayment of taxes.

There are two basic methods of paying the tax on distilled spirits withdrawn from bonded premises: deferred payment and prepayment.

(a) *Deferred payment.* Under the deferred payment system, the proprietor may withdraw spirits from bond after tax determination but before payment of tax. The excise tax paid is based on the amount of spirits removed from bond during each return period. In order to pay taxes under the deferral system, the proprietor must file a withdrawal bond or unit bond. For detailed information regarding return periods and filing requirements under the deferred system see §§ 19.234, 19.235 and 19.236.

(b) *Prepayment.* Under the prepayment system, the proprietor must pay the distilled spirits tax after tax determination but before withdrawal of the spirits from bonded premises. See § 19.230 for conditions that require prepayment of taxes.

(26 U.S.C. 5061)

§ 19.230 Conditions requiring prepayment of taxes.

Under certain conditions, the proprietor must prepay the distilled spirits tax on form TTB F 5000.24, Excise Tax Return, before removing spirits from the bonded premises. Those conditions are:

(a) When the proprietor has not given TTB a withdrawal bond or a unit bond;

(b) When the proprietor has posted a withdrawal or a unit bond, but defaults on any payment of tax under this section, and the tax payment remains in default. The proprietor must continue to prepay the tax until the appropriate TTB officer decides that allowing them to make deferred tax payments again will not jeopardize the revenue;

(c) When the proprietor receives a notice from the appropriate TTB officer that the tax must be prepaid. Such notice may be issued to the proprietor if—

(1) The proprietor fails to maintain records required by this part to substantiate the correctness of his tax returns; or

(2) The proprietor fails to comply with any other provision of this part; or

(d) When the proprietor's withdrawal bond, or the withdrawal coverage under their unit bond, is for less than the maximum penal sum. The proprietor must prepay the tax to the extent that a withdrawal would cause the outstanding tax liability to exceed the limits of coverage under the bond. See § 19.231 if the bond is for less than the maximum penal sum.

(26 U.S.C. 5213, 5555)

§ 19.231 Accounting for bond coverage.

When a proprietor furnishes a withdrawal bond or a unit bond to cover the tax on spirits withdrawn on determination of tax, and such bond is in less than the maximum penal sum, the proprietor must maintain an account for the bond to ensure that outstanding tax liabilities do not exceed the penal sum of the bond. The account must charge the bond for the amount of liability incurred on each withdrawal on determination of tax and, credit the bond for each payment of tax made with a return and for authorized credits taken on a return. If the balance of the bond account reaches zero, the proprietor may no longer defer tax payments for taxable withdrawals. Where the bond is for less than the maximum penal sum and has been allocated among two or more plants, the proprietor must maintain an account at each plant for that part of the penal sum allocated to each plant.

(26 U.S.C. 5173, 5201)

Requirements for Filing Tax Returns**§ 19.233 Filing prepayment returns.**

When the proprietor is required to prepay the tax prior to withdrawal of spirits from the bonded premises, he must prepay the tax with a return on form TTB F 5000.24, Excise Tax Return, and include the remittance with the return. The proprietor may prepay tax for one or more withdrawals with a single prepayment return on form TTB F 5000.24. The proprietor will note the serial number of the form TTB F 5000.24, and the date and time of the prepayment on the individual record of tax determination. The proprietor may not remove spirits from the bonded premises until the tax has been paid.

(26 U.S.C. 5061)

§ 19.234 Filing deferred payment returns.

A proprietor must pay the tax on spirits withdrawn from bond for deferred payment of tax by filing a return on form TTB F 5000.24, Excise Tax Return. The proprietor must execute and file form TTB F 5000.24, for each return period, even when no tax is due for a particular return period. The proprietor of each bonded premises must pay the full amount of distilled spirits tax determined for all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(26 U.S.C. 5061)

§ 19.235 Deferred payment return periods—quarterly and semimonthly.

(a) *Two types of return periods.* The IRC provides for two different return periods for those taxpayers who pay their taxes on a deferred basis: quarterly and semimonthly. Small taxpayers who meet certain criteria are eligible to use quarterly return periods and pay their taxes on a quarterly basis. Larger taxpayers must use semimonthly return periods and pay their taxes on a semimonthly basis.

(b) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any

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

(c) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b) of this section, all other taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods will run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.277.

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

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

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

(26 U.S.C. 5061)

§ 19.236 Due dates for returns.

(a) *Semimonthly returns.* Except when payment is pursuant to a quarterly return as provided in paragraph (b) of this section, where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor must file a semi-monthly tax return covering such spirits on form TTB F 5000.24, Excise Tax Return, and remittance, as required by §§ 19.238, 19.239 or § 19.240, not later than the 14th day after the last day of the return period, except for returns filed for September as provided in § 19.237. If the due date falls on a Saturday, Sunday or legal holiday, the return and payment are due on the immediately preceding day that is not a Saturday, Sunday or legal holiday, except as provided in § 19.237(c).

(b) *Quarterly returns.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.235(b), the proprietor must file a quarterly return covering such spirits on form TTB F 5000.24, and remittance, as

required by §§ 19.238, 19.239 or § 19.240, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance will be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

(26 U.S.C. 5061)

§ 19.237 Special rule for semimonthly filers for the month of September.

(a) *Returns required for September.* If the proprietor is required to file semimonthly returns as provided in § 19.235(c), there are three return periods during the month of September. The first semimonthly return period is from the first day through the fifteenth day of the month and the return with remittance is due by the 29th of September. The second semimonthly return period for the month of September is divided into two payment periods. The exact dates of these periods depends upon whether the proprietor remits tax payments by electronic fund transfer (EFT).

(1) *Taxpayments by EFT.* If the proprietor remits tax payments by EFT, the two payment periods for the second half of September are from the 16th through the 26th, and from the 27th through the 30th. The return on form TTB F 5000.24 and remittance for the period September 16–26 is due on or before September 29. The return on form TTB F 5000.24 and remittance for the period September 27–30 is due no later than October 14.

(2) *Taxpayment other than by EFT.* If the proprietor is not required to pay the distilled spirits tax by EFT, the two payment periods for the second half of September are from the 16th through the 25th and from the 26th through the 30th. The return on form TTB F 5000.24 and remittance for the period September 16–25 is due on or before September 28. The return on Form 5000.24 and remittance for the period September 26–30 is due no later than October 14.

(b) *Amount of payment: Safe harbor rule—(1) EFT Taxpayers.* The proprietor satisfies the requirements of paragraph (a)(1) of this section if by September 29 the amount paid is at least 11/15ths (73.3 percent) of the tax liability incurred in the semimonthly return period for September 1–15, and the proprietor also pays any underpayment of tax resulting from the use of the safe harbor rule on or before October 14.

(2) *Other than EFT taxpayers.* The proprietor satisfies the requirements of paragraph (a)(2) of this section if the amount paid by September 28 is at least 2/3rds (66.7 percent) of the tax liability incurred in the semimonthly return

period for September 1–15, and the proprietor also pays any underpayment of tax resulting from the use of the safe harbor rule on or before October 14.

(c) *Last day for payment.* If the required tax payment due date for the return period September 16–25 (non-EFT taxpayers) or September 16–26 (EFT taxpayers), falls on a Saturday or legal holiday, the proprietor's return and remittance are due on the immediately preceding day. If the required tax payment due date falls on a Sunday, the proprietor's return and payment are due on the immediately following day.

(d) *Example.* Payment of tax for the month of September.

(1) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29. X's payment of tax for the period September 16–26 is also due no later than September 29. X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26. Under the safe harbor rule, X's payment of tax must equal \$22,000.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14. X must also pay the underpayment of tax, \$23,000.00, for the period September 16–26, no later than October 14.

(26 U.S.C. 5061)

§ 19.238 Payment by mail.

The proprietor must file each return on form TTB F 5000.24 in accordance with the instructions printed on the form. If the proprietor submits the return by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return is mailed will be considered to be the date of delivery of the remittance. If the postmark on the cover is illegible, the proprietor will bear the burden of proving when the postmark was made. If the proprietor sends the return with or without remittance by registered mail or certified mail, the date of registry, or the date of the postmark on the sender's postal receipt for certified mail, will be treated as the date of delivery of the

return and also of the remittance, if included.

(26 U.S.C. 6302)

§ 19.239 Form of payment.

(a) *General.* The proprietor must pay the tax due on spirits when filing a return on form TTB F 5000.24, Excise Tax Return. The remittance for the tax must accompany the return and may be in any form that is authorized by § 70.61 of this chapter and acceptable to the appropriate TTB officer. *Exception:* This does not apply to payments that must be made by electronic fund transfer (EFT). For EFT payments see § 19.240.

(b) *Consequences of default.* If a check or money order tendered in payment of taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, then any remittance made during the period of default must be either in cash or by an acceptable certified instrument. The proprietor must continue to pay in cash or by certified instrument as long as the proprietor remains in default, and until the appropriate TTB officer finds that accepting a check will not jeopardize the revenue.

(c) *Certified instruments.* Acceptable certified instruments include certified checks, cashier's checks or treasurer's checks drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory or possession of the United States, or a money order, as provided in § 70.61 of this chapter.

(d) *Payment of taxes.* The proprietor must make checks or money orders payable to "Alcohol and Tobacco Tax and Trade Bureau".

(26 U.S.C. 5061, 6311)

§ 19.240 Payment of tax by electronic fund transfer.

(a) *General—(1) Criteria requiring ETF payment.* Under certain conditions, a proprietor may not make payments by cash, check, or money order. Instead, the proprietor must use the services of a commercial bank to pay tax on distilled spirits tax by electronic fund transfer (EFT). Payments must be made by EFT in the current calendar year if the proprietor, as a taxpayer, was liable for five million dollars or more in taxes on distilled spirits during the prior calendar year. For the purpose of determining whether the proprietor is subject to this requirement, the proprietor must use the total amount of tax liability on distilled spirits incurred under this part and parts 26 and 27 of this chapter (gross tax liability). Gross tax liability includes the distilled spirits tax on all taxable withdrawals of spirits, taxable importations of spirits, as well

as tax on spirits brought into the United States from Puerto Rico and the Virgin Islands during the calendar year. This figure includes taxes incurred at any and all premises at which the proprietor conducts regulated activities. The proprietor may not net out or adjust for any drawback, credits or refunds of tax that are allowed. Overpayments made in excess of actual tax liability will not be included in the gross tax liability figure.

(2) *Controlled group.* If the taxpayer is a member of a controlled group, the controlled group is treated as a single taxpayer when calculating liability of five million dollars or more in distilled spirits taxes during the prior calendar year. A controlled group is a related group of taxpayers and is defined in subpart D of part 70 of this chapter.

(3) *Separate return and payment for each DSP.* When the proprietor makes payments by EFT, the proprietor must file a separate return, form TTB F 5000.24 and make a separate EFT payment for each DSP from which spirits are withdrawn upon determination of tax.

(b) *Requirements—(1) Notice to TTB.* If the proprietor's gross tax liability is five million dollars or more in one calendar year, the proprietor must notify the appropriate TTB officer of this fact not later than January 10 of the following year. The proprietor must use the total amount of tax liability incurred under this part and parts 26 and 27 of this chapter to determine whether he must make this notification. *Exception:* this notice requirement does not apply if the proprietor already pays tax on distilled spirits by EFT. The notice shall be an agreement to make payments by EFT.

(2) *Separate EFT for each return.* For each return filed in accordance with this part, the proprietor will direct the bank to make an EFT to the Treasury Account for the amount of the tax reported due on the return. The proprietor must give instructions to the bank early enough for the EFT to be made to the Treasury Account by no later than close of business on the last day for filing the return as prescribed in § 19.236 or § 19.237, as appropriate.

(3) *Discontinuing EFT payments.* If the proprietor pays tax by EFT and has a gross tax liability of less than five million dollars in distilled spirits taxes during a calendar year, combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, payment by EFT will be optional in the following year. The proprietor may continue to remit tax payment by EFT as provided in this section, or the proprietor may remit taxpayment using any acceptable method as set forth in § 19.239. If the

proprietor decides to stop paying tax by EFT, the proprietor must give the appropriate TTB officer written notice of that decision. The proprietor must attach a written notice to the first return on form TTB F 5000.24 filed using a method of payment other than EFT. Such notice must state that tax is not due by EFT because the proprietor's tax liability during the preceding calendar year was less than five million dollars. The proprietor must further state that future tax payments will be filed with the returns on form TTB F 5000.24.

(c) *Remittance—(1) Identifying EFT payments.* When the proprietor completes the return on form TTB F 5000.24, the proprietor must indicate on the form that the tax was paid by EFT. The proprietor must file the completed form TTB F 5000.24 with TTB as directed by the instructions on the form.

(2) *Credit for payment.* TTB will credit the proprietor as having made a tax payment when the Treasury Account receives the EFT. TTB considers the EFT to be received by the Treasury Account when the EFT is paid to a Federal Reserve Bank.

(3) *Record of payment.* When a proprietor directs a bank to make an EFT as required by paragraph (b)(2) of this section, any transfer data record furnished to the proprietor as part of normal banking procedures will serve as the record of payment. The proprietor will retain this document as part of the required records.

(d) *Failure to make a taxpayment by EFT.* The proprietor will be subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656 for failure to make a required EFT tax payment before close of business on the last day for filing.

(e) *Procedure.* Upon receipt of a notice filed pursuant to paragraph (b)(1) of this section, the appropriate TTB officer will provide the proprietor with a copy of the TTB Procedure entitled "Payment of Tax by Electronic Fund Transfer". This publication outlines the procedure that the proprietor must follow when preparing returns and payments by EFT as required by this part. Customs and Border Protection (CBP) will provide instructions for submitting the EFT payments that must be made to CBP.

(26 U.S.C. 5061, 6302)

Requirements for Employer Identification Numbers

§ 19.242 Employer identification number.

The proprietor must enter the employer identification number (EIN) assigned to him by the Internal Revenue Service on each form TTB F 5000.24, Excise Tax Return, filed with TTB.

Failure to enter the assigned EIN on form TTB F 5000.24, may result in a \$50.00 penalty for each occurrence as specified in § 70.113 of this chapter.

(26 U.S.C. 6109, 6723)

§ 19.243 Application for employer identification number.

(a) *Use Form SS-4.* The proprietor must obtain an employer identification number (EIN) by filing an application with the Internal Revenue Service (IRS) on Form SS-4. Form SS-4 is available from the local IRS Center, from the IRS District Director, the IRS Web site at <http://www.irs.gov> or from TTB's National Revenue Center. The proprietor may file this form with IRS by mail, telephone, or fax by following the instructions on the form.

(b) *Time limit.* If the proprietor has not already received, or applied for, an EIN at the time that the first return on form TTB F 5000.24, Excise Tax Return, is filed, the proprietor must file such application for an EIN not later than seven days from the date of filing the form TTB F 5000.24.

(c) *One EIN only.* Each proprietor must obtain and use only one EIN, regardless of the number of places of business for which the proprietor is required to file a tax return under this subpart.

(26 U.S.C. 6109)

Effective Tax Rates

§ 19.245 Tax credits under 26 U.S.C. 5010.

(a) *The distilled spirits tax.* Sections 5001 and 7652 of the IRC impose a tax on all distilled spirits produced in, or imported into, or brought into the United States at the rate prescribed in section 5001 of the IRC.

(b) *Tax credits.* Section 5010 of the IRC provides a credit for the wine and flavors content in distilled spirits products. These credits effectively reduce the rate of excise tax paid on distilled spirits products that contain eligible wines and eligible flavors. As a result, the alcohol derived from eligible wine is taxed at the rates specified for wine in 26 U.S.C. 5041, and the alcohol derived from eligible flavors is not taxed to the extent that it does not exceed 2½ percent of the alcohol in the product. This results in an effective tax rate on the distilled spirits product that is lower than the rate prescribed in 26 U.S.C. 5001.

(c) *Eligible wine and eligible flavor.* The credit for the wine and flavor content of a distilled spirits product is allowable only if the wine or flavor contained in the product is an "eligible wine" or an "eligible flavor". To determine whether a wine or flavor is

eligible, refer to the definitions in § 19.1, and 26 U.S.C. 5010.

(d) *Application of effective tax rates.* Section 19.246 describes how the proprietor should compute the effective tax rate for each distilled spirits product containing eligible wine or eligible flavor. Sections 19.247 through 19.250 set forth several different methods that the proprietor may use in applying the effective tax rates to taxable removals of products from the proprietor's bonded premises.

(26 U.S.C. 5010)

§ 19.246 Computing the effective tax rate for a product.

(a) *How to compute effective tax rates.* In order to determine the effective tax rate for a distilled spirits product containing eligible wine or eligible flavor, the proprietor must first determine the total excise taxes due on the product from all sources including distilled spirits, eligible wine, and alcohol from eligible flavors in excess of 2 ½ percent of the total proof gallons in the product. Then, the proprietor must determine the total number of proof gallons of alcohol in the product regardless of the source. By dividing the total tax (numerator) by the total number of proof gallons (denominator) the proprietor will arrive at the effective

tax rate for the product in dollars per proof gallon. The proprietor will compute the effective tax rate according to the following formula:

(1) *Numerator.* The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), that would be imposed on the wine but for its removal to bonded premises. Three different tax classes of wine are eligible for the tax credit. The proprietor will have to repeat this step for each different tax class of eligible wine used; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½ percent of the denominator prescribed in paragraph (a)(2) of this section.

(2) *Denominator.* The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) *Rounding numbers—(1) Proof gallons.* When determining the effective tax rate, the proprietor must express quantities of distilled spirits, eligible wine, and eligible flavors to the nearest tenth of a proof gallon.

(2) *Tax rates.* The proprietor may round the effective tax rate to as many decimal places as the proprietor deems appropriate, provided that the rate is expressed no less exactly than the rate rounded to the nearest whole cent. The proprietor must be consistent and round the effective tax rates for all products to the same number of decimal places. When rounding, if the number to the right of the last decimal place to be kept is less than five, it will be dropped, if it is five or over, a unit will be added.

(c) *Example.* The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1 (\$13.50) + 2265.0 (\$1.07) + 1020 (\$1.57) + 16.6^1 (\$13.50)}{2249.1 + 100.9 + (2265.0 \times .28) + (1020 \times .38)} =$$

$$\frac{\$30,362.85 + \$2,423.55 + \$1,601.40 + \$224.10}{2,350.0 + 634.2 + 387.6} =$$

$$\frac{\$34,611.90}{3,371.8} = \$10.27, \text{ the effective tax rate.}$$

¹ Proof gallons by which distilled spirits derived from eligible flavors exceed 2 ½% of the total proof gallons in the batch (100.9 - (2 ½% × 3,371.8) = 16.6).

(26 U.S.C. 5010)

§ 19.247 Use of effective (actual) tax rates.

(a) *Select method of applying tax rate.* The proprietor may choose to apply an effective tax rate to taxable removals of distilled spirits products in accordance with §§ 19.248, 19.249, or 19.250. Any proprietor who does not elect one of these options must establish an effective tax rate for each batch of distilled spirits product on which a claim for tax credit for alcohol derived from eligible wine or

eligible flavor will be made. The proprietor must compute the effective tax rates for these products in accordance with the instructions in § 19.246.

(b) *Record tax rates used.* The proprietor must record the effective tax rate used on the dump or batch records for the products as required by § 19.598. The proprietor must record the serial numbers of cases of product removed at each rate on the record of tax determination or other related record.

The proprietor must keep these records available for inspection by TTB officers. (26 U.S.C. 5010, 5207)

§ 19.248 Standard effective tax rate.

(a) *Establishing a standard effective tax rate for a product.* The proprietor may establish a permanent standard effective tax rate for any eligible distilled spirits product, rather than calculate a separate effective tax rate for each batch of product made. If the proprietor elects to use this option, the

proprietor must determine the permanent standard effective tax rate based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used to manufacture the product. Thus, the permanent standard effective tax rate is the highest tax rate that would apply to the product because it is based on a batch with the least amount of alcohol from eligible wine and flavors that qualify for the credit under 26 U.S.C. 5010. By using this method the proprietor forgoes the possible use of a lower tax rate in exchange for the convenience of using a permanent standard effective tax rate that does not have to be recomputed for each batch of product made. The proprietor must keep a permanent record of the standard effective tax rates established for each product, in accordance with § 19.615.

(b) *Batches subject to a higher tax rate.* Whenever the proprietor manufactures a batch of the product with a lesser quantity or lower alcohol content of eligible wine or eligible flavor, this will result in a higher tax rate on the product since the product will have less alcohol qualifying for the credit under 26 U.S.C. 5010 and a higher percentage of alcohol taxable at the rate published in 26 U.S.C. 5001. In such instances, the proprietor must keep the cased goods segregated from other completed cases of the same product subject to the permanent standard effective tax rate for that product. The proprietor must determine the tax rate for the non-standard batch in accordance with § 19.247.

(c) *TTB review of standard tax rates.* If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure. (26 U.S.C. 5010, 5207)

§ 19.249 Average effective tax rate.

(a) *Establishing an average tax rate.* The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition which have been produced during the preceding 6-month period and which have been or will be bottled or packaged, in whole or in part, for domestic consumption. At the beginning of each month, the proprietor must recompute the average effective tax rate so as to include only the immediately preceding 6-month period. The proprietor must show the average tax rate established for a product in the record of average effective tax rates as prescribed in § 19.613.

(b) *TTB review of average effective tax rates.* If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure.

(26 U.S.C. 5010, 5207)

§ 19.250 Inventory reserve account.

(a) The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by § 19.614. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted. With an inventory reserve account, the proprietor will tax pay removals on a first-in first-out basis regardless of which lot of product is actually removed.

(b) If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure.

(26 U.S.C. 5010, 5207)

Assessment of Taxes by TTB

§ 19.253 Assessment of tax on spirits not accounted for or reported.

The proprietor is required by law to properly account for and report all spirits that he produces. TTB will assess the proprietor for the tax on the difference between the quantity reported and the quantity actually produced.

(26 U.S.C. 5006)

§ 19.254 Assessment of tax for losses or unauthorized removals.

(a) *Lost or destroyed in bond.* TTB will assess the proprietor for the tax on spirits, denatured spirits or wines in bond that are lost or destroyed if:

(1) The proprietor is liable for the tax on spirits, denatured spirits or wines in bond, and the proprietor fails to file a claim for remission of the tax on spirits, denatured spirits, or wines that are lost or destroyed in bond as provided in § 19.263(a), or

(2) The proprietor files a claim for such loss or destruction but the claim is denied. Exception: The provisions of this section do not apply to spirits, denatured spirits or wines on which the tax is not collectable due to the provisions of 26 U.S.C. 5008(a) or (d), or 26 U.S.C. 5370, as applicable.

(b) *Unauthorized removal from bond.*

(1) TTB will assess the proprietor for the tax on any spirits, denatured spirits or wines in bond that are removed from bonded premises other than as authorized by law.

(2) TTB will assess the proprietor for tax on spirits or denatured spirits lost from casks or other packages as described in 26 U.S.C. 5006(b) if the proprietor does not pay the tax upon demand by the appropriate TTB officer. (26 U.S.C. 5006, 5008, 5370)

Additional Tax Provisions

§ 19.256 Tax on wine.

(a) *Imposition of tax.* All wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported into or brought into the United States is subject to tax pursuant to 26 U.S.C. 5041 or 7652. The proprietor may be liable for wine taxes under 26 U.S.C. 5362(b)(3) for wine that is transferred in bond to the proprietor's distilled spirits plant. The proprietor may not remove wine from the bonded premises of a distilled spirits plant for consumption or sale as wine. (See 26 U.S.C. 5362.)

(b) *Liability for tax.* Except as otherwise provided by law, the proprietor is liable for the tax on wine transferred in bond to the proprietor's distilled spirits plant from a bonded wine cellar or from another distilled spirits plant until the proprietor uses the wine in the manufacture of a distilled spirits product or properly disposes of the wine as provided elsewhere in this part.

(26 U.S.C. 5041, 5362, 7652)

§ 19.257 Imported spirits.

The proprietor will incur a tax liability greater than the internal revenue tax imposed by 26 U.S.C. 5001(a)(1), if spirits originally imported for nonbeverage purposes are transferred from customs custody to TTB bonded premises pursuant to 26 U.S.C. 5232, and the proprietor subsequently decides to withdraw the spirits for beverage purposes. If the spirits would have been subject to a higher duty had they been imported for beverage purpose, the proprietor must pay a tax equal to the difference between the higher duty and the duty actually paid. Proprietors will refer to this additional tax as "additional tax—less duty" and pay it at the same time and in the same manner as the distilled spirits excise tax. Proprietors must compute the amount of "additional tax—less duty" owed by applying this rate to the total quantity of proof gallons withdrawn. The proprietor must make a separate entry on the tax return labeled

“additional tax—less duty” and show the amount of tax due.

(26 U.S.C. 5001)

§ 19.258 Additional tax on nonbeverage spirits.

The additional tax imposed by 26 U.S.C. 5001(a)(8), on imported spirits withdrawn from customs custody without payment of tax and later withdrawn from bonded premises for beverage purposes, and the related provisions of § 19.257, are not applicable to Puerto Rican or Virgin Islands spirits brought into the United States and transferred to bonded premises under the provisions of this part.

(26 U.S.C. 5201)

Subpart J—Claims

§ 19.261 Scope.

This subpart covers the various types of claims that a proprietor may file and includes provisions regarding the following:

- (a) General requirements for filing claims;
- (b) Specific requirements for filing certain types of claims; and
- (c) Remission, abatement, credit and refund of tax.

(26 U.S.C. 5008, 5215, 6065)

Requirements for Filing Claims

§ 19.262 General requirements for filing claims.

(a) A proprietor must file all claims for abatement, remission, credit, or refund under this part on form TTB F 5620.8, Claim—Alcohol and Tobacco Tax and Trade Bureau Taxes. The claim must:

- (1) Be filed with TTB’s National Revenue Center;
- (2) Show the name, address, and capacity of the claimant;
- (3) Be signed by the claimant or by the claimant’s duly authorized agent under penalties of perjury as provided in § 19.45; and
- (4) Include any supporting documents required by this part. The supporting documents will be considered a part of the claim.

(b) The appropriate TTB officer may require that the claimant submit additional evidence or documentation to further support the legitimacy or accuracy of the claim.

(26 U.S.C. 5008, 5215, 6065)

§ 19.263 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond—specific requirements.

(a) *Claims for remission.* A claim for remission of tax liability relating to the

destruction or loss of spirits, denatured spirits, articles, or wines in bond must include the following information:

- (1) *Identity of containers.* Identification of the containers, by serial number if they were numbered, and location of the containers from which the spirits, denatured spirits, articles or wines were lost, or in which they were removed for destruction;
- (2) *Quantity of spirits.* The quantity of spirits, denatured spirits, articles, or wines lost or destroyed from each container, and the total quantity of spirits or wines covered by the claim;
- (3) *Amount of claim.* The total amount of tax for which the claim is filed;
- (4) *Identity of distilled spirits plant.* The name, number, and address of the distilled spirits plant from which withdrawn without payment of tax or removed for transfer in bond, if the claim involves spirits so withdrawn or removed or if the claim involves wines transferred in bond, and the date and purpose of such withdrawal or removal. In the case of imported spirits lost or destroyed while being transferred from customs custody to TTB bond as provided in § 19.409 of this part, the name of the customs bonded warehouse, if any, and port of entry will be included instead of the plant name, number, and address;
- (5) *Date and cause.* The date of the loss or destruction. If the date is not known, enter the date the loss or destruction was discovered. Include the cause of the loss together with relevant facts and details;
- (6) *Carrier.* The name of the carrier if the loss occurred while the spirits were in transit;
- (7) *Consignee.* The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;
- (8) *Theft.* If lost by theft, the facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them; and
- (9) *Insurance.* In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund.* If a proprietor files a claim for abatement of an assessment, or for credit or refund of tax that has been paid or determined, for spirits, denatured

spirits, articles, or wines lost or destroyed in bond, the claim must include all of the applicable information described in paragraph (a) of this section as well as the following:

(1) The date of assessment or payment of the tax for which abatement, credit or refund is claimed. If the tax has not been assessed or paid, give the date of the tax determination; and

(2) The name, plant number and address of the plant where the tax was determined, assessed or paid. If the tax was assessed against, or paid by, someone other than the proprietor, then give the name, address and capacity of the person who was assessed or paid the tax.

(c) *Supporting documents—(1) General.* If possible, the proprietor should support the information and details on all claims filed under this section with affidavits by persons having personal knowledge of the circumstances of the loss or destruction.

(2) *Losses in transit.* For claims on spirits, denatured spirits, articles, or wines lost while being transferred by a carrier, the claim must be supported by a copy of the bill of lading.

(3) *Spirits withdrawn without payment of tax.* If the lost spirits were withdrawn without payment of tax for research, development or testing, the claim must be supported by a copy of the proprietor’s sample record prescribed in subpart V of this part.

(26 U.S.C. 5008, 5370)

§ 19.264 Claims on spirits returned to bonded premises—specific requirements.

(a) *General.* Section 5215(a) of the IRC allows for the return of tax paid or tax determined spirits to the bonded premises of a distilled spirits plant under certain conditions. In addition, section 5008(c) of the IRC allows a proprietor to file a claim for credit or refund of tax on the spirits returned to bonded premises under section 5215(a). For information on allowable returns see subpart Q of this part.

(b) *Claims for credit or refund.* A claim for credit or refund of tax on spirits returned to bonded premises under section 5215(a), must include the following information:

- (1) Quantity of spirits so returned;
- (2) Amount of tax for which the claim is filed;
- (3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;
- (4) The purpose for which the spirits were returned; and
- (5) The serial number of the gauge record on which the spirits were returned.

(c) *Puerto Rican and Virgin Islands spirits and imported rum.* If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim must show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(d) *Products subject to 26 U.S.C. 5010 tax credits.* A claim for credit or refund of tax on spirits containing eligible wine or eligible flavors must include the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

(e) *Limits on claims.* Claims for credit or refund of tax must be filed by the proprietor of the plant to which the spirits were returned. The claim must be filed within six months of the date of the return. No interest is allowed on any claims for refund or credit.

(26 U.S.C. 5008, 5215)

§ 19.265 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, will be prepared and filed in accordance with the regulations in § 19.263(b) and (c).

(26 U.S.C. 5008)

Rules Regarding Credits, Abatement, Remission or Refund

§ 19.266 Claims for credit of tax.

A proprietor may file a claim for credit of tax, as provided in this part, after the tax has been determined, whether or not the tax has been paid. However, a proprietor may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(26 U.S.C. 5008, 5215)

§ 19.267 Adjustments for credited tax.

When a proprietor receives a notice of allowance of credit from TTB, including notification of credit for tax on spirits

exported with benefit of drawback as provided in part 28 of this chapter, the proprietor will make an adjusting entry and an explanatory statement on his next excise tax return. The proprietor will identify the notification of allowance of credit that authorizes the adjusting entry in the explanatory statement. If the allowable tax credit is greater than the tax due on the excise tax return, the proprietor will apply the balance of the tax credit to one or more following tax returns until the tax credit is exhausted.

(26 U.S.C. 5008, 5062)

§ 19.268 Allowance of remission, abatement, credit or refund of tax.

The appropriate TTB officer is authorized to allow claims for remission, abatement, credit, and refund of tax, filed under the provisions of this part.

(26 U.S.C. 5008)

Rules for Puerto Rican and Virgin Islands Spirits

§ 19.269 Puerto Rican and Virgin Islands spirits.

(a) The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit, or refund for loss or destruction of distilled spirits, also apply to spirits brought into the United States from Puerto Rico or the Virgin Islands with respect to the following:

- (1) Spirits lost while in TTB bond;
- (2) Voluntary destruction of spirits in bond;
- (3) Spirits returned to bonded premises after withdrawal without payment of tax; and
- (4) Spirits returned to bonded premises after withdrawal upon tax determination.

(b) In addition to the information required by § 19.263, claims relating to spirits lost in bond must show the name of the producer and the serial number and date of the formula under which produced, if any.

(26 U.S.C. 5008, 5215)

Subpart K—Gauging

§ 19.281 Scope.

This subpart covers gauging, which is the determination of the quantity and the proof of distilled spirits. Topics covered in this subpart include: the general requirements for gauging; when gauges are required at distilled spirits plants; and special rules that apply to the gauges performed at distilled spirits plants. For additional requirements and procedures governing gauging, see part 30 of this chapter, Gauging Manual.

§ 19.282 General requirements for gauging and measuring equipment.

A proprietor is required to perform periodic gauges of the spirits, wines, and alcoholic flavorings at the plant. A proprietor must have accurate and readily usable gauging and measuring equipment as required by this part and part 30 of this chapter. At any time, TTB may require that the proprietor's gauges be performed in the presence of, and be verified by, a TTB officer. In addition, TTB may disapprove the use of any equipment, or the proprietor's means of gauging, if TTB finds that it is not sufficiently accurate or suitable for the gauges and measurements to be made.

(26 U.S.C. 5006, 5204)

Required Gauges

§ 19.283 When gauges are required.

The proprietor must gauge spirits, wine, and alcoholic flavoring materials when they are:

- (a) Produced and entered for deposit;
- (b) Filled into packages from storage tanks;
- (c) Transferred or received in bond;
- (d) Transferred between operational accounts;
- (e) Mixed in the manufacture of a distilled spirits product;
- (f) Mingled under § 19.329;
- (g) Reduced in proof before bottling;
- (h) Voluntarily destroyed;
- (i) Removed or withdrawn from bond;
- (j) Tax determined;
- (k) Returned to bond;
- (l) Denatured; or
- (m) When required by a TTB officer.

(26 U.S.C. 5204, 5559)

Rules for Gauging

§ 19.284 Quantity determination of bulk spirits.

(a) *Gauge of spirits in packages.* When determining the quantity of bulk spirits in packages, the proprietor must determine the quantity by weight as provided in part 30 of this chapter.

(b) *Bulk Gauge for Tax Determination.* When determining the quantity of bulk spirits for determination of tax or when performing a production gauge that will be used for tax determination, the proprietor must determine the quantity by weight as provided in part 30 of this chapter or by an accurate mass flow meter. For tax determination purposes, an accurate mass flow meter is a mass flow meter that has been certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.1\%$.

(c) *Volumetric determination.* Except as provided in paragraphs (a) and (b) of this section, in all other instances when the proprietor is required to gauge bulk

spirits in bond, the proprietor may determine the quantity by either weight or volume. When the proprietor determines the quantity by volume, the proprietor must measure the spirits by using:

(1) A tank or bulk conveyance for which a calibration chart is provided, with the calibration charts certified as accurate by persons qualified to calibrate tanks or bulk conveyances; or

(2) An accurate mass flow meter. For purposes of this paragraph, an accurate mass flow meter is a mass flow meter that has been certified by the manufacturer or other qualified person as accurate within a tolerance of $\pm 0.5\%$; or

(3) Another device or method when approved by the appropriate TTB officer.

(26 U.S.C. 5559)

§ 19.285 Proof determination of distilled spirits.

(a) Except as provided in paragraph (b) of this section, when the proprietor is required to gauge distilled spirits, the proprietor must determine the proof in accordance with the procedures prescribed in part 30 of this chapter, Gauging Manual.

(b) *Use of Initial proof.* After a proprietor has determined the proof of distilled spirits in accordance with the procedures in part 30 of this part, a proprietor may use the initial determination of proof when required to make a later gauge at the same plant. However, a proprietor must determine the proof again when:

(1) A bottling tank gauge is required by § 19.353;

(2) A gauge for tax determination is required by § 19.226; or

(3) In any case where the proof may have changed.

(26 U.S.C. 5559)

§ 19.286 Gauging of spirits in bottles.

When gauging spirits in bottles, the proprietor may determine the proof and quantity from case markings and label information if the bottles are full and there is no evidence that tampering has occurred.

(26 U.S.C. 5204, 5559)

§ 19.287 Gauging of alcoholic flavoring materials.

Generally, alcoholic flavoring material must be gauged when dumped. However, when received from a manufacturer in a closed, nonporous container such material may be gauged by using the proof shown on the container label or a related statement of proof from the manufacturer. When the proof is determined from a label or

manufacturer's statement, the proprietor will test a sufficient number of samples to verify the accuracy of the proof so determined. TTB may require that alcoholic flavoring materials be gauged by the methods provided in part 30 of this chapter.

(26 U.S.C. 5204, 5559)

§ 19.288 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, the actual tare must be determined in accordance with part 30 of this chapter.

(26 U.S.C. 5204)

§ 19.289 Production gauge.

(a) *General requirements for production gauges.* A proprietor must gauge all spirits by determining the quantity and proof as soon as reasonably possible after production is completed. Except as otherwise provide in this section, a proprietor may determine the quantity by volume or by weight, by an accurate mass flow meter, or when approved by the appropriate TTB officer, by other devices or methods that accurately determine the quantities. If caramel is added to brandy or rum, the proof of the spirits must be determined after the addition. Spirits in each receiving tank will be gauged before any reduction in proof and both before and after each removal of spirits. The gauges must be recorded in the records required by § 19.585.

(b) *Tax to be determined on production gauge.* If the tax is to be determined based on the production gauge, all transaction records must be marked "Withdrawal on Production Gauge." A proprietor may determine the tax based on the production gauge if the spirits are:

(1) Weighed into bulk conveyances or metered using an accurate mass flow meter;

(2) Uniformly filled by weight or an accurate mass flow meter into metal packages; or

(3) Filled by weight or an accurate mass flow meter into packages for immediate withdrawal from bonded premises with the details recorded on a package gauge record in accordance with § 19.619.

(c) *Tax not to be determined on production gauge.* If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and the containers are filled to capacity, and the tax is not to be determined on the basis of the production gauge, the gauge may be made by:

(1) Weighing in a tank, converting the weight into proof gallons, and

determining the average content of each container;

(2) Measuring volumetrically, in a calibrated tank, converting the wine gallons determined into proof gallons, and determining the average content of each container;

(3) Converting the rated capacity into proof gallons to determine the average content of each container. Rated capacity will be determined from specifications of the manufacturer. The proprietor will determine the rated capacity of used cooperage; or

(4) Determining by an accurate mass flow meter or a device or method approved under paragraph (a) of this section, the total quantity filled into containers, and determining the average content of each container.

(d) *Records of production gauge.* For the production gauge, fractional proof gallons will be rounded to the nearest one-tenth and the average content and the number of packages filled will be used in computing the quantity produced. The actual proof gallons in each remnant container must be shown. As provided in § 19.618, a separate gauge record will be prepared for each lot of packages filled (see § 19.485) and for each removal by pipeline or bulk conveyance for deposit in bond on the same plant premises. The gauge record will show "Deposit in storage" or "Deposit in processing." If spirits are to be transferred in bond or withdrawn from bond, the production gauge will be made on the form or record required by this part (accompanied by a package gauge record, if required).

(26 U.S.C. 5204, 5211)

Subpart L—Production of Distilled Spirits

§ 19.291 General.

The regulations in this subpart cover production operations. A proprietor authorized to produce distilled spirits must conduct production operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to production operations.

(26 U.S.C. 5201)

Notification to TTB When Beginning or Suspending Production Operations

§ 19.292 Notice of operations.

A proprietor authorized to produce distilled spirits may not commence, suspend, or resume production operations at the plant without first providing written notice to TTB.

(a) *Beginning operations.* A proprietor must file a letterhead notice with the appropriate TTB officer before

beginning or resuming production operations. A proprietor must not begin or resume operations before the time specified in the notice.

(b) *Suspending operations.* If a proprietor intends to suspend production operations for a period of 90 days or more, the proprietor must file a letterhead notice with the appropriate TTB officer specifying the date on which operations will be suspended.

(c) *Discontinuing reports.* A proprietor is not required to prepare or file reports of production operations under subpart V of this part for periods during which production operations are suspended.

(26 U.S.C. 5221)

Rules for Receipt, Use, and Disposal of Materials

§ 19.293 Receipt of materials.

When a proprietor receives certain materials on bonded premises, the proprietor must determine the quantity received and record those quantities in the records prescribed by subpart V of this part. This requirement applies to:

- (a) Fermenting materials;
- (b) Distilling materials (including nonpotable chemical mixtures containing spirits); and
- (c) Spirits, denatured spirits, articles, and spirits residue for redistillation.

(26 U.S.C. 5201, 5222, 5223)

§ 19.294 Removal of fermenting material.

Material received for use as fermenting material may be removed from or used on bonded premises for other purposes. The proprietor must keep a record of use or removal as provided in subpart V of this part.

(26 U.S.C. 5201)

§ 19.295 Removal or destruction of distilling material.

(a) *Distilling material.* Generally, a proprietor may not remove distilling material from bonded premises before it is distilled. However, a proprietor may remove mash, wort, wash or other distilling material:

- (1) To plant premises, other than bonded premises, for use in any business authorized under § 19.55;
- (2) To other premises for use in processes not involving the production of spirits, alcohol beverages, or vinegar by the vaporizing process; or
- (3) For destruction.

(b) *Residues.* A proprietor may remove the residue of distilling material not introduced into the production system from the premises if the liquid is extracted from the material before removal and the liquid is not received at any distilled spirits plant or bonded wine cellar. A proprietor may return

residue of beer used as distilling material to the producing brewery. A proprietor may destroy distilling material produced and wine and beer received for use as distilling material.

(c) *Records.* A proprietor must keep a record of removal or destruction as provided in subpart V of this part.

(26 U.S.C. 5222, 5370)

§ 19.296 Fermented materials

Fermented materials that a proprietor intends to use in the production of spirits must be:

- (a) Produced on the bonded premises where used;
- (b) Received from a bonded wine cellar in the case of wine;
- (c) Beer received from a brewery without payment of tax, or beer that was removed from a brewery upon determination of tax; or
- (d) Apple cider exempt from tax under 26 U.S.C. 5042(a)(1).

(26 U.S.C. 5201, 5222, 5223)

§ 19.297 Use of materials in production of spirits.

A proprietor may produce spirits from any suitable material in accordance with the proprietor's statements of production procedure in the notice of registration. Materials from which alcohol will not be produced may be used in production only if the use of the materials is described in the approved statements of production procedure. The distillation of nonpotable chemical mixtures as described in § 19.36 will be deemed to be the original and continuous distillation of the spirits in such mixtures and to constitute the production of spirits.

(26 U.S.C. 5172, 5178)

Rules for Production of Spirits

§ 19.301 Distillation.

The distillation of spirits must be done in a continuous system. Distilling operations are continuous when the spirits are moved through the various steps of production as quickly as plant operation will permit. The proprietor may move the product through as many distilling or other production operations as desired, provided the operations are continuous. The collection of unfinished spirits for the purpose of redistillation is not considered to be a break in the continuity of the distilling procedure. However, the quantity and proof of any unfinished spirits must be determined and recorded before any mingling with other materials or before any further operations involving the unfinished spirits outside the continuous system. Before the production gauge, spirits may be held

only as long as reasonably necessary to complete the production procedure.

(26 U.S.C. 5178, 5211, 5222)

§ 19.302 Treatment during production.

During production, the proprietor may purify or refine the spirits by using any material that will not remain in the finished product. Juniper berries and other natural aromatics or their extracted oils may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips that have not been treated with any chemical. The proprietor must destroy or so treat any materials used in treatment of spirits, and which do not remain in the spirits, so as to preclude the extraction of potable spirits.

(26 U.S.C. 5201)

§ 19.303 Addition of caramel to rum or brandy and addition of oak chips to spirits.

A proprietor may add caramel that has no material sweetening properties to rum or brandy in packages or tanks prior to production gauge. A proprietor may add oak chips that have not been treated with any chemical to packages of spirits prior to or after the production gauge. The proprietor must note the use of oak chips on all transaction records.

(26 U.S.C. 5201)

§ 19.304 Production gauge.

A proprietor must gauge all spirits by determining the quantity and proof as soon as reasonably possible after production is completed. Additional requirements regarding production gauges are found in subpart K of this part.

(26 U.S.C. 5204, 5211)

§ 19.305 Identification of spirits.

Upon completion of the production gauge, the proprietor must identify containers of spirits as provided in subpart S of this part. When the proprietor intends to enter spirits into bonded storage for later packaging in wooden packages, the proprietor may identify the spirits with the designation to which they would be entitled if drawn into wooden packages, followed by the word "Designate," for example, "Bourbon Whisky Designate."

(26 U.S.C. 5201, 5206)

§ 19.306 Entry.

(a) Following completion of the production gauge, a proprietor must make the appropriate entry for:

- (1) Deposit of the spirits on bonded premises for storage or processing;
- (2) Withdrawal of the spirits on determination of tax;
- (3) Withdrawal of the spirits free of tax;

(4) Withdrawal of the spirits without payment of tax; or

(5) Transfer of the spirits for redistillation.

(b) A proprietor may use the production gauge as the entry gauge when spirits are:

(1) Deposited for storage or processing at the same distilled spirits plant; or

(2) Entered for redistillation at the same distilled spirits plant.

(c) When spirits are entered for deposit at another distilled spirits plant or are entered for withdrawal or redistillation, the provisions subpart P of this part will apply.

(26 U.S.C. 5211)

§ 19.307 Distillates containing extraneous substances.

(a) *Use in production.* Distillates that contain substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system before the production gauge and promptly added to fermenting or distilling material at the distillery where produced.

(b) *Use at adjacent bonded wine cellar.* Distillates that contain aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use in fermentation of wine to be used as distilling material at the distilled spirits plant from which the distillates were removed. The removal of distillates to an adjacent bonded wine cellar must be done as provided in § 19.419. The receipt and use of those distillates must conform to the requirements of part 24 of this chapter.

(26 U.S.C. 5201, 5222, 5373)

Rules for Chemical By-Products

§ 19.308 Spirits content of chemicals produced.

All chemicals and chemical by-products produced must be substantially free of spirits before being removed from bonded premises. The spirits content of chemicals to be removed from bonded premises must not exceed 10 percent by volume unless the appropriate TTB officer approves higher limits. A proprietor must test chemicals for spirits content and maintain a record of such tests as required by § 19.584.

(26 U.S.C. 5201)

§ 19.309 Disposition of chemicals.

Chemicals that meet the requirements in § 19.308 may be removed from bonded premises by pipeline or in containers marked to show the contents. The proprietor must determine the quantities of chemicals removed from bonded premises and keep records of

removals as required by § 19.586. A TTB officer may take samples of chemicals.

(26 U.S.C. 5201, 5222)

§ 19.310 Wash water.

Water used in washing chemicals to remove spirits may be run into a wash tank or a distilling material tank, or may be destroyed or disposed of on the premises.

(26 U.S.C. 5008, 5201)

Production Inventories

§ 19.312 Physical inventories.

A proprietor must take a physical inventory of the spirits and denatured spirits in tanks and other containers in the production account at the close of each calendar quarter. A proprietor must record the results of the inventory as provided in subpart V of this part and must show separately spirits and denatured spirits received for redistillation. TTB may require additional inventories be taken at any time.

(26 U.S.C. 5201)

Rules for Redistillation

§ 19.314 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Some redistillation requires an approved formula on form TTB F 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages, as specified in §§ 5.26 and 5.27 of this chapter.

(26 U.S.C. 5223)

§ 19.315 Receipts for redistillation.

(a) A proprietor may receive and redistill spirits or denatured spirits that:

(1) Have not been removed from bond;

(2) Have been withdrawn from bond on payment or determination of tax and returned to bond under subpart Q of this part;

(3) Have been withdrawn from bond free of tax or without payment of tax and returned to bond under subpart T of this part; or

(4) Have been abandoned to the United States and sold to the proprietor without the payment of tax.

(b) A proprietor may also receive and redistill:

(1) Recovered denatured spirits and recovered articles returned under § 19.454, and

(2) Articles and spirits residues received under § 19.454.

(26 U.S.C. 5201, 5215, 5223, 5243)

§ 19.316 Redistillation.

(a) TTB has established standards of identity for the various classes and

types of distilled spirits. Those standards are found in part 5 of this chapter. If a proprietor intends to redistill spirits, the proprietor must ensure that the redistillation process does not cause the distillate to become ineligible for designation in the class or type of spirits that the proprietor intends to produce. Therefore, spirits must not be redistilled at a proof lower than that allowed for the class and type at which the spirits were originally produced, unless the redistilled spirits are to be:

(1) Used in wine production;

(2) Used in the manufacture of gin or vodka; or

(3) Designated as alcohol.

(b) In order to preserve the class and type of spirits during the redistillation process, different kinds of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced. However, this restriction does not apply when:

(1) Brandy is redistilled into “spirits-fruit” or “neutral spirits-fruit”. In this case the resulting distillate must not be used for producing wine;

(2) Whiskey is redistilled into “spirits-grain” or “neutral spirits-grain”;

(3) Spirits originally distilled from different kinds of material are redistilled into “spirits-mixed” or “neutral spirits-mixed”; or

(4) The spirits are redistilled into alcohol.

(c) All spirits redistilled after the production gauge will be treated the same as if the spirits had been originally produced by the redistiller. Spirits recovered by redistillation of denatured spirits, articles, or spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation. Otherwise, all provisions of this part and 26 U.S.C. Chapter 51 applicable to the original production of spirits will be applicable to the redistillation of spirits. Nothing in this section affects any provision of this chapter relating to the labeling of distilled spirits.

(26 U.S.C. 5215, 5223)

Subpart M—Storage of Distilled Spirits

§ 19.321 General.

This subpart covers storage operations at distilled spirits plants. A proprietor qualified as a warehouseman and authorized to store bulk distilled spirits and wines must conduct storage operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to storage operations.

(26 U.S.C. 5201)

Receipt and Storage of Spirits and Wines

§ 19.322 Receipt and storage of bulk spirits and wines.

(a) *Deposit of spirits into storage account.* A proprietor may receive bulk spirits into the storage account:

- (1) From the production facilities of the same plant;
- (2) By transfer in bond from another plant;
- (3) From customs custody without payment of tax; or
- (4) By return to bulk storage.

(b) *Deposit of wine into storage account.* A proprietor may receive bulk wine into the storage account:

- (1) By transfer in bond from a bonded wine cellar; or
- (2) By transfer in bond from another distilled spirits plant.

(c) *Storage.* A proprietor may store spirits or wines in packages, tanks or portable bulk containers in the storage account on the bonded premises. If stored in portable containers, the containers must be kept so that they can be readily inspected or inventoried by TTB officers.

(26 U.S.C. 5201, 5202, 5211, 5212, 5231, 5232, 5601)

Rules for Filling and Changing Packages

§ 19.324 Filling of packages from tanks.

A proprietor may fill spirits or wines into packages from storage tanks on bonded premises. The spirits or wines in the tank must be gauged before the filling of packages begins and again when the filling is finished if the tank is not empty. The results of the gauges must be recorded in the records required by § 19.618.

(26 U.S.C. 5201)

§ 19.325 Change of packages.

A proprietor may transfer spirits or wines in storage from one package to another. Each new package must contain spirits from only one package except in the case of spirits of 190 degrees or more proof. Packages of spirits must be marked as provided in subpart S of this part. Each package of wine must bear the same marks as the package from which the wine was transferred.

(26 U.S.C. 5201)

Rules for Mingling or Blending Spirits

§ 19.326 Mingling or blending of spirits for further storage.

A proprietor may mingle or blend spirits in the storage account according to the following rules:

(a) Spirits distilled at 190 degrees or more of proof, whether or not later reduced, may be mingled in storage.

(b) Domestic spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if the spirits:

- (1) Are of the same kind; and
- (2) Were produced in the same State.

(c) Imported spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if the spirits:

- (1) Are of the same kind;
- (2) Were produced in the same foreign country; and

(3) Were treated, blended, or compounded in the same foreign country and the U.S. import duty was paid at the same rate.

(d) Imported spirits distilled at less than 190 degrees of proof that are recognized as distinctive products under part 5 of this chapter may be mingled for withdrawal or further storage if the spirits:

- (1) Are of the same kind;
- (2) Were produced by the same proprietor in the same foreign country; and

(3) Were treated, blended, or compounded by the same proprietor in the same foreign country and the U.S. import duty was paid at the same rate.

(e) Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be blended with each other, or with any blend of such fruit brandies in storage. Rums may, for the sole purpose of perfecting them according to commercial standards, be blended with each other, or with any blend of rums.

(f) Packaging after mingling or blending must be done under the provisions of § 19.324. The mingled or blended spirits may be returned to the packages from which they were dumped, or as many of the packages as needed.

(26 U.S.C. 5201, 5214)

§ 19.327 Packages dumped for mingling.

A proprietor must examine each package of spirits to be dumped for mingling. If any package bears evidence of loss due to theft or unauthorized voluntary destruction, the proprietor must notify the appropriate TTB officer before dumping the package. Mingled spirits must be recorded on the tank record required by § 19.592 and § 19.593, as appropriate.

(26 U.S.C. 5201)

§ 19.328 Determining age of mingled spirits.

When spirits are mingled, the age of the spirits for the entire lot will be the age of the youngest spirits contained in the lot.

(26 U.S.C. 5201)

§ 19.329 Mingled spirits or wines held in tanks.

When wines or spirits of less than 190 degrees of proof are mingled in a tank, the proprietor must gauge the spirits or wines in the tank and record the mingling gauge on the tank record prescribed in § 19.592.

(26 U.S.C. 5201)

Use of Oak Chips and Caramel

§ 19.331 Use of oak chips in spirits and caramel in brandy and rum.

A proprietor may add oak chips that have not been treated with any chemical to packages of spirits. The proprietor must note the use of oak chips on all transaction records. A proprietor may add caramel that has no material sweetening properties to rum or brandy stored in packages or tanks.

(26 U.S.C. 5201)

Storage Inventories

§ 19.333 Physical inventories.

A proprietor must take a physical inventory of all spirits and wines held in the storage account in tanks and other containers (except packages) at the close of each calendar quarter. A proprietor must record the results of the inventory as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

Subpart N—Processing of Distilled Spirits

§ 19.341 General.

This subpart covers processing operations at distilled spirits plants. A proprietor authorized to perform processing operations must conduct processing operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to processing operations. Also, the provisions of subpart O of this part apply if a proprietor denatures spirits or manufactures articles on bonded premises as part of processing operations under this subpart.

(26 U.S.C. 5201)

Rules for Receipt and Use of Spirits, Wines, and Alcoholic Flavoring Materials

§ 19.342 Receipt of spirits, wines, and alcoholic flavoring materials for processing.

(a) *Receipt of bulk spirits.* A proprietor may receive bulk spirits into the processing account:

- (1) From the production or storage account at the same plant;
- (2) By transfer in bond from another distilled spirits plant; or
- (3) By withdrawal from customs custody under 26 U.S.C. 5232.

(b) *Receipt of wines.* A proprietor may receive wines into the processing account:

- (1) From the storage account at the same plant; or
- (2) By transfer in bond from a bonded wine cellar or another distilled spirits plant.

(c) *Receipt of spirits returned to bond.* A proprietor may receive spirits into the processing account that are returned to bond under the provisions of 26 U.S.C. 5215.

(d) *Receipt of alcoholic flavoring materials.* A proprietor may receive alcoholic flavoring materials into the processing account.

(e) *Dumping of spirits, wines, and alcoholic flavoring materials.* As provided in §§ 19.343 and 19.598, the proprietor must prepare a dump/batch record when spirits, wines, and alcoholic flavoring materials are dumped for use in the processing account. Spirits, wines, and alcoholic flavoring materials that are dumped into the processing account are subject to the following rules:

- (1) Spirits and wines received in bulk containers or conveyances may be retained in the containers or conveyances in which received until used, but must be recorded as dumped upon receipt;
- (2) Spirits and wines received by pipeline must be deposited in tanks and recorded as dumped on receipt; and
- (3) Alcoholic flavoring materials may be retained in the containers in which received or may be transferred to another container if the proprietor marks or otherwise indicates thereon, the full identification of the original container, the date of receipt, and the quantity deposited. Alcoholic flavoring materials and nonalcoholic ingredients will be considered dumped when mixed with spirits or wines.

(f) *Gauging.* A proprietor must determine the proof gallon content of spirits, wines, and alcoholic flavoring materials at the time of dumping. Additional information regarding the gauging of spirits, wines, and alcoholic

flavoring materials is found in subpart K of this part.

(26 U.S.C. 5201)

§ 19.343 Use of spirits, wines and alcoholic flavoring materials.

A proprietor must prepare a dump/batch record in accordance with § 19.598 for spirits, wines, alcoholic flavoring materials, and nonalcoholic ingredients used in the manufacture of a distilled spirits product according to the following rules.

(a) *Dump record.* A proprietor must prepare a dump record when spirits, wines, or alcoholic flavoring materials are dumped for use in the manufacture of a distilled spirits product, and when spirits are dumped for redistillation in the processing account.

(b) *Batch record.* A proprietor must prepare a batch record to report:

(1) The dumping of spirits that are to be used immediately and in their entirety in preparing a batch of a product manufactured under an approved formula;

(2) The use of spirits or wines previously dumped, reported on dump records and retained in tanks or receptacles; or

(3) The use of any combination of ingredients under paragraph (b)(1) or paragraph (b)(2) of this section in preparing a batch of product manufactured under an approved formula.

(26 U.S.C. 5201)

§ 19.344 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

(a) Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises.

(b) Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131–5134, may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises.

(c) For purposes of computing an effective tax rate, flavors manufactured on either the bonded or general premises of a distilled spirits plant are not eligible flavors. See § 19.1 for the definition of the term “eligible flavor” and further restrictions that apply to the manufacture of an eligible flavor.

(26 U.S.C. 5201)

Obscuration Determination

§ 19.346 Determining obscuration.

A proprietor may determine, as provided in § 30.32 of this chapter, the proof obscuration of spirits to be bottled on the basis of a representative sample taken from a storage tank before the transfer of the spirits to the processing account or from a tank after the spirits have been dumped for processing, whether or not combined with other alcoholic ingredients. The obscuration will be determined after the sample has been reduced to within one degree of bottling proof. Only water may be added to a lot of spirits to be bottled for which the determination of proof obscuration is made from a sample under this section. The proof obscuration for spirits gauged under this section must be frequently verified by testing samples taken from bottling tanks before bottling.

(26 U.S.C. 5204)

Filing Formulas With TTB

§ 19.348 Formula requirements.

A proprietor must obtain an approved formula on form TTB F 5100.51 as provided in §§ 5.26 and 5.27 of this chapter before a proprietor may:

(a) Blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits, including redistillation as provided in § 19.314; or

(b) Produce gin or vodka by other than original and continuous distillation.

(26 U.S.C. 5201, 5555)

Rules for Bottling, Packaging, and Removal of Products

§ 19.351 Removals from processing.

(a) *Method of removal.* A proprietor may remove spirits or wines from the processing account in any approved bulk container, by pipeline, or in bulk conveyances in compliance with the provisions of this part. Spirits may be bottled and cased for removal.

(b) *Authorized removals from processing.* A proprietor may remove from processing:

(1) Spirits, upon tax determination or withdrawal under 26 U.S.C. 5214 or 26 U.S.C. 7510;

(2) Spirits, to the production account at the same plant for redistillation;

(3) Bulk spirits, by transfer in bond to production or processing account at another distilled spirits plant for redistillation or further processing;

(4) Spirits or wines, for authorized voluntary destruction; or

(5) Wines, by transfer in bond to a bonded wine cellar or to another

distilled spirits plant. However, wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

(c) *Exception.* Except as provided in paragraph (b)(2) and (3) of this section, spirits may not be transferred from the processing account to the storage account.

(26 U.S.C. 5001, 5006, 5008, 5201, 5206, 5212, 5214, 5223, 5362)

§ 19.352 Bottling tanks.

Generally, a proprietor must bottle all spirits from tanks that are listed in the notice of registration and have been certified as accurate. However, if a proprietor files a letterhead application and shows the need to do so, the appropriate TTB officer may authorize bottling from original packages, tank trucks, totes or special containers where it is not practical to use a bottling tank. In addition, a proprietor may bottle liqueurs directly from a tank truck or tote without applying for permission to TTB if the liqueurs are gauged prior to unloading and piped directly to the bottling line.

(26 U.S.C. 5201)

§ 19.353 Bottling tank gauge.

When a distilled spirits product is to be bottled or packaged, the proprietor must gauge the product after any filtering, reduction, or other treatment, and before bottling or packaging begins. The gauge must be made at labeling or package marking proof, and the details of the gauge must be entered on the bottling and packaging record required in § 19.599.

(26 U.S.C. 5201)

§ 19.354 Bottling or packaging records.

A proprietor must prepare a record for each batch of spirits bottled or packaged as provided in § 19.599. A proprietor must keep a separate daily summary record of spirits bottled or packaged as provided in § 19.601.

(26 U.S.C. 5201, 5207)

§ 19.355 Labels describing the spirits.

Labels affixed to containers must accurately describe the spirits in the tanks from which the containers are filled. The proprietor's records must enable TTB officers to readily determine which label was used on any filled container.

Additional information regarding labeling requirements is found in subpart T of this part and part 5 of this chapter.

(26 U.S.C. 5201)

§ 19.356 Alcohol content and fill.

(a) *General.* At representative intervals during bottling operations, a proprietor must examine and test bottled spirits to determine whether the alcohol content and quantity (fill) of those spirits agree with what is stated on the label or the bottle. A proprietor's test procedures must be adequate to ensure accuracy of labels on the bottled product. Proprietors must record the results of all tests of alcohol content and quantity (fill) in the record required by § 19.600.

(b) *Variations in fill.* Quantity (fill) must be kept as close to 100 percent fill as the equipment and bottles in use will permit. There must be approximately the same number of overfills and underfills for each lot bottled. In no case will the quantity contained in a bottle vary by more than plus or minus two percent from the quantity stated on the label or bottle.

(c) *Variations in alcohol content.* Variations in alcohol content, subject to a normal drop that may occur during bottling, must not exceed:

(1) 0.25 percent alcohol by volume for products containing solids in excess of 600 mg per 100 ml;

(2) 0.25 percent alcohol by volume for all spirits products bottled in 50 or 100 ml size bottles; or

(3) 0.15 percent alcohol by volume for all other spirits and bottle sizes.

(d) *Example.* Under paragraph (c) of this section, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume.

(26 U.S.C. 5201, 5301)

§ 19.357 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close of the day, the proprietor must make entries on the bottling and packaging record covering the total quantity bottled that day from the tank. Entries must be made not later than the morning of the following business day unless the proprietor maintains auxiliary or supplemental records as provided in § 19.580.

(26 U.S.C. 5201)

§ 19.358 Cases.

(a) On completion of bottling, a proprietor must place filled bottles with properly affixed closures in cases. A proprietor may only fill cases with the same kind, size, and proof of spirits. Normally, the cases must be sealed; however, cases may be temporarily

retained on bonded premises without being sealed pending the affixing to bottles of any required labels, State stamps, or seals. Unsealed cases must be marked in accordance with subpart S of this part, and segregated from other cases until sealed. All cases must be sealed and marked as provided in subpart S of this part before removal from the bonded premises.

(b) Filled bottles may remain on the bottling line at the end of the workday if the identical product will be bottled on the next bottling shift and if adequate security measures are in place to prevent theft.

(26 U.S.C. 5201, 5206)

§ 19.359 Remnants.

When at the end of a bottling run less bottles remain than the number necessary to fill a case, the remaining bottles may be placed in a case marked as a remnant case or kept uncased on the bonded premises until spirits of the same kind are again bottled. The remnant bottles may later be used to complete the filling of a case, or may be used for another lawful purpose such as replacing accidental breakage occurring on bonded premises.

(26 U.S.C. 5201, 5206)

§ 19.360 Filling packages.

A proprietor may draw spirits into packages from a tank meeting the requirements of § 19.182 through § 19.184. A proprietor must gauge the packages, report the details of the gauge on a package gauge record as provided in § 19.619, and attach a copy of the package gauge record to each copy of the bottling and packaging record covering the product. The packages must be marked as provided in subpart S of this part.

(26 U.S.C. 5201)

§ 19.361 Removals by bulk conveyances or pipelines.

(a) When a proprietor removes spirits from the processing account in bulk conveyances or by pipeline, the proprietor must record the removal on the bottling and packaging record.

(b) Transfers and withdrawals of bulk spirits from the processing account must be performed in accordance with the provisions of subpart P of this part.

(c) The consignor of the transfer must forward to the consignee a statement of composition or a copy of any formula under which the spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product.

(d) Bulk conveyances must be marked as provided in subpart S of this part.

(26 U.S.C. 5201)

§ 19.362 Rebottling.

When spirits are dumped for rebottling, the proprietor must prepare an appropriately modified bottling and packaging record. If the spirits were originally bottled by another proprietor, the rebottling proprietor must obtain a statement from the original bottler consenting to the rebottling.

(26 U.S.C. 5201)

§ 19.363 Reclosing and relabeling.

(a) A proprietor may reclose or relabel distilled spirits before removal from, or after return to, bonded premises. The reclosing or relabeling of spirits returned to bonded premises must be done immediately, and the spirits promptly removed.

(b) If the spirits were originally bottled by another proprietor, the relabeling proprietor must have on file a statement from the original bottler consenting to the relabeling.

(c) When spirits are relabeled, the proprietor must have a certificate of label approval or certificate of exemption from label approval issued under part 5 of this chapter for the labels used on relabeled spirits.

(d) A proprietor must prepare a separate record under § 19.604 for the relabeling or reclosing of spirits.

(26 U.S.C. 5201, 5215)

§ 19.364 Bottled-in-bond spirits.

If a proprietor labels spirits as bottled-in-bond for domestic consumption, the labels must meet the requirements in part 5 of this chapter and the bottles must bear a closure or other device as required by subpart T of this part.

(26 U.S.C. 5201)

§ 19.365 Spirits not originally intended for export.

Spirits produced in the United States and originally intended for domestic use may be exported with benefit of drawback or without payment of tax if the containers are marked as required by part 28 of this chapter. A proprietor may relabel the spirits to show any of the information required by § 19.519. If a proprietor intends to file a claim for drawback on spirits prepared for export under this section, the proprietor must follow the provisions of § 28.195b of this chapter. If a proprietor intends to withdraw spirits without payment of tax for export, the proprietor must follow the procedures in subpart E of part 28 of this chapter.

(26 U.S.C. 5062, 5214)

§ 19.366 Alcohol.

(a) *Containers.* A proprietor may put alcohol for industrial use in bottles, packages, or other containers, subject to the provisions of subpart S of this part. A proprietor must follow the provisions of subpart T of this part when bottling alcohol for nonindustrial domestic use.

(b) *Closures.* Closures or other devices must be affixed to containers of alcohol as provided in subpart T of this part.

(c) *Bottle labels.* All bottles of alcohol for industrial use must have a label that is securely affixed to the bottle showing the word "Alcohol" and the name and plant number of the bottler. The proprietor may place additional information on the label if it is not inconsistent with the required information.

(d) *Case marks.* Each case of bottled alcohol must bear the marks required by subpart S of this part.

(26 U.S.C. 5201, 5206, 5235, 5301)

Requirements for Processing Inventories

§ 19.371 Inventories of wines and bulk spirits in processing.

A proprietor must take a physical inventory of all wines and bulk spirits (except packages) held in the processing account at the close of each calendar quarter. The results of the inventory must be recorded as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

§ 19.372 Physical inventories of bottled and packaged spirits.

(a) *Physical inventories.* Generally, a proprietor must take physical inventories of bottled and packaged spirits in the processing account for the return periods ending June 30 and December 31, and at any other time that the appropriate TTB officer requires. Physical inventories may be taken within a period of a few days before or after June 30 or December 31 if:

(1) The period does not include more than one complete weekend; and

(2) Necessary adjustments are made to the inventory record to reflect the actual quantities on hand June 30 or December 31.

(b) *Alternate dates.* On approval of an application filed with the appropriate TTB officer, required physical inventories may be taken on dates other than June 30 and December 31 if the dates established for taking such inventories:

(1) Coincide with the end of a return period, and

(2) Are approximately six months apart.

(c) *Waiver of physical inventory.* A proprietor may file an application to take only one physical inventory per year. The appropriate TTB officer may approve the application if he finds that only one physical inventory per year will be sufficient to protect the revenue. However, the requirement for the waived inventory may be reimposed if it becomes necessary for protection of the revenue.

(d) *Notification of physical inventory.* A proprietor must notify the appropriate TTB officer at least 5 business days in advance of the date and time of a physical inventory of bottled or packaged spirits. TTB officers may be assigned to verify or supervise physical inventories taken under the provisions of this section.

(26 U.S.C. 5201)

Subpart O—Denaturing Operations and Manufacture of Articles

§ 19.381 General.

This subpart covers the denaturation of spirits and the manufacture of articles by proprietors of distilled spirits plants. Denatured spirits are distilled spirits that have been rendered unsuitable for beverage use by the addition of specific amounts of approved denaturing materials. For purposes of this subpart, articles are products that contain denatured spirits and that are made in accordance with this subpart or part 20 of this chapter. Proprietors who are qualified under this part as processors may make denatured spirits and articles in accordance with the provisions of this subpart. Additional requirements regarding the distribution, use, and standards for denatured spirits are set forth in parts 20 and 21 of this chapter.

(26 U.S.C. 5178, 5241)

§ 19.382 Formulas.

(a) *Approved formulas.* A proprietor must denature spirits according to an approved formula listed in 27 CFR part 21.

(b) *Alternate formulas and denaturants.* If a proprietor wishes to denature spirits by using an alternative formula or a different denaturant, the proprietor must apply to TTB for authorization. A proprietor must receive written approval from the appropriate TTB officer before denaturing spirits using an alternative formula or a different denaturant. See also §§ 21.5 and 21.91 of this chapter for additional requirements that apply in these circumstances.

(26 U.S.C. 5241)

Rules for Denaturing Spirits and Testing Denaturants

§ 19.383 Gauge for denaturation.

(a) *General.* A proprietor must gauge spirits before denaturation and after denaturation and must record each gauge in the record of denaturation required by § 19.606(b). However, a proprietor is not required to gauge either spirits that are dumped from previously gauged containers or spirits that are transferred directly to mixing tanks from gauge tanks where they were gauged. Measurements of spirits and denaturants may be made by volume, weight, accurate mass flow meter, or by any other device that has been approved by the appropriate TTB officer.

(b) *Denaturation and article manufacture in a single process.* When a proprietor both denatures spirits and manufactures articles in a single, unified process, the proprietor may, in place of the procedure specified in paragraph (a) of this section, gauge the spirits before and after denaturation in the following manner:

(1) Gauge the spirits to be denatured by volume, weight, accurate mass flow meter, or other device or method approved by the appropriate TTB officer;

(2) Gauge the denaturants to be used by volume, weight, accurate mass flow meter, or other device approved by the appropriate TTB officer; and

(3) Compute the number of wine gallons of denatured spirits produced, and enter this figure in the record required by § 19.606(b). In calculating the amount of denatured spirits produced, the proprietor must not include in the calculation the amount of additional chemicals or denaturants used for article manufacture.

(26 U.S.C. 5204, 5241)

§ 19.384 Adding denaturants to spirits.

(a) When making denatured spirits, a proprietor must mix the denaturants and spirits only in packages, tanks or bulk conveyances and only on bonded premises. A proprietor must thoroughly mix the denaturants with the spirits to ensure that all of the spirits are effectively denatured.

(b) If a proprietor wishes to use another method of mixing denaturants and spirits not prescribed in this subpart, the proprietor must submit to the appropriate TTB officer a written application for approval of the alternative method in accordance with § 19.27. TTB may require that the proprietor submit additional information, including a flow diagram or other graphic representation of the

alternative method, in support of the application.

(26 U.S.C. 5242)

§ 19.385 Making alcohol or water solutions of denaturants.

If a proprietor uses a denaturant that is difficult to dissolve in spirits at normal working temperatures, that is highly volatile, or that becomes solid at normal working temperature, the proprietor may liquefy or dissolve the denaturant in a small amount of spirits or water prior to its use in the production of denatured spirits.

However, the proof of the denatured spirits produced must not fall below the proof required by the approved formula. In addition, if alcohol is used as a solvent, the proprietor must include this additional alcohol in calculating the total quantity of spirits denatured in the batch.

(26 U.S.C. 5242)

§ 19.386 Adjusting pH of denatured spirits.

A proprietor may add trace amounts of acidic or caustic chemical compounds to adjust or neutralize the pH of denatured spirits. However, a proprietor may not adjust the pH with any substance that will counteract or reduce the effect of the denaturants. A proprietor who adjusts the pH of denatured spirits must keep a record of the adjustment with reference to the formula number of the treated denatured spirits. The record must include the kinds and quantities of chemical compounds used for each batch of denatured spirits treated.

(26 U.S.C. 5241, 5242)

§ 19.387 Ensuring the quality of denaturants.

(a) *Testing.* Proprietors must ensure that the materials they receive for use in denaturing conform to the specifications prescribed in part 21 of this chapter. In addition, the appropriate TTB officer may require that a proprietor test the quality of denaturants at any time.

(b) *Sampling denaturants.* Proprietors must use good commercial practice when taking samples of denaturants for quality assurance testing. Samples of denaturants must be representative of the lot being sampled.

(c) *Third party testing.* A proprietor may employ an outside laboratory or other appropriate third party to test samples of denaturants. In the case of a third party test, the proprietor must obtain a copy of the analysis or statement of findings signed by the chemist who performed the test. On request, the proprietor must provide to the appropriate TTB officer samples of

denaturants for quality control testing in a Government laboratory.

(d) *Substandard denaturants.* If TTB or a proprietor finds that a material does not conform to the specifications for a denaturant prescribed in part 21 of this chapter, the proprietor must immediately terminate use of the substandard material as a denaturant. However, the proprietor may continue to use the material as a denaturant after treating or reprocessing the substandard material to correct the deficiency and bring the material into conformity with the applicable specifications.

(26 U.S.C. 5242)

Rules for Storing Denatured Spirits and Filling Containers

§ 19.388 Storing denatured spirits.

(a) *Bonded storage.* A proprietor must store on bonded premises all denatured spirits produced, received in bond, or received by return to bond.

(b) *Storage methods.* A proprietor may store denatured spirits on bonded premises in any appropriate tank, package or container authorized for filling with denatured spirits. The proprietor must store containers of denatured spirits in a manner that allows for easy inspection and inventory of the denatured spirits by TTB officers. A proprietor must store portable containers of denatured spirits within a building or structure that protects the spirits from unauthorized access. A proprietor may apply to the appropriate TTB officer for authorization to store containers of denatured spirits in an alternative manner in accordance with § 19.27.

(c) *Tank Records.* A proprietor must maintain a record for tanks in which denatured spirits are stored in accordance with § 19.606.

(26 U.S.C. 5201)

§ 19.389 Filling containers from tanks.

(a) *Filling portable containers.* A proprietor may fill portable containers with denatured spirits from tanks on the bonded premises.

(b) *Accounting for denatured spirits in filling operations.* In performing filling operations under paragraph (a) of this section, a proprietor must:

(1) Gauge the denatured spirits remaining in the tanks at the end of each filling operation;

(2) Maintain a record of each gauge and document the quantity of denatured spirits drawn from the tank during each filling operation; and

(3) Make a record of any spirits lost during the filling operation.

(c) *Gauging requirements.* The provisions of § 19.289 (a) and (c) apply

to the filling and gauging of portable containers. In addition, a proprietor may withdraw denatured spirits from the bonded premises in portable containers based on the filling gauge.

(26 U.S.C. 5201)

§ 19.390 Container marking requirements.

A proprietor must mark packages and portable containers containing denatured spirits in accordance with the requirements of subpart S of this part.

(26 U.S.C. 5206)

Rules for Mixing and Converting Denatured Spirits

§ 19.391 Mixing denatured spirits.

(a) *Spirits of the same formula.* If a proprietor has two or more different batches of denatured spirits produced under the same formula, the proprietor may mix them on bonded premises.

(b) *Spirits of different formulas.* A proprietor may mix denatured spirits produced under different formulas on bonded premises for immediate redistillation at the same plant or at another plant subject to the provisions of §§ 19.314, 19.315, and 19.316.

(26 U.S.C. 5241, 5242)

§ 19.392 Converting denatured alcohol to a different formula.

(a) *General.* A proprietor may convert specially denatured alcohol (SDA) from one formula of SDA to another formula of SDA if the resultant mixture contains only alcohol and the denaturants listed for an approved SDA formula and in the correct concentrations, as set forth in part 21 of this chapter. Such converted SDA may be used only as authorized in part 21 of this chapter.

(b) *Converting SDA to SDA Formula No. 1—(1) All SDA other than SDA Formulas No. 3–A and No. 30.* A proprietor may convert any SDA, other than SDA produced under Formulas No. 3–A and No. 30, into SDA Formula No. 1 by adding methyl alcohol and any one of the other alternative denaturants listed in § 21.32 of this chapter in accordance with the formulation prescribed in that section.

(2) *SDA Formulas No. 3–A and No. 30.* SDA Formulas No. 3–A and No. 30 specify more methyl alcohol than is specified for SDA Formula No. 1. Therefore, in order to convert SDA produced under Formulas No. 3–A or No. 30 into SDA under Formula No. 1, a proprietor must first add a sufficient amount of ethyl alcohol to the SDA in question to bring the methyl alcohol content to the proportion prescribed for SDA Formula No. 1. After adjusting the proportion of methyl alcohol, the proprietor must add the specified

amount of any one of the other alternative denaturants listed in § 21.32 of this chapter.

(c) *Converting SDA to SDA Formula No. 29.* A proprietor may convert any SDA into SDA Formula No. 29 by adding the amount of acetaldehyde or ethyl acetate specified in § 21.56 of this chapter. However, due to the presence of other denaturants from the original formula, SDA under Formula No. 29 that has been converted from another SDA formula may be used only as authorized in § 21.56(b) but not in the manufacture of vinegar, drugs or medicinal chemicals, and the conditions governing use provided in § 21.56(c) will apply.

(d) *Other conversions of SDA.* If a proprietor wishes to make an SDA formula conversion other than one authorized in paragraph (a), (b), or (c) of this section, the proprietor must obtain approval from the appropriate TTB officer prior to the conversion.

(e) *Conversions to completely denatured alcohol.* A proprietor may convert any SDA from a formula that does not contain methyl alcohol or wood alcohol to any one of the completely denatured alcohol (CDA) formulas prescribed in subpart C of part 21 of this chapter, by adding the denaturants specified for CDA.

(26 U.S.C. 5242)

Rules for Restoration and Redenaturation, Inventories, and Manufacture of Articles; Records Required

§ 19.393 Restoration and redenaturation of recovered denatured spirits and recovered articles.

(a) *Recovered denatured spirits and articles.* A proprietor may receive recovered denatured spirits and recovered articles on bonded premises for restoration (including redistillation, if necessary), or redenaturation, or both, as provided in subpart Q of this part. However, the proprietor may not withdraw the spirits from bonded premises except for industrial use or after redenaturation.

(b) *Spirits or articles retaining some denaturants.* If recovered denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, the proprietor must make an entry to that effect in the record of denaturation required by § 19.606(b).

(26 U.S.C. 5242)

§ 19.394 Inventory of denatured spirits.

A proprietor must take a physical inventory of all denatured spirits in the processing account at the close of each

calendar quarter. The proprietor must record the results of that inventory as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

§ 19.395 Manufacture of articles.

A proprietor must manufacture, label, mark and dispose of articles in accordance with part 20 of this chapter.

(26 U.S.C. 5273)

§ 19.396 Required records.

(a) *Records of denaturing operations.* A proprietor who denatures spirits must maintain daily records of denaturing operations in accordance with § 19.606.

(b) *Records of manufacture of articles.* A proprietor who manufactures articles must maintain daily records in accordance with § 19.607.

(26 U.S.C. 5178, 5241)

Subpart P—Transfers, Receipts, and Withdrawals

§ 19.401 Authorized transactions.

(a) *General.* A proprietor of a distilled spirits plant may transfer spirits and wines in bond to other distilled spirits plants, receive spirits and wines in bond from other distilled spirits plants, receive spirits from customs custody, and withdraw spirits from the distilled spirits plant without payment of tax or free of tax under certain conditions. This subpart sets forth the rules that a proprietor must follow when so transferring, receiving, or withdrawing spirits and wines and also includes related rules for taking samples and securing conveyances.

(b) *Other transfers and withdrawals.* For withdrawals of spirits from bonded premises on determination or payment of tax, see subpart I of this part. For rules regarding withdrawals for exportation and transfers to foreign trade zones or to customs bonded warehouses, see part 28 of this chapter.

(26 U.S.C. 5181, 5212, 5213, 5214, 5232, 5362, 5373)

Transfers Between Bonded Premises

§ 19.402 Authorized transfers in bond.

The IRC allows a proprietor to transfer and receive spirits, wines, and industrial alcohol as provided in paragraphs (a) through (c) of this section.

(a) *Spirits.* Bulk spirits or denatured spirits may be transferred in bond between the bonded premises of plants qualified under 26 U.S.C. 5171 or 26 U.S.C. 5181 in accordance with §§ 19.403 and 19.733. However, spirits or denatured spirits produced from

petroleum, natural gas, or coal may not be transferred to alcohol fuel plants.

(b) *Wine.* Wines may be transferred:

(1) From a bonded wine cellar to the bonded premises of a distilled spirits plant;

(2) From the bonded premises of a distilled spirits plant to a bonded wine cellar; and

(3) Between the bonded premises of distilled spirits plants.

(c) *Alcohol for industrial purposes.* Alcohol bottled for industrial purposes in accordance with § 19.366 and subpart S of this part, may be transferred between the bonded premises of distilled spirits plants in the same manner as provided in § 19.403 through § 19.407 for bulk distilled spirits.

(26 U.S.C. 5181, 5212, 5362)

§ 19.403 Application to receive spirits in bond.

(a) When the proprietor of a distilled spirits plant qualified under 26 U.S.C. 5171 or of an alcohol fuel plant qualified under 26 U.S.C. 5181 wishes to have spirits or denatured spirits transferred in bond to his plant from another distilled spirits plant, the proprietor must complete an application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond, in triplicate, and forward it to the appropriate TTB officer for approval. A proprietor is not required to submit an application on TTB F 5100.16 for transfers from customs custody under 26 U.S.C. 5232.

(b) TTB will not approve the application submitted under paragraph (a) of this section unless the proprietor's operations bond or unit bond either is in the maximum penal sum amount or is sufficient to cover the tax on the spirits or denatured spirits to be transferred in addition to all other liabilities chargeable against the bond. If TTB approves the application, TTB will return two signed copies of the approved application to the proprietor.

(c) Upon receipt of an approved application from TTB, the proprietor must retain one of the signed copies for his files and forward the other signed copy to the consignor that will ship the spirits or denatured spirits.

(26 U.S.C. 5005, 5112)

§ 19.404 Termination of application.

A proprietor may at any time terminate an approved application on TTB F 5100.16 by retrieving the consignor's copy and returning it together with his own approved copy to the appropriate TTB officer for cancellation.

(26 U.S.C. 5005)

§ 19.405 Consignor for in-bond shipments.

(a) *General.* A proprietor who ships spirits, denatured spirits, or wines by transfer in bond, is the "consignor" of the shipment for purposes of this part. The following rules apply to these transfers:

(1) A consignor who is a proprietor of a distilled spirits plant must prepare a transfer record in accordance with § 19.620 to cover the transfer in bond of—

(i) Spirits or denatured spirits to another distilled spirits plant pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond;

(ii) Wine to the bonded premises of a distilled spirits plant or a bonded wine cellar; or

(iii) Spirits or denatured spirits to an alcohol fuel plant pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond; and

(2) A consignor who is a proprietor of an alcohol fuel plant must prepare a transfer record in accordance with § 19.620 to cover the transfer in bond of spirits to the bonded premises of a distilled spirits plant pursuant to an approved application on TTB F 5100.16.

(b) *Disposition of the transfer record.* On completion of lading or transfer by pipeline, the consignor must retain one copy of the transfer record and one copy of any accompanying document and must forward the original transfer record and any accompanying document to the consignee. If the shipment is made by truck, the original transfer record and accompanying documents must accompany the shipment.

(c) *Multiple shipments.* As a general rule, a consignor must prepare a transfer record for each conveyance. However, a consignor may prepare a single transfer record that covers all packages of spirits shipped by truck on the same day to the same plant. In such a case, the consignor must prepare a shipment and delivery order for each shipment showing the number of packages, their serial numbers or other package identification, the name of the producer, warehouseman, or processor, and the serial numbers of any seals or other security devices applied to the truck. The shipping and delivery order must be properly authenticated by the consignor and must constitute a complete record of the spirits transferred in each truck each day. The consignor must retain a copy of each shipping and delivery order. After lading the last truck for the day, the consignor must retain one copy of the

single transfer record and one copy of any accompanying document and forward the original single transfer record and accompanying document to the consignee.

(d) *Packages.* When a consignor transfers spirits in packages, the consignor must weigh each package except in the following circumstances:

(1) When transferring the spirits in a secured conveyance;

(2) When the consignor has securely sealed the individual packages; or

(3) When the appropriate TTB officer waives this requirement upon a finding that there will be no jeopardy to the revenue.

(e) *Temporary serial numbers.* When packages are weighed at the time of shipment, the consignor must assign temporary serial numbers to the packages and show for each package its gross shipment weight on a package gauge record prepared in accordance with § 19.619. A copy of the package gauge record must accompany each original or copy of the transfer record.

(f) *Bulk conveyances and pipelines.* When a consignor transfers spirits, denatured spirits, or wines in bulk conveyances or by pipelines, the consignor must gauge the spirits, denatured spirits, or wines and record the quantity determined on the transfer record required under § 19.620 or § 24.309 of this chapter. The consignor must secure bulk conveyances of spirits or denatured spirits pursuant to § 19.441 of this part.

(26 U.S.C. 5212, 5362)

§ 19.406 Reconsignment of in-bond shipments.

A consignor may reconsign an in-bond shipment of spirits, denatured spirits, or wines prior to, or upon, arrival of the shipment at the premises of the consignee for any good faith reason. The consignor may reconsign the shipment to himself or to another consignee who is qualified to receive the shipment and has an adequate bond. In either case, an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5100.16 must have been previously approved for the new consignee, except that an approved form TTB F 5100.16 is not required for the transfer of wine. The bond of the new consignee will cover the shipment while in transit after reconsignment. When a consignor reconsigns a shipment, the consignor must prepare a new transfer record prominently marked with the word "Reconsignment". The consignor must also notify the original consignee that the transfer has been cancelled.

(26 U.S.C. 5212, 5362)

§ 19.407 Consignee premises.

(a) *General.* A proprietor who receives spirits, denatured spirits, or wines by transfer in bond is the “consignee” of the shipment for purposes of this part. Upon arrival of an in-bond shipment at the consignee’s premises or at the destination point specified in the carrier’s transportation documents, the consignee must:

(1) Examine each conveyance to determine whether the securing devices, if any, are intact upon arrival. If the securing devices are not intact, the consignee must immediately notify the appropriate TTB officer before removal of any spirits from the conveyance;

(2) Determine, record, and report any losses as required by subpart R of this part;

(3) Acknowledge receipt of the shipment on the transfer record as required by § 19.621 or § 24.309 of this chapter and retain the original of the transfer record and any accompanying documents for his files. Retained copies of transfer records will become deposit records for purposes of this part; and

(4) Identify separately any spirits that were produced at an alcohol fuel plant. Those spirits may not be withdrawn, used, sold or otherwise disposed of for other than fuel use.

(b) *Packages.* When a consignee receives spirits in packages, the consignee must weigh each package. The consignee must record the receiving weight of each package on the accompanying package gauge record or on a list according to temporary package serial numbers prepared by the consignor. A copy of the package gauge record or list must remain with the original transfer record. However, the consignee is not required to weigh each package when:

(1) The transfer is made in a secured conveyance and the securing devices are intact on arrival;

(2) The individual packages were sealed by the consignor and are intact on arrival; or

(3) The requirement for weighing the packages at the consignor premises has been waived under § 19.405(d)(3).

(c) *Bulk conveyances and pipelines.* When a consignee receives spirits, denatured spirits, or wines by bulk conveyance or by pipeline, the consignee must:

(1) Make a gauge and record the results on the transfer record in accordance with § 19.621 or § 24.309 of this chapter. However, the appropriate TTB officer may waive the gauging requirement for receipts by pipeline upon a finding that there will be no jeopardy to the revenue; and

(2) Ensure that each conveyance is empty and has been thoroughly drained.

(26 U.S.C. 5204, 5213, 5362)

Receipt of Spirits from Customs Custody**§ 19.409 General.**

A proprietor may withdraw from customs custody spirits imported or brought into the United States in bulk containers for transfer of those spirits without payment of tax to the bonded premises of the proprietor’s distilled spirits plant. The proprietor may receive these spirits either in bulk containers or by pipeline. Spirits received on bonded premises under this section may be:

(a) Withdrawn for any purpose authorized by chapter 51 of the IRC in the same manner as domestic spirits; or

(b) Redistilled or denatured only at 185 degrees or more of proof. For the requirements regarding transfers of bulk spirits from customs custody to the bonded premises of a distilled spirits plant, see subpart L of part 27 of this chapter.

(26 U.S.C. 5232)

§ 19.410 Age and fill date.

For purposes of this part, the age and fill date for spirits imported or brought into the United States will be:

(a) The claimed age, as shown on the documentation required under part 5 of this chapter; and

(b) The date that packages of spirits are released from customs custody or are filled on the bonded premises of a distilled spirits plant.

(26 U.S.C. 5201)

§ 19.411 Recording gauge.

(a) *Receipts into storage.* When a proprietor receives into the storage account packages of spirits from customs custody, the proprietor must use the last official gauge to compute and record the average content of the packages received in the storage records required under § 19.590. That gauge also will constitute the basis for entries on the package summary records required under § 19.591. If the last official gauge indicates a substantial variation in the contents of the packages, the proprietor must group the packages into lots according to their approximate contents and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(b) *Receipts into processing.* When a proprietor receives into the processing account packages of spirits from customs custody, the proprietor must determine the proof gallons of spirits received in each package. The

determination may be made by using the last official gauge.

(26 U.S.C. 5232)

Marking Requirements for Imported Spirits**§ 19.414 Marks on containers of imported spirits.**

(a) *General.* Except as provided in paragraph (c) of this section, when a proprietor receives imported bulk containers of spirits on bonded premises under § 19.409 or fills packages from imported bulk containers on the proprietor’s bonded premises, each container or filled package must be marked with:

(1) The name of the importer;

(2) The country of origin of the spirits;

(3) The kind of spirits;

(4) In the case of filled packages, the package identification number as required under § 19.485 or the package serial number as required under § 19.490. Package identification numbers and package serial numbers must be preceded by the symbol “IMP”;

(5) If the package is filled on bonded premises, the date of fill;

(6) The proof; and

(7) The proof gallons of spirits in the package.

(b) *Responsibility for marks.* Except as otherwise provided in paragraph (c) of this section, the proprietor who receives packages of imported spirits under § 19.409 is responsible for ensuring that the required marks are placed on the packages and for preparing the required deposit records.

(c) *Exception.* A proprietor is not required to place or ensure the placement of prescribed marks on packages when the spirits will be removed from the packages within 30 days after receipt at the distilled spirits plant. However, the proprietor must still assign package identification numbers or package serial numbers for use on deposit records and other transaction forms, records, or reports.

(26 U.S.C. 5206)

§ 19.415 Marks on containers of Puerto Rican and Virgin Islands spirits.

(a) *Packages from Puerto Rico.* When a proprietor receives packages of Puerto Rican spirits on bonded premises under the provisions of this subpart, the markings required under § 26.40 of this chapter will be acceptable in place of the markings required under § 19.414. However, the proprietor still must mark each package to show the date of fill as required under § 19.410, and must include on each package the words “Puerto Rican” or the abbreviation “P.R.”.

(b) *Packages from the Virgin Islands.* When a proprietor receives packages of Virgin Islands spirits on bonded premises under the provisions of this subpart, the markings required under § 26.206 of this chapter will be acceptable in place of the markings required under § 19.414. However, the proprietor still must mark each package to show the date of fill as required under § 19.410, and must include on each package the words “Virgin Islands” or the abbreviation “V.I.”.

(c) *Portable bulk containers.* Portable bulk containers of Puerto Rican or Virgin Islands spirits that are filled on premises bonded under this part must be marked in accordance with § 19.484. In addition, those containers must be marked with the serial number of any approved formula under which they were produced and with the words “Puerto Rican” or the abbreviation “P.R.” or “Virgin Islands” or the “V.I.”, as applicable.

(d) *Cases of bottled alcohol.* Alcohol from Puerto Rico or the Virgin Islands that is bottled and cased on bonded premises must be marked as required by § 19.496. In addition, the words “Puerto Rican” or “Virgin Islands” or the abbreviation “P.R.” or “V.I.”, respectively, must precede the word “alcohol” designation on the cases.

(26 U.S.C. 5206, 5235)

Spirits Withdrawn Without Payment of Tax

§ 19.418 Authorized withdrawals without payment of tax.

(a) A proprietor may withdraw spirits from bonded premises without payment of tax for:

- (1) Export, as authorized under 26 U.S.C. 5214(a)(4);
- (2) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;
- (3) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;
- (4) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;
- (5) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9);
- (6) Use in wine production, as authorized under 26 U.S.C. 5373;
- (7) Transfer to any university, college of learning, or institution of scientific research for experimental or research use as authorized under 26 U.S.C. 5312(a);
- (8) Research, development or testing, as authorized under 26 U.S.C. 5214(a)(10); or,
- (9) Use on bonded wine cellar premises in the production of wine and

wine products which will be rendered unfit for beverage use, as authorized under 26 U.S.C. 5362(d).

(b) If a proprietor withdraws spirits for any of the purposes listed under paragraphs (a)(1) through (a)(5) of this section, the proprietor must do so in accordance with the provisions of part 28 of this chapter.

(19 U.S.C. 1311), (26 U.S.C. 5066, 5214, 5312, 5373)

§ 19.419 Withdrawals of spirits for use in wine production.

A proprietor may withdraw wine spirits without payment of tax for transfer in bond to a bonded wine cellar for use in wine production. The proprietor, as consignor, must prepare a transfer record in accordance with § 19.620. In addition, the proprietor must prepare a package gauge record in accordance with § 19.619 and must attach it to the transfer record, unless the wine spirits are already in packages and are being withdrawn on the production or filling gauge.

(26 U.S.C. 5214, 5373)

§ 19.420 Withdrawals of spirits without payment of tax for experimental or research use.

A scientific university, college of learning, or institution of scientific research qualified under § 19.35 may withdraw spirits from bonded premises without payment of tax for experimental or research use. In order to withdraw a specific quantity of spirits for experimental or research use, the qualified institution must file a letterhead application with, and receive written approval from, the appropriate TTB officer.

(26 U.S.C. 5312)

§ 19.421 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

A proprietor may withdraw spirits without payment of tax for transfer to a bonded wine cellar for use in the production of nonbeverage wine and nonbeverage wine products in accordance with part 24 of this chapter. The proprietor, as consignor, must prepare a transfer record in accordance with § 19.620. In addition, the proprietor must prepare a package gauge record in accordance with § 19.619 and must attach it to the transfer record, unless the wine spirits are already in packages and are being withdrawn on the production or filling gauge.

(26 U.S.C. 5214)

Spirits Withdrawn Free of Tax

§ 19.424 Authorized withdrawals free of tax.

A proprietor may withdraw spirits from bonded premises free of tax as provided in this chapter:

- (a) Upon receipt of a signed photocopy of a permit to withdraw and use alcohol free of tax issued on TTB F 5150.9 under part 22 of this chapter;
- (b) Upon receipt of a signed photocopy of a permit to procure spirits free of tax for use of the United States or any governmental agency, any State, any political division of a State, or the District of Columbia for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2) issued on TTB F 5150.33 under part 22 of this chapter;
- (c) Upon receipt of a valid permit issued under this part to procure spirits by and for the use of the United States under the provisions of 26 U.S.C. 7510 for purposes other than those specified in paragraph (b) of this section;
- (d) If the spirits are specially denatured—

(1) Upon receipt of a signed photocopy of a permit to procure specially denatured spirits issued on TTB F 5150.9 under part 20 of this chapter; or

(2) For export;

(e) If the spirits are completely denatured, for any lawful purpose; or

(f) If the spirits are contained in an article.

(26 U.S.C. 7510), (26 U.S.C. 5214)

§ 19.425 Withdrawal of spirits free of tax.

When a proprietor ships tax free spirits to a permit holder as provided under § 19.424, the proprietor must:

- (a) Ship the spirits to the consignee designated in the permit;
- (b) Ship the spirits in approved containers;
- (c) Gauge each container, unless the spirits are in cases or are withdrawn based on the production or filling gauge;
- (d) Prepare a package gauge record in accordance with § 19.619, and attach it to the record of shipment if the spirits are in packages that are to be gauged;
- (e) Prepare a record of shipment (shipping invoice, bill of lading, or other document serving the same purpose) for each shipment and forward the original to the consignee as provided in § 19.625; and
- (f) Secure all bulk conveyances as provided in § 19.441.

(26 U.S.C. 5214)

§ 19.426 Withdrawal of spirits by the United States.

- (a) *Withdrawal for nonbeverage use—*
- (1) *Permit required.* Agencies of the

United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on TTB F 5150.33 or must have a previously issued permit on ATF Form 1444. TTB issues permits to Government agencies for:

(i) Withdrawal and use of specially denatured spirits under part 20 of this chapter;

(ii) Withdrawal and use of alcohol free of tax for nonbeverage purposes under part 22 of this chapter; and

(iii) Importation and use of alcohol free of tax for nonbeverage purposes under part 27 of this chapter.

(2) *Orders and shipments.* In order to obtain spirits under this section, the United States Government agency must forward a copy of a signed permit to the distilled spirits plant for the initial purchase. Later orders with the same plant may refer to that permit number. In the case of a Government agency holding a single permit for use by its sub-agencies, the copy of the signed permit must contain an attachment listing all sub-agencies authorized to obtain spirits under that permit. For each shipment that a proprietor makes to a Government agency under this section, the proprietor must prepare a record of shipment and forward the original to the Government agency as provided in § 19.625.

(b) *Withdrawal for beverage use.* Agencies of the United States Government that wish to obtain distilled spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee. Each case of spirits withdrawn must bear a plain mark "For Use of the United States" in addition to the marks required by subpart S of this part. For each withdrawal under this paragraph, the proprietor must prepare a record containing the information required by § 19.611 for a record of tax determination and must mark this record "Free of Tax For Use of the United States."

(26 U.S.C. 7510), (26 U.S.C. 5271, 5313)

§ 19.427 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.*

(1) Specially denatured spirits withdrawn by a proprietor free of tax under § 19.424(d) must be shipped in the type of containers authorized under subpart S to the consignee designated on the permit. Bulk conveyances used to transport specially denatured spirits must be secured as required by § 19.441, and the proprietor must prepare a record of shipment in accordance with

§ 19.625. If a proprietor withdraws specially denatured spirits for export or for transfer to a foreign-trade zone for export or for storage pending export, the provisions of part 28 of this chapter will apply to the withdrawal.

(2) A proprietor may transfer domestic specially denatured spirits to qualified users located in a foreign-trade zone for use in the manufacture of articles under part 20 of this chapter. The "alcohol", as defined in part 20 of this chapter, that is contained in domestic specially denatured spirits must have been produced entirely in the United States or Puerto Rico.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for the removal of completely denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.*

(1) A proprietor may take samples of denatured spirits free of tax that are necessary for the conduct of business. A proprietor may furnish samples of specially denatured spirits:

(i) To dealers in, and users of, specially denatured spirits in advance of sales; or

(ii) To applicants or prospective applicants for permits to use specially denatured spirits for experimental purposes or for use in preparing samples of a finished product for submission to TTB.

(2) A proprietor must maintain records to ensure that samples of specially denatured spirits furnished to each nonpermittee do not exceed five gallons per calendar year. However, a proprietor may furnish samples in excess of five gallons to a nonpermittee if the consignee has provided the proprietor with a letterhead application approved under § 20.252 of this chapter. The proprietor must retain the approved letterhead application on file as a part of the record of transaction. For each shipment of a sample over the five gallon limit, the proprietor must prepare a record of shipment and forward the original to the consignee as provided in § 19.625. Each such sample must bear a label showing the word "Sample", the words "Specially Denatured Alcohol" or "Specially Denatured Rum" as applicable, the formula number, and the proprietor's name, address, and plant number. The proprietor must maintain records of samples of less than five gallons as provided in § 19.616.

(d) *Articles.* A proprietor may remove articles from bonded premises in accordance with part 20 of this chapter.

(19 U.S.C. 81c), (26 U.S.C. 5214, 5271)

§ 19.428 Reconsignment.

(a) A consignor may reconsign a shipment of spirits or specially

denatured spirits withdrawn free of tax under § 19.424. The shipment may be reconsigned while in transit or upon arrival at the consignee's premises for any bona fide reason. The consignor may reconsign the shipment:

(1) To himself;

(2) To a proprietor for return to bonded premises under § 19.454; or

(3) To another consignee holding a valid permit issued under part 20 or 22 of this chapter.

(b) In the case of reconsignment to a proprietor for return to bonded premises under § 19.454, the distilled spirits plant proprietor who will return the spirits to bond must file a consent of surety on TTB F 5000.18 to extend the terms of the operations or unit bond to cover the return of the spirits.

(c) When a consignor reconsigns a shipment, the consignor must cancel the initial record of shipment and prepare a new record of shipment marked "Reconsignment". The consignor must annotate the copies of the canceled record of shipment and the new record of shipment to cross-reference each other.

(26 U.S.C. 5201)

Spirits Withdrawn on Production Gauge

§ 19.431 Withdrawal of spirits on production gauge.

A proprietor may withdraw spirits from bonded premises for any lawful purpose based on the production gauge when it is made in accordance with § 19.289(b). Spirits may be withdrawn without payment of tax for export based on the production gauge when it is made under § 19.289(c). When spirits that are to be withdrawn on determination of tax on the original gauge are transferred in bond, all copies of the transfer record required by § 19.620 must be marked "Withdrawal on Original Gauge".

(26 U.S.C. 5204)

Rules for Taking Samples of Spirits

§ 19.434 Spirits withdrawn from bonded premises.

(a) *Laboratory samples.* A proprietor may withdraw spirits without payment of tax, or may withdraw wine spirits or brandy free of tax, to the proprietor's laboratory, to the laboratory of an affiliated or subsidiary corporation, or, if approved by the appropriate TTB officer, to a recognized commercial laboratory. The samples must be used only for testing or analysis to determine the quality or character of the finished product and must be withdrawn in the minimum amounts necessary for the purpose.

(b) *Customer samples.* If a bona fide purchase agreement exists that is contingent upon quality approval, a proprietor may furnish to a prospective customer a sample of spirits not exceeding 1 liter for quality testing. A proprietor may furnish a sample not to exceed 1 liter to a prospective customer for quality testing in anticipation of a purchase agreement if the customer is authorized to receive bulk spirits for industrial use.

(c) *Research or development.* A proprietor may withdraw spirits without payment of tax for research or development testing, for testing of processes, systems, or materials, or for the testing of equipment relating to distilled spirits or distilled spirits plant operations. The amount withdrawn must be limited to the amount reasonably necessary to conduct the test. If the test is to be conducted by someone other than the proprietor, the proprietor must obtain a written statement, executed by the consignee, agreeing to maintain records of the receipt, use, and disposition of all spirits received for purposes of the test. The statement must specify that records of operations will be available during regular business hours for inspection by TTB officers.

(d) *Conditions.* The following conditions apply to the withdrawal and testing of samples under this section:

- (1) The spirits may not be used for consumer testing or other market analysis;
- (2) The proprietor must maintain the records specified in § 19.616; and
- (3) Remnants or residues of spirits not used during testing must be destroyed or returned to the bonded premises of the proprietor.

(e) *Liability for tax.* The proprietor must pay the tax on any samples of spirits withdrawn, used, or disposed of in a manner not authorized by this section.

(f) *Losses.* When spirits are lost before use for a purpose authorized under this section, the proprietor must pay the tax or must file a claim for remission of tax liability in accordance with § 19.263.

(26 U.S.C. 5214, 5173)

§ 19.435 Samples used on bonded premises.

A proprietor may take samples of spirits for research, development, testing, or laboratory analysis conducted in a laboratory located on the bonded premises. The purposes, conditions, and limitations specified for samples under § 19.434 will also apply to samples used under this section.

(26 U.S.C. 5008)

§ 19.436 Taxpayment of samples.

When a proprietor is required to pay tax on samples under § 19.434(f), the proprietor may include the tax on the next semimonthly or quarterly tax return, as appropriate, if qualified to defer payment of tax. If a proprietor is not qualified to defer payment of tax, the proprietor must prepay the tax on TTB F 5000.24. See subpart I of this part for rules regarding the payment of taxes.

(26 U.S.C. 5005, 5061)

§ 19.437 Labels.

(a) On each container of spirits withdrawn under § 19.434, the proprietor must affix a label showing the following information:

- (1) The proprietor's name and plant number;
- (2) The date withdrawn;
- (3) The purpose for which withdrawn;
- (4) The kind of spirits;
- (5) The size and the proof of the sample, if known; and
- (6) The name and address of the consignee, if the spirits are removed other than to the proprietor's adjacent or contiguous premises.

(b) The labeling prescribed under paragraph (a) of this section is not required when the sample container bears a label approved under part 5 of this chapter and subpart S of this part and the sample is removed from bonded premises to the general premises of the same distilled spirits plant or to any laboratory owned and operated by the proprietor of that distilled spirits plant.

(26 U.S.C. 5206, 5214, 5373)

Securing Conveyances

§ 19.441 Securing of conveyances.

(a) *Construction for securing.* When the securing of a conveyance is required by this part, the conveyance must be constructed so that all openings, including valves, may be closed and secured.

(b) *Approval of securing devices.* Seals, locks or other devices on conveyances used to transport taxpaid spirits, denatured spirits transferred in bond, or denatured spirits withdrawn free of tax do not require approval by TTB. On the other hand, all seals, locks, or devices used on conveyances in which spirits are transferred in bond, withdrawn free of tax, or withdrawn without payment of tax, require approval by the appropriate TTB officer before use. However, cap seals at least 3/4 of an inch in diameter, ball-strap-type (railroad) seals with a strap at least 5/16 of an inch wide, and locking security cable with at least 1/16 of an inch cable may be used on conveyances

without approval by TTB. Such seals must:

- (1) Be made of durable materials;
- (2) Bear the plant registration number or the name, or readily recognizable abbreviation of the name, of the proprietor;
- (3) Bear a serial number, including letter prefixes or suffixes, that will not be repeated within the following six month period;
- (4) Be durably and legibly marked; and
- (5) Be constructed to show evidence of tampering.

(c) *Furnishing and affixing securing devices.* The proprietor must furnish and affix any seals, locks or other devices used on conveyances. However, TTB may require any conveyance in which spirits are transferred in bond, withdrawn free of tax, or withdrawn without payment of tax, to be secured by a device furnished by TTB and affixed by a TTB officer. The securing of a conveyance will be done:

- (1) As soon as the conveyance is loaded for shipment; and
- (2) In such a manner that access to the contents of the conveyance cannot be gained without leaving evidence of tampering.

(26 U.S.C. 5206, 5682)

Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction

§ 19.451 Scope.

The IRC allows a proprietor of a distilled spirits plant to return distilled spirits, denatured spirits, and articles to the bonded premises of that plant under certain conditions. This subpart covers the types of returns allowed, sets forth the procedures that the proprietor must follow when returning these products to bonded premises, and prescribes rules for voluntary destruction on or off bonded premises.

Conditions for Return of Spirits to Bond

§ 19.452 Return of taxpaid spirits to bonded premises for destruction, denaturation, redistillation, reconditioning, or rebottling.

(a) *Allowable returns.* A proprietor may return spirits to bonded premises if the spirits were taxpaid or tax determined by him, by another distilled spirits plant proprietor, or by an importer upon importation through U.S. Customs and Border Protection. However, under section 5215(a) of the IRC the proprietor may return such spirits to bond only for one of the following reasons:

- (1) Destruction, in accordance with § 19.459;

(2) Denaturation, in accordance with subpart O of this part;

(3) Redistillation, in accordance with subpart L of this part;

(4) Reconditioning; or

(5) Rebottling.

(b) *Dump and gauge of returned spirits.* The proprietor must immediately dump spirits returned to bonded premises under this section unless the spirits are returned in the sealed metal drums in which they were withdrawn. The proprietor must gauge spirits returned under this section upon their receipt. The proprietor may gauge spirits in bottles based upon the case markings and label information in accordance with § 19.286.

(c) *Claims for credit or refund of tax.* A proprietor may file a claim under § 19.264 for credit or refund of tax on spirits returned to bonded premises under this section. In addition to the information specified in § 19.264, a proprietor filing a claim for credit or refund of tax must have on file at the plant where spirits are returned to bond the following documentation for each lot of spirits returned:

(1) Documentation that establishes the amount of tax for which the claim for credit or refund is filed. If the spirits contain eligible wine or eligible flavors, the proprietor must have on file a copy of the record of tax determination as prescribed by § 19.611, or other documentation that establishes the rate of tax that was paid on the product. In lieu of establishing the actual effective tax rate of the product, the proprietor may claim a credit or refund based on the lowest effective tax rate applied to the product; and

(2) Credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(d) *Applicability of IRC Chapter 51.* All provisions of Chapter 51 of the IRC and of this part that apply to spirits under TTB bond also apply to spirits when returned to bond under this section.

(26 U.S.C. 5008, 5010, 5201, 5207, 5215)

§ 19.453 Return of bottled spirits for relabeling or reclosing.

A proprietor may return bottled distilled spirits to his bonded premises

for relabeling or reclosing. When bottled spirits are returned for relabeling or reclosing, the proprietor may not claim credit or refund of tax on the returned spirits, and no tax will be due on their subsequent removal. The proprietor must relabel or reclose the bottles immediately and must promptly remove the spirits from bonded premises. The provisions of § 19.363 apply to relabeling and reclosing performed under this section.

(26 U.S.C. 5215)

§ 19.454 Other authorized returns to bonded premises.

In addition to the returns to bonded premises specified in §§ 19.452 and 19.453, there are other distilled spirits products that a proprietor may return to his bonded premises. These other products, the purposes for which they may be returned, and the conditions for their return are listed in the table below. All of these products must be gauged upon receipt.

Type of product	Purpose of return	Conditions
SDA withdrawn free of tax under part 20 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
Recovered denatured spirits	For restoration or redenaturation	—To any DSP authorized to denature. —If SDA needs to be redistilled, the DSP must be authorized to produce or process spirits. —Returns must be in accordance with part 20 of this chapter.
Recovered articles	For restoration or redenaturation	—To any DSP authorized to denature. —If recovered articles need to be redistilled, the DSP must be authorized to produce or process spirits. —Returns must be in accordance with part 20 of this chapter.
Articles manufactured under part 20 of this chapter and spirits residues from manufacturing processes.	For recovery by redistillation	To a DSP authorized to produce or process spirits.
SDA withdrawn free of tax for export under part 28 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits
Tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
Recovered tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For restoration (not including redistillation)	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.

Type of product	Purpose of return	Conditions
Spirits withdrawn without payment of tax under part 28 of this chapter for export, for transfer to a customs bonded storage, manipulation, or manufacturing warehouse, for deposit in an FTZ, or for use on vessels or aircraft, and not so exported, transferred, deposited, or used.	(1) For redistillation (2) For later lawful removal	For (1)—To any DSP authorized to produce or process spirits. For (2)—To the bonded premises from which withdrawn for later lawful removal. For (1) and (2)—Returns must be made in accordance with the provisions of part 28 of this chapter.
Wine spirits withdrawn without payment of tax for use in wine production.	Any lawful purpose	—To any DSP. —The proprietor must obtain approval as provided in § 19.403. —Removal of wine spirits from a winery must be in accordance with part 24 of this chapter.
Spirits withdrawn without payment of tax for research, development, or testing.	For destruction, or return to containers, or return to the distilling system.	To the DSP from which the spirits were withdrawn.

(19 U.S.C. 81(c), 26 U.S.C. 5001, 5062, 5066, 5214, 5215, 5223, 5273, 5373)

§ 19.455 Return of spirits withdrawn for export with benefit of drawback.

(a) Subject to the provisions of §§ 28.197 through 28.199 of this chapter, whole or partial shipments of spirits withdrawn for export with benefit of drawback may be returned to:

(1) The bonded premises of the distilled spirits plant, pursuant to § 19.452; or

(2) To a wholesale liquor dealer or taxpaid storeroom.

(b) Claims for export drawback filed by proprietors on form TTB F 5110.30 which include the returned spirits shall be reduced by the amount of tax paid or determined on the returned spirits.

(26 U.S.C. 5215)

§ 19.457 Receipt of spirits abandoned to the United States.

Spirits abandoned to the United States may be sold, without payment of the tax, to a proprietor of a distilled spirits plant for denaturation or for redistillation and denaturation, provided that the plant is authorized to denature or redistill and denature spirits. The proprietor must gauge the spirits upon receipt and must keep the spirits apart from all other spirits or denatured spirits until denatured.

(26 U.S.C. 5243)

Rules for Voluntary Destruction

§ 19.459 Voluntary destruction.

(a) *General.* A proprietor may voluntarily destroy spirits, denatured spirits, articles, or wines on bonded premises as provided in this section. There is no tax liability on spirits, denatured spirits, articles, or wines destroyed in accordance with this section.

(b) *Wine notice.* A proprietor may destroy wine held on bonded premises only after the proprietor has filed a notice of intent to destroy with the

appropriate TTB officer stating the kind and quantity of wine to be destroyed and the date and manner in which the wine is to be destroyed. The wine may be destroyed after the filing of the notice.

(c) *Gauging.* A proprietor must gauge all spirits, denatured spirits, articles, or wines to be destroyed. The proprietor may establish the gauge of spirits in bottles on the basis of legible case markings and label information in accordance with § 19.286. The proprietor must individually count bottles in partial cases.

(d) *Destruction off bonded premises.* If a proprietor intends to remove spirits, denatured spirits, articles, or wines from bonded premises in order to destroy them at a location off bonded premises, the proprietor must file a consent of surety to cover the removal. When the destruction takes place off plant premises, the proprietor must comply with applicable Federal, State, and local environmental laws and regulations.

(e) *Record of destruction.* The proprietor must record the destruction of spirits, denatured spirits, articles, or wines as provided in § 19.617.

(26 U.S.C. 5008, 5370)

Subpart R—Losses and Shortages

§ 19.461 Losses and shortages in general.

(a) *Allowable losses and shortages.* Except as otherwise provided in paragraph (b) of this section, TTB will not collect tax on spirits, denatured spirits, or wines that are lost, destroyed, or otherwise unaccounted for while in bond, and if the tax has already been paid, TTB will refund the tax.

(b) *Exceptions.* TTB will collect the tax in the case of:

(1) Theft, unless the appropriate TTB officer finds that the theft occurred without connivance, collusion, fraud or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or

carrier, or any employee or agent of any of them;

(2) Voluntary destruction carried out other than as provided in subpart Q of this part;

(3) An unexplained shortage of bottled spirits.

(c) *Burden of proof.* When it appears that a theft occurred, the burden of proof will be on the proprietor or other person liable for the tax to establish to the satisfaction of the appropriate TTB officer that the theft did not result from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or any employee or agent of any of them.

(d) *Claims.* Claims for losses and shortages allowable under this section must be filed in accordance with the provisions of subpart J of this part.

(e) *Limitations.* TTB will abate, remit, credit, or refund taxes on spirits, denatured spirits, or wines lost by theft only to the extent that the claimant is not indemnified against, or recompensed for, the taxes paid or owed.

(26 U.S.C. 5008, 5370)

§ 19.462 Determination of losses in bond.

(a) *Times for determining losses.* A proprietor must determine at any of the following times whether a loss of spirits, denatured spirits, or wines has occurred:

(1) Each time a tank or bulk conveyance is emptied;

(2) Upon discovery of an accident or an unusual variation in a gauge; and

(3) When required to take a physical inventory.

(b) *Losses from theft, tampering, or unauthorized voluntary destruction.* Whenever any spirits, denatured spirits, or wines are lost or destroyed in bond, whether by theft, tampering, or unauthorized voluntary destruction, the proprietor may elect voluntarily to pay the tax on the quantity lost. If the

proprietor does not elect to pay the tax, the proprietor must promptly report the loss or destruction to the appropriate TTB officer. TTB may require that the proprietor file any claim for relief from the tax in accordance with § 19.263.

(c) *Missing packages.* When a proprietor cannot locate or otherwise account for any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises, the proprietor must promptly report that fact to the appropriate TTB officer. In such case the proprietor must either pay the tax on the lost spirits, denatured spirits, or wines or file a claim for relief from the tax in accordance with § 19.263.

(d) *Excessive in-transit losses.* A proprietor must promptly report excessive in-transit losses to the appropriate TTB officer. As a general rule, when spirits, denatured spirits, or wines are received in bond in bulk conveyances TTB will consider as excessive a loss that exceeds one percent of the quantity consigned. However, in the case of transcontinental transfers of wine in bond, TTB will consider as excessive only a loss in excess of two percent of the quantity of wine consigned.

(e) *Excessive storage losses.* A proprietor must pay the tax on excessive storage account losses of spirits unless the proprietor files a claim for remission in accordance with § 19.263 and TTB allows the claim under § 19.268. TTB will consider a storage account loss as excessive when the quantity of spirits lost during a calendar quarter from all storage tanks and stored bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and stored bulk conveyances during the calendar quarter.

(26 U.S.C. 5008, 5370)

§ 19.463 Loss of spirits from packages.

(a) *Tampering or theft.* The appropriate TTB officer may require that a proprietor pay the tax on any loss caused by tampering or theft of spirits from packages in storage unless the proprietor establishes to the satisfaction of the appropriate TTB officer that the loss was not due to connivance, collusion, fraud or negligence on the part of the proprietor. As a general rule, the tax will be assessed on the quantity of spirits that represents the difference between the quantity originally entered in the package and the quantity remaining after discovery of the tampering or theft. However, if the proprietor can show that the package had already sustained normal storage losses before the tampering or theft occurred, the proprietor may exclude

the amount of the normal storage losses from the quantity to be taxpaid.

(b) *Alternative method of tax assessment.* If tampering or theft has occurred at a proprietor's plant and the proprietor has failed to use effective controls to prevent it, the appropriate TTB officer may use an alternative to the general method of tax assessment specified in paragraph (a) of this section. In this case, the appropriate TTB officer may assess on each package showing evidence of tampering or theft an amount equal to the tax on 5 proof gallons of spirits.

(26 U.S.C. 5006)

§ 19.464 Losses after tax determination.

If a proprietor sustains a loss of spirits after tax determination but prior to completion of physical removal of the spirits from bonded premises, the proprietor may file a claim in accordance with subpart J of this part.

(26 U.S.C. 5008)

§ 19.465 Shortages of bottled spirits.

(a) *Determination of shortage.* The determination of whether an unexplained shortage of bottled distilled spirits exists must be made by comparing the spirits recorded as being on hand to either the results of the physical inventory required by § 19.372 or the results of any other complete physical inventory taken by the proprietor. When the recorded quantity is greater than the quantity determined by physical inventory, the difference is an unexplained shortage. The proprietor must adjust his records to reflect the results of the physical inventory.

(b) *Payment of tax on shortage.* A proprietor must pay the tax on any unexplained shortage of bottled distilled spirits:

(1) Immediately on a prepayment return on TTB F 5000.24, Excise Tax Return; or

(2) On a deferred payment return on TTB F 5000.24 for the period during which the shortage was determined.

(26 U.S.C. 5008)

Subpart S—Containers and Marks

§ 19.471 General.

The proprietor of a distilled spirits plant must comply with the container and marking requirements that apply to both industrial and nonindustrial spirits. This subpart covers those requirements. For the requirements that apply to articles made with denatured spirits, see part 20 of this chapter. For the requirements that apply to wine, see part 24 of this chapter.

(26 U.S.C. 5206)

§ 19.472 Need to determine use of spirits: industrial or nonindustrial.

Many of the container and marking requirements set forth in this subpart are based on the intended use of the spirits, that is, whether they are for "industrial" or "nonindustrial" use. For purposes of this subpart, the terms "industrial" use and "nonindustrial" use refer to the uses specified in paragraphs (a) and (b) of this section.

(a) *Industrial use.* The word "industrial" when used with reference to the use of spirits has the same meaning as in §§ 1.60 and 1.62 of this chapter. Those uses are as follows:

(1) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes;

(2) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(i) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) 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;

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

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

(iv) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof);

(3) Free of tax, after denaturation of such spirits in the manner prescribed by law for—

(i) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(ii) Any other use in the arts and industries (except for uses prohibited by 26 U.S.C. 5273(b) or (d)) and for fuel, light, and power; and

(4) The use of distilled spirits for experimental purposes and in the manufacture of—

(i) Medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists;

(ii) Toilet preparations;

(iii) Flavoring extracts, syrups, or food products; or

(iv) Scientific, chemical, mechanical, or industrial products, provided such products are unfit for beverage use.

(b) *Nonindustrial use.* The word “nonindustrial” when used with reference to the use of spirits refers to any use not listed as an “industrial” use in paragraph (a) of this section. Nonindustrial uses include the following:

- (1) For beverage purposes;
- (2) In the manufacture, rectification, or blending of alcoholic beverages; or in the preparation of food or drink by a hotel, restaurant, tavern, or similar establishment; or as a medicine; and
- (3) Distilled spirits in containers with a capacity of 1 wine gallon or less, other than anhydrous alcohol and alcohol that may be withdrawn from bond free of tax.

(26 U.S.C. 5206, 5301)

Requirements for Containers

§ 19.473 Authorized containers.

(a) *General.* A proprietor may only use containers that are authorized under this part for use in containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits.

(b) *Approval of other containers.* The appropriate TTB officer may approve the use of another type of container for a particular purpose in place of a type of container specifically authorized in this part for that purpose if the use of that container:

(1) Will provide protection to the revenue equal to or greater than that provided by the authorized container; and

(2) Will not hinder the effective administration of this part.

(c) *Approval of other container materials.* The appropriate TTB officer may approve the use of a container made of a material other than one prescribed in this subpart if he finds the other material to be suitable for the intended purpose. If the appropriate TTB officer approves another material for a container, the approval may also specify how the container must be constructed, protected, marked, and used.

(26 U.S.C. 5002, 5206, 5212, 5213, 5214, 5301)

§ 19.474 Spirits for nonindustrial use.

(a) *Containers.* A proprietor may fill spirits for nonindustrial use into packages or into other containers that are filled during processing operations, if consistent with the provisions of part 5 of this chapter.

(b) *Bottles and labels.* The provisions of subpart T of this part and part 5 of this chapter govern the liquor bottles and labels that a proprietor must use in bottling spirits for nonindustrial domestic use.

(c) *Cases.* If spirits for nonindustrial use are in containers with a capacity of one gallon or less the proprietor must place the containers in cases constructed to afford reasonable protection against breakage.

(26 U.S.C. 5206, 5212, 5301)

§ 19.475 Spirits for industrial use.

(a) *Containers.* A proprietor may fill denatured spirits or other spirits for industrial use into suitable containers. The proprietor must ensure that all containers for spirits that will be used in food products comply with applicable U.S. Food and Drug Administration health and safety laws and regulations.

(b) *Encased containers.* A proprietor may encase unlabeled containers of denatured spirits and other spirits for industrial use in wood, fiberboard or similar material if:

(1) The cases are constructed so that the surface, including the opening of the container, is not exposed;

(2) Required marks are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading, “Do not remove inner container until emptied” or a statement of similar meaning appears on the portion of the case bearing the marks.

(c) *Cases.* With the exception of encased containers covered in paragraph (b) of this section, if the containers for denatured spirits and spirits for industrial use have a capacity of not more than 1 gallon, the proprietor must place the containers in cases that provide reasonable protection against breakage.

(26 U.S.C. 5206, 5301)

§ 19.476 Packages.

A proprietor may use packages on bonded premises for original entry of spirits, and for packaging from tanks, storing, transferring in bond, and withdrawing spirits and denatured spirits from bonded premises. Packages must be constructed so as to be capable of secure closure.

(26 U.S.C. 5206)

§ 19.477 Use of bulk conveyances.

If a bulk conveyance meets the construction requirements of § 19.478 or is approved under § 19.473(b), a proprietor may use the bulk conveyance on bonded premises for the original entry of spirits, and for filling from tanks, storing, transferring in bond, and withdrawing taxpaid spirits and

denatured spirits. A proprietor may use such a bulk conveyance to withdraw spirits free of tax, in accordance with the provisions of this part, for use of the United States or to a specified consignee if so authorized by the appropriate TTB officer under § 19.473(b). A proprietor may also use such a bulk conveyance to withdraw spirits without payment of tax, in accordance with the provisions in this part, for any one of the following purposes:

(a) Export, as authorized under 26 U.S.C. 5214(a)(4);

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9); or

(e) Use in wine production, as authorized under 26 U.S.C. 5373.

(26 U.S.C. 5206)

§ 19.478 Construction requirements for bulk conveyances.

(a) *Construction.* The following standards apply to bulk conveyances authorized by this part:

(1) If the conveyance consists of two or more compartments, each compartment must be constructed or arranged so that the emptying of any compartment does not provide access to the contents of any other compartment;

(2) The conveyance (or in the case of compartmented conveyances, each compartment) must be arranged so that it can be completely drained;

(3) Each tank car or tank truck must have permanently and legibly marked thereon its number, its capacity in wine gallons, and the name or symbol of its owner;

(4) If the conveyance consists of two or more compartments, each compartment must be identified by a number and the capacity in wine gallons of each shall be marked thereon;

(5) The conveyance must have a route board or other suitable device for carrying required marks or brands; and

(6) Calibrated charts, showing the capacity of each compartment in wine gallons for each inch of depth, must be available for use in measuring the contents of each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility.* Before filling any bulk conveyance, a proprietor must examine it to verify that it meets the requirements of this section or of an approval under § 19.473(b) and that it is otherwise suitable for receiving the spirits or denatured spirits. A proprietor must refrain from using, or discontinue use of, any conveyance

found by him or by the appropriate TTB officer not to meet the applicable requirements.

(26 U.S.C. 5206, 5212, 5213, 5214)

§ 19.479 Restrictions on dispositions of bulk spirits.

(a) *Bulk spirits for nonindustrial use.* A proprietor may sell or dispose of spirits for nonindustrial use in containers holding more than one wine gallon only to the persons and for the purposes specified in § 1.80 of this chapter.

(b) *Bulk spirits for industrial use.* If a proprietor withdraws spirits (other than alcohol or neutral spirits) from bond in containers holding more than one wine gallon for industrial use, the proprietor must ship or deliver the spirits directly to the user of the spirits as provided in § 1.95 of this chapter.

(26 U.S.C. 5201)

Marking Requirements for Spirits

§ 19.482 General.

A proprietor must mark, identify, and label all containers of spirits or denatured spirits as provided in this part. For information regarding liquor bottle label requirements, see subpart T of this part and part 5 of this chapter.

(26 U.S.C. 5204, 5206)

§ 19.483 Specifications for marks.

(a) *Basic requirements.* A proprietor must place the marks prescribed by this subpart on cases, encased containers, and packages of spirits and denatured spirits so that they are:

- (1) Of adequate size to be easily read;
- (2) Of a color in distinct contrast to the color of the background;
- (3) Legible; and
- (4) Durably affixed.

(b) *Use of labels.* A proprietor may use labels as the means for applying prescribed marks if the labels meet the requirements of paragraph (a) of this section.

(c) *Location.* A proprietor must place the prescribed marks on one side of the case or encased container, or on the head of the package.

(26 U.S.C. 5206)

§ 19.484 Marks on packages filled in production or storage.

(a) *Packages filled in production or storage.* Except as otherwise provided in this part, a proprietor must mark packages of spirits filled in production or storage with:

- (1) The name of the producer, or the producer's trade name, in accordance with paragraph (b) of this section;
- (2) The distilled spirits plant number of the producer, such as "DSP-KY-708";

(3) The kind of spirits or, in the case of distillates removed under § 19.307, the kind of distillate such as "Grape Distillate" or "Peach Distillate";

(4) The package identification number;

(5) "BSA" or "OC" when spirits are treated with caramel (burnt sugar) or oak chips, as the case may be;

(6) The rated capacity of the package in gallons shown as "RC-G"; and

(7) The name or trade name and the plant number of the packaging proprietor in place of the name or trade name and plant number of the producer if packages of spirits of 190° or more of proof are filled by a proprietor other than the producer.

(b) *Real or trade names.* The producer's or other proprietor's real name or the authorized trade name used in accordance with § 19.94 at the time of production, may be placed on any package filled at the time of the production gauge, or at the time of the original packaging of the spirits in wood when, as provided in § 19.305, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled in accordance with § 19.326, the proprietor may use only a producer name associated with any portion of the mingled spirits on packages filled with such mingled spirits.

(26 U.S.C. 5206)

§ 19.485 Package identification numbers in production and storage.

(a) *General.* A proprietor must mark with a lot identification number each package of spirits filled during production or storage operations. The lot identification number shows when the package is filled and must consist of, in order, the following:

- (1) The last two digits of the calendar year;
- (2) An alphabetical designation for the month from "A" through "L", representing, in order, January through December;
- (3) Two digits corresponding to the day of the month; and
- (4) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix sequence starting with "A" representing the second lot, with "B" representing the third lot, and so forth. For example: The first three lots filled into packages on January 2, 2002, would be identified as "02A02", "02A02A", and "02A02B".

(b) *Packages constituting a lot.* Packages of spirits, including any remnant package, received from customs custody or filled during any one day will receive the same lot

identification number, subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantity by weight or other measurement method prescribed in § 19.289;

(2) They are filled with spirits of the same kind and same proof;

(3) If they are filled with mingled spirits, the mingling was conducted in accordance with § 19.326; and

(4) In the case of spirits imported or brought into the United States, they are filled with imported spirits, Puerto Rican spirits or Virgin Island spirits, as applicable.

(c) *Serial numbers.* At the time of filling, receipt on bonded premises, or withdrawal from bond, the appropriate TTB officer may require serial numbers on packages of spirits within the same lot in conjunction with the lot identification number. The proprietor must assign temporary serial numbers to packages for control purposes when they are transferred in bond in an unsecured conveyance or gauged after tampering within the storage account.

(26 U.S.C. 5206)

§ 19.486 Change of packages in storage.

When a proprietor transfers spirits from one package to another as permitted in § 19.325, the proprietor must give the new package the same package identification number and marks as the original package. The proprietor must also prepare and sign a label to be affixed to the head of each new package. The label must be in the following form:

The spirits in this _____ [kind of cooperage: barrel or drum], package identification No. _____, were transferred from a _____ [kind of cooperage: barrel or drum], on _____ [Date], _____ [Proprietor]

(26 U.S.C. 5206)

§ 19.487 Kind of spirits.

(a) *Designation.* The designations of kind of spirits required for packages filled on bonded premises must be consistent with the classes and types of spirits set forth in part 5 of this chapter subject to the following exceptions or conditions:

- (1) A proprietor may designate as "Alcohol" spirits distilled at more than 160° proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character. When alcohol so designated is withdrawn on determination of tax, the designation

must consist of the word "Alcohol" preceded or followed by a word or phrase that describes the material from which the alcohol was produced;

(2) The designation for vodka, neutral spirits, or gin must include a word or phrase that describes the material from which the spirits were produced;

(3) A proprietor may designate as "Spirits", preceded or followed by a word or phrase that describes the material from which the spirits were produced, those distilled spirits that are distilled at less than 190° proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin. However, the proprietor may not designate such spirits as "Spirits grain" or "Grain spirits";

(4) A proprietor must designate spirits distilled from fruit at or above 190° proof, if intended for use in wine production, as "Neutral Spirits-Fruit", preceded or followed by the name of the fruit from which the spirits were produced;

(5) A proprietor may designate as "Whisky" spirits distilled at not more than 160° proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, provided that the designation is further qualified with the words "Distilled from rye mash" (or bourbon, wheat, malt, or rye malt mash, as the case may be). However, spirits designated as "Whisky" must, if distilled from a fermented mash of not less than 80 percent corn, carry the designation "Corn Whisky."

(b) *Change of designation.* After written application to, and approval of, the appropriate TTB officer, a proprietor may at any time before their withdrawal from bonded premises, change the original designation for spirits to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If a proprietor proposes to produce spirits for which a designation has not been prescribed in this section or in part 5 of this chapter, the proprietor must first make written application to the appropriate TTB officer for a designation for such spirits, and the proprietor must then designate the spirits accordingly.

(d) *Spirits for nonindustrial use.* A proprietor may not treat the provisions of this section as constituting authorization to apply designations to spirits withdrawn for nonindustrial use if those designations do not conform to the requirements of part 5 of this chapter.

(26 U.S.C. 5206)

§ 19.488 Marks on packages filled in processing.

(a) *Packages filled in processing.* Except as otherwise provided in this part, a proprietor must mark packages of spirits filled in processing with:

(1) The name of the processor, or the processor's trade name;

(2) The distilled spirits plant number of the processor, such as "DSP-KY-708";

(3) The kind of spirits in accordance with § 19.487 or, in the case of an intermediate product, the product name shown on form TTB F 5110.38, Formula for Distilled Spirits Under the Federal Alcohol Administration Act;

(4) The serial number or lot identification number, in accordance with § 19.490, and the date of filling;

(5) The proof of the spirits; and

(6) The serial number of the formula if it was manufactured under an approved formula.

(b) *Real or trade names.* The proprietor's real name or any trade name used in accordance with § 19.94 may be placed on any package filled with spirits during processing operations.

(26 U.S.C. 5206)

§ 19.489 Marks on cases filled in processing.

(a) *Mandatory marks.* Except for cases marked in accordance with § 19.496, a proprietor must mark in accordance with § 19.483 the following information on each case of spirits filled in processing:

(1) Serial number in accordance with § 19.490;

(2) Kind of spirits in accordance with the classes and types of spirits set forth in part 5 of this chapter;

(3) The distilled spirits plant number where bottled;

(4) Date filled;

(5) Proof; and

(6) Liters or proof gallons.

(b) *Export marks.* In addition to the marks referred to in paragraph (a) of this section, the proprietor must include the marks required by part 28 of this chapter on cases removed for export, for transfer to any customs bonded warehouses, for transfer to foreign-trade zones, or for use as supplies on certain vessels and aircraft.

(c) *Other marks.* A proprietor may include other marks on cases filled in processing in addition to the marks prescribed under this section. Any additional marks must not interfere with, or detract from, the marks prescribed in this section. The proprietor may include other marks such as:

(1) The name or trade name, and the location if desired, of the bottler, displayed with the word "Bottler";

(2) For products distilled or processed by the proprietor, the proprietor's name or trade name, and the location of the distilled spirits plant, if desired, displayed with the words "Distiller" or "Processor", as applicable;

(3) For products imported and bottled by the proprietor, the words "Imported and Bottled By", followed by the proprietor's name or trade name and the location of the distilled spirits plant if desired;

(4) For products bottled for a dealer, the words "Bottled For", followed by the name of that dealer;

(5) Any material required by Federal or State law and regulations; and

(6) Labels or data describing the contents for commercial identification or accounting purposes or indicating payment of State or local taxes.

(26 U.S.C. 5206, 5066)

§ 19.490 Numbering of packages and cases filled in processing.

(a) *Packages of spirits and denatured spirits filled during processing operations.* When a proprietor fills packages of spirits and denatured spirits during processing, the proprietor must identify the packages consecutively beginning with "1" and continuing the series until the number "1,000,000" is reached, except that any series of such numbers already in use may be continued to that limit. When the identification in any series reaches "1,000,000", the proprietor may begin a new series with "1" but must add an alphabetical prefix or suffix to the new series number. For example, the first identifier in the second series of 1,000,000 packages filled might be "1A" or "A1".

(b) *Cases containing bottles or other containers of spirits and denatured spirits.* When a proprietor fills cases containing bottles or other containers of spirits and denatured spirits during processing, the proprietor must identify the cases consecutively beginning with "1" and continuing the series until the number "1,000,000" is reached, except that any series of such numbers already in use may be continued to that limit. When the identification in any series reaches "1,000,000", the proprietor may begin a new series with "1". This series of identifiers for cases containing bottles or other containers must be distinct from the series of serial numbers required for packages under paragraph (a) of this section.

(c) *Additional identification.* A proprietor may establish separate series of identifiers, distinguished from each

other by the use of alphabetical prefixes or suffixes, to identify the size of bottles, the brand names, or other information, on written notice to the appropriate TTB officer. The proprietor must identify remnant cases by placing the identifier of the last full case followed by the letter "R" on the remnant case. When there is a change in the name, or trade name of the proprietor, all series in use may be continued. However, if there is a change in proprietorship, a new series must be commenced.

(d) *Alternative marking for spirits for industrial use.* A proprietor may mark packages and cases of spirits for industrial use, including denatured spirits, filled in processing with the lot identification numbers specified in § 19.485 instead of using the identifiers specified in paragraphs (a), (b) and (c) of this section.

(26 U.S.C. 5206)

§ 19.491 Marks on containers of specially denatured spirits.

(a) *General.* A proprietor must mark or label each package, case, or encased container of specially denatured spirits filled on bonded premises to show:

- (1) The quantity in gallons;
- (2) The serial number or lot identification number;
- (3) The plant number of the proprietor;
- (4) The designation or abbreviation of the specially denatured spirits by kind (alcohol or rum);
- (5) The applicable formula number;

and

- (6) The proof of the spirits, if they were denatured at other than 190 proof.

(b) *Bottles.* A proprietor must mark or label each bottle to show the information prescribed in paragraphs (a)(1), (3), (4), (5), and (6) of this section.

(c) *Alternate formulations.* When spirits are denatured under a formula authorizing a choice of types and quantities of denaturants, the proprietor must mark the container or case to show the actual types and quantities of denaturants used.

(26 U.S.C. 5206)

§ 19.492 Marks on containers of completely denatured alcohol.

Except in the case of completely denatured alcohol transported by pipelines and bulk conveyances, a proprietor must mark each container of completely denatured alcohol on the head of the package or on the side of the can or carton with:

- (a) The name of the proprietor who filled the containers;
- (b) The plant number where the container was filled;

(c) The container's contents in wine gallons;

(d) The apparent proof;

(e) The words "Completely Denatured Alcohol"; and

(f) The applicable formula number.

§ 19.493 Caution label for completely denatured alcohol.

A proprietor must place a label containing the words "Completely Denatured Alcohol" and the statement "Caution—contains poisonous ingredients" on each container of completely denatured alcohol containing five gallons or less that is sold or offered for sale. The label must be written in plain, legible letters. The proprietor may print the name and address of the denaturer on such label, but may not include any other non-essential matter on the label without approval from the appropriate TTB officer. The word "pure" may not appear on the label or the container.

(26 U.S.C. 5206)

§ 19.494 Additional marks on portable containers.

(a) In addition to the other marks prescribed in this part, a proprietor must mark portable containers of spirits or denatured spirits (other than bottles enclosed in cases) that will be withdrawn from the bonded premises as follows:

(1) Without payment of tax, for export, for transfer to customs manufacturing bonded warehouses, for transfer to foreign-trade zones, or as supplies for certain vessels and aircraft, in accordance with the provisions in 27 CFR part 28; or

(2) If tax-free, with the word "Tax-Free."

(b) A proprietor may show other optional information such as brand or trade name; a caution notice, or other information required by Federal, State, or local law or regulations; wine or proof gallons; and plant control data. However, any such mark must not conceal, obscure, interfere with, or conflict with the markings required by this subpart.

(26 U.S.C. 5206)

§ 19.495 Marks on bulk conveyances.

(a) A proprietor must securely attach a label identifying each conveyance or compartment to the route board, or to another equivalent device, for each bulk conveyance used to transport spirits or denatured spirits setting forth the following information:

- (1) The name, plant number, and location of the consignor;

(2) The name, distilled spirits plant number, permit number, or registry number (as applicable), and the location of the consignee;

(3) The date of shipment;

(4) The quantity (proof gallons for spirits, wine gallons for denatured spirits); and

(5) The formula number for denatured spirits.

(b) If the conveyance is accompanied by documentation containing the information specified in paragraph (a) of this section, the proprietor is not required to label each conveyance or compartment.

(c) Export shipments must conform to the requirements of part 28 of this chapter.

(26 U.S.C. 5206)

§ 19.496 Cases of industrial alcohol.

(a) *Mandatory marks.* A proprietor must mark each case and each encased container of alcohol bottled for industrial use under the provisions of subpart N of this part to show the following information:

- (1) The designation "Alcohol";
- (2) The serial number or lot identification number;
- (3) The distilled spirits plant number of the proprietor;
- (4) The proof;
- (5) The proof gallons;
- (6) The designation "Tax-Free"; and
- (7) Any information required by part 28 of this chapter, for cases that are withdrawn for export, transferred to customs bonded warehouses, transferred to foreign-trade zones, or are for use on vessels and aircraft.

(b) *Other marks.* A proprietor may mark cases of industrial alcohol with other marks, provided that they do not interfere with, or detract from, mandatory case marks in the manner permitted under § 19.489.

(26 U.S.C. 5206, 5235)

§ 19.497 Obliteration of marks.

Except as otherwise provided in § 19.487(b), the marks required to be placed on any container or case under this part must not be destroyed or altered before the container or case is emptied.

(26 U.S.C. 5206)

§ 19.498 Relabeling and reclosing off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, or reclose bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the proprietor's distilled spirits plant,

provided that the wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the distilled spirits plant. If products relabeled under this section were originally bottled by another proprietor, the relabeling proprietor must have on file a statement from the original bottler consenting to the relabelling.

(26 U.S.C. 5201)

§ 19.499 Authorized abbreviations to identify marks.

In addition to the other abbreviations and symbols authorized under this part for use in marking containers, a proprietor may use the following abbreviations to identify the following marks:

Mark	Abbreviation
Completely Denatured Alcohol Gallon or Wine Gallon	CDA
Gross Weight	WG
Proof	G
Specially Denatured Alcohol ..	P
Specially Denatured Rum	SDA
Tare	SDR
Tax Determined	T
Wine Spirits Addition	TD
	WSA

(26 U.S.C. 5206)

Subpart T-Liquor Bottle, Label, and Closure Requirements

Authorized Liquor Bottles

§ 19.511 Bottles authorized.

Each liquor bottle for nonindustrial distilled spirits for domestic use must conform to a bottle size specified in the standards of fill set forth in subpart E of part 5 of this chapter. This rule applies to liquor bottles intended for distribution in both interstate and intrastate commerce.

(26 U.S.C. 5301)

§ 19.512 Bottles not constituting approved containers.

A proprietor may not use any liquor bottle that the appropriate TTB officer finds is misleading within the meaning of § 5.46 of this chapter. Misleading liquor bottles do not constitute approved containers for the purposes of this part, and a proprietor may not use them for packaging distilled spirits for domestic purposes.

§ 19.513 Distinctive liquor bottles.

(a) Application. A proprietor must submit form TTB F 5100.31, Application for and Certification/Exemption of Label/Bottle Approval, to the appropriate TTB officer in order to obtain approval to use domestic liquor bottles of distinctive shapes or designs. The proprietor must certify as to the

total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the proprietor must affix a readily legible photograph (showing both front and back of the bottle) to the front of each copy of TTB F 5100.31 along with the label(s) to be used on the bottle. The proprietor must submit to TTB an actual bottle or accurate model only when specifically requested to do so.

(b) Approval. The appropriate TTB officer will approve a distinctive liquor bottle on a properly completed TTB F 5100.31 if the bottle is found to:

- (1) Meet the requirements of part 5 of this chapter;
- (2) Be distinctive;
- (3) Be suitable for its intended purpose;
- (4) Not jeopardize the revenue; and
- (5) Be not misleading to the consumer.

(c) Retention. A proprietor must keep on file at his premises a copy of the complete approved TTB F 5100.31 for the distinctive liquor bottle.

(d) Cross reference. For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(26 U.S.C. 5301)

Labeling Requirements

§ 19.516 Certificate of label approval or exemption.

A proprietor must obtain a certificate of label approval or an exemption from label approval under part 5 of this chapter on form TTB F 5100.31 for any label that the proprietor will use on bottles of spirits for domestic use. Upon request by the appropriate TTB officer, the proprietor must provide evidence of label approval, or of exemption from label approval, for a label used on a bottle of spirits for domestic use. For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

(26 U.S.C. 5201)

§ 19.517 Statements required on labels under an exemption from label approval.

If a proprietor bottles spirits for domestic use under a certificate of exemption from label approval on form TTB F 5100.31, the following information must appear on the label used on the bottle, in the manner indicated:

(a) *Brand name.* The brand name on the label must conform to the requirements of § 5.34 of this chapter;

(b) *Kind.* The class and type of the spirits identified on the label must conform to the requirements of § 5.35 of this chapter;

(c) *Alcohol content.* The alcohol content on the label must conform to the requirements of § 5.37(a) of this chapter;

(d) *State of distillation.* In the case of whisky, the state of distillation statement on the label must conform to the requirements of § 5.36(d) of this chapter;

(e) *Net contents.* The label must show the net contents, unless the statement of net contents is permanently marked on the side, front, or back of the bottle;

(f) *Name and address of bottler.* The name and address of the bottler must conform to the requirements of § 19.518;

(g) *Age of whisky containing no neutral spirits.* In the case of whisky containing no neutral spirits, statements of age and percentage by volume on the label must conform to the requirements of § 5.40 of this chapter;

(h) *Age of whisky containing neutral spirits.* In the case of whisky containing neutral spirits, the label must state the age of the whisky or whiskies and the respective percentage by volume of whisky or whiskies and neutral spirits in accordance with § 5.40 of this chapter;

(i) *Age of brandy.* In the case of brandy aged for a period of less than two years, the label must state the age.

(j) *Presence of neutral spirits or coloring, flavoring, or blending material.* The label must indicate the presence of neutral spirits or coloring, flavoring, or blending material in accordance with § 5.39 of this chapter; and

(k) *Country of origin.* Labels of imported spirits must state the country of origin in substantially the following form: "Product of _____," with the blank filled in with the name of the country of origin.

(26 U.S.C. 5201)

§ 19.518 Name and address of bottler.

In setting forth the name and address of the bottler required by § 19.517(f), the label must contain the words "Bottled by", "Packed by", or "Filled by" followed immediately by the name (or trade name) of the bottler and the place where the bottling takes place. If the bottler is the proprietor of more than one distilled spirits plant engaged in bottling operations, the label may include the addresses of all such plants immediately following the name (or trade name) of the bottler. The following additional rules apply to name and address labeling under this section:

(a) Where distilled spirits are bottled by or for the distiller of the spirits, the label may state, in lieu of the words

“Bottled by”, “Packed by”, or “Filled by”, followed by the bottler’s name (or trade name) and address or addresses, the words “Distilled by”, followed immediately by the name (or trade name) under which the particular spirits were distilled, or by any trade name shown on the distiller’s permit covering the premises where the particular spirits were distilled, and the address (or addresses) of the distiller;

(b) Where “straight whiskies” of the same type produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman’s bonded premises for further storage) and are subsequently bottled and labeled as “straight whisky”, that “straight whisky” must be labeled as provided in the introductory paragraph of this section. However, where that combined “straight whisky” is bottled by or for the distillers of the whiskies, the label may contain, in lieu of the wording specified in that introductory paragraph, the words “Distilled by”, followed immediately by the name (or trade name) of each distiller that distilled a portion of the “straight whisky”, the address of each of the of the distilled spirits plants where a portion of the “straight whisky” was distilled, and the percentage of “straight whisky” distilled by each distiller (with a tolerance of plus or minus 2 percent). In addition, where “straight whisky” is made up of a mixture of “straight whiskies” of the same type distilled at two or more distilled spirits plants of the same proprietor located within the same State, and where that “straight whisky” is bottled by or for that proprietor, the label for the “straight whisky” may contain, in lieu of the wording specified in the introductory paragraph of this section, the words “Distilled by” followed by the name (or trade name) of the proprietor and the address of each of the distilled spirits plants that distilled a portion of the “straight whisky”;

(c) Where distilled spirits are bottled by or for the proprietor of a distilled spirits plant, the label may state, in lieu of the words “Bottled by”, “Packed by”, or “Filled by” followed by the bottler’s name (or trade name) and address, the words “Blended by”, “Made by”, “Prepared by”, “Manufactured by”, or “Produced by” (whichever is appropriate to the process involved), followed by the name (or trade name) and the address (or addresses) of the distilled spirits plant proprietor;

(d) In the case of labels of distilled spirits bottled for a retailer or other person who is not the proprietor of the distilled spirits plant where the distilled spirits were distilled, the label may also

state the name and address of that retailer or other person, preceded immediately by the words “Bottled for”, “Distributed by”, or other similar statement; and

(e) The label may state the address of the proprietor’s principal place of business in lieu of the place where the bottling, distilling or processing operation occurred, provided that the address where the bottling, distilling, or other operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle. The coding system employed must permit TTB to determine where the operation stated on the label occurred. Prior to using such a label or bottle coding system, the proprietor must send a notice to the appropriate TTB officer explaining the coding system.

(26 U.S.C. 5201)

§ 19.519 Labels for export spirits.

(a) *Required information.* If a proprietor bottles spirits for export, the bottles must have a securely affixed label showing:

- (1) The kind (class and type) of spirits;
- (2) The percent-alcohol-by-volume of the spirits;
- (3) The net contents, unless the markings on the bottle indicate such contents; and
- (4) The name (or trade name) of the bottler.

(b) *Additional information.* The bottler may place additional information on the export label if it is not inconsistent with the information required under paragraph (a) of this section.

(c) *Language.* The export label information may appear in the language of the country to which the spirits are to be exported provided that the proprietor maintains on file an English translation of that information. The export label may state the net contents and percent-alcohol-by-volume in the units of measurement of the foreign country, provided that the proprietor maintains a record of the equivalent units as required for labels of spirits bottled for domestic consumption.

(d) *Waiver.* The appropriate TTB officer may waive the requirement to show any information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information. In regard to kind (class and type) of spirits, the appropriate TTB officer may waive the designation required by § 5.22 of this chapter, only to the extent that the label need not bear the word “diluted” for distilled spirits

bottled below the minimum bottling proof, and provided that this is in accordance with the rules of the country to which the product is to be exported.

(26 U.S.C. 5201, 5301)

§ 19.520 Spirits for shipment to Puerto Rico.

Spirits removed for shipment to Puerto Rico with benefit of drawback or without payment of tax in accordance with part 28 of this chapter are subject to the provisions of part 5 of this chapter in regard to labeling and standards of fill for bottles.

(26 U.S.C. 5201)

Closure Requirements

§ 19.523 Affixing closures.

Each bottle or other container of spirits having a capacity of one gallon (3.785 liters) or less must have a closure or other device securely affixed to the container prior to withdrawal from bond or customs custody. The closure or other device must be constructed in such a manner as to require breaking in order to gain access to the contents of the container.

(26 U.S.C. 5301)

§ 19.525 Reclosing.

A proprietor may reclose bottles of distilled spirits filled on bonded premises as provided in subpart N of this part. A proprietor may also reclose bottles of distilled spirits to which closures or other devices have been affixed as provided in § 19.498.

(26 U.S.C. 5215)

Subpart U—[Reserved]

Subpart V—Records and Reports

General Rules for Records

§ 19.571 Records in general.

Each proprietor of a distilled spirits plant must maintain records that accurately reflect the operations and transactions occurring at the plant. This subpart specifies the types of records that a proprietor must maintain. In general, a proprietor is responsible for recording activities and transactions related to the three primary operational accounts at a plant: production, storage, and processing. A proprietor’s records must show receipts in each account, movement from one account to another, transfers in bond, and withdrawals of spirits, denatured spirits, articles, or wines. The types of records that a proprietor must keep include:

- (a) All individual transaction forms, records, and summaries that are specifically required by this part;

(b) All supplemental, auxiliary, and source data that a proprietor uses to compile required forms, records, and summaries, and to prepare reports, returns and claims; and

(c) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(26 U.S.C. 5207)

§ 19.572 Format of records.

As a general rule, the provisions of this subpart do not require proprietors to keep their records in any particular format or medium. For example, a proprietor may keep required records on paper, on microfilm or microfiche, or on a computer or other electronic medium, so long as the records are readily retrievable in hard-copy format for review by TTB officers as necessary. The required records may consist of documents created in the ordinary course of business, rather than documents created expressly to meet the requirements of this part, provided that those documents:

(a) Contain all of the relevant information required under this part;

(b) Are consistent with the general standards of clarity and accuracy; and

(c) Can be readily understood by TTB personnel.

(26 U.S.C. 5207)

§ 19.573 Location of required records.

A proprietor may keep the records required by this part at the distilled spirits plant where operations or transactions occur or at a central recordkeeping location maintained by the proprietor. If a proprietor keeps the required records at any location other than the distilled spirits plant where operations or transactions occur, the proprietor must notify the Director, National Revenue Center, of the location where the records are kept.

(26 U.S.C. 5207)

§ 19.574 Availability of records.

The records required by this part must be available for inspection by the appropriate TTB officer during normal business hours. If a proprietor keeps the records at a location other than the distilled spirits plant where operations or transactions occur, the proprietor upon request must make them available at the distilled spirits plant premises undergoing a TTB audit or inspection. The records must be produced within two days of the request except that data accumulated on cards, tapes, discs, or other accepted record media must be retrievable within five business days. Applicable data processing programs

must be made available for examination if requested by any authorized TTB officer.

(26 U.S.C. 5207)

§ 19.575 Retention of records.

A proprietor must retain any records required by this part for a period of not less than three years from the date of the record or the date of the last entry required to be made, whichever is later. However, the appropriate TTB officer may require a proprietor to keep records for an additional period not exceeding three years in any case where such retention is deemed appropriate for the protection of the revenue.

(26 U.S.C. 5207)

§ 19.576 Preservation of records.

A proprietor must maintain required records to ensure their readability and availability for inspection. Whenever the condition of any record will render it unsuitable for its intended or continued use, the proprietor must create an accurate and legible reproduction of the original record. TTB will treat the reproduced record as an original record, and all of the provisions of law that would apply to the original record also will apply to the reproduced record.

(26 U.S.C. 5207, 5555)

§ 19.577 Documents that are not records.

The term "records" as used in this subpart does not include qualifying documents required under subpart D of this part, or bonds required under subpart F of this part. Approved active formulas, plant registrations and similar records are permanent in nature and must be maintained in a permanent file.

(26 U.S.C. 5207)

§ 19.578 Financial records and books of account.

See 27 CFR 70.22 for information regarding TTB examination of financial records and books of account.

(26 U.S.C. 7602)

§ 19.580 Time for making entries in records.

(a) *Daily record entries.* A proprietor must make entries required by this part in records on a daily basis for each transaction or operation and not later than the close of the next business day after the transaction or operation occurred. However, if a proprietor prepares supplemental or auxiliary records when an operation or transaction occurs and those records contain all of the required information, the proprietor may make entries into the daily records not later than the close of

business on the third business day following the day on which the transaction or operation occurred.

(b) *Tax records.* A proprietor must enter the tax determination and the taxable removal of distilled spirits in the proprietor's records on the day on which tax determination and taxable removal occurs.

(26 U.S.C. 5207)

§ 19.581 Details of daily records.

The daily records required by this part must include the following information:

(a) The date of each operation or transaction;

(b) For spirits, the kind and the quantity in proof gallons;

(c) For denatured spirits, the formula number and the quantity in wine gallons;

(d) For distilling materials produced on the premises, the kind and the quantity in wine gallons. For chemical byproducts containing spirits, articles, spirits residues, and distilling material received on the premises, the kind, the percent of alcohol by volume, and the quantity in wine gallons;

(e) For wines, the kind, the quantity in wine gallons and the percent of alcohol by volume;

(f) For alcoholic flavoring materials, the kind, formula number (if any), and the quantity in proof gallons;

(g) For containers (other than those bearing lot identification numbers) or cases, the type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. However, a proprietor may withdraw spirits in cases without recording the serial numbers of the cases, unless the appropriate TTB officer requires such recording. A proprietor must record package identification numbers, number of packages, and proof gallons per package on deposit records in the storage account reflecting production gauges or filling of packages from tanks; however, the proprietor need show only the lot identification, number of packages, and proof gallons per package for transactions in packages of spirits unless package identification numbers are specifically required by this part;

(h) For materials intended for use in the production of spirits, the kind and the quantity, with liquids recorded in gallons and other nonliquid materials recorded by weight;

(i) For each receipt or removal of material, spirits, denatured spirits, articles, spirits residues, and wine, the name and address of the consignee or consignor, and, if any, the plant number

or industrial use permit number of such person;

(j) The serial number of any tank used;

(k) On the transaction record, the rate of duty paid on imported spirits;

(l) Identification of imported spirits, spirits from Puerto Rico, and spirits from the Virgin Islands, or a showing that a distilled spirits product contains such spirits; and

(m) Identification of spirits that are to be used exclusively for fuel use.

(26 U.S.C. 5207)

§ 19.582 Conversion from metric to U.S. units.

When liters are converted to wine gallons, the proprietor must multiply the quantity in liters by 0.264172 to determine the equivalent quantity in wine gallons. If cases contain the same quantity of spirits of the same proof in metric bottles, the proprietor must convert the cases to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units must be rounded to the sixth decimal; or

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units must be rounded to the nearest hundredth. Once converted to wine gallons, the proprietor must determine the proof gallons of spirits in cases as provided in § 30.52 of this chapter.

(26 U.S.C. 5201)

Production Records

§ 19.584 Materials for the production of distilled spirits.

A proprietor must maintain daily records of materials produced or received for, or used in, the production of distilled spirits. This includes records covering:

(a) Receipt and use of fermenting material or other nonalcoholic materials for the production of distilled spirits;

(b) Receipt and use of spirits, denatured spirits, articles, and spirits residues for redistillation;

(c) Distilling materials produced, received for production, and used in the production of distilled spirits;

(d) Receipt of beer from brewery premises without payment of tax, and receipt of beer removed from brewery premises upon determination of tax as authorized by 26 U.S.C. 5222(b);

(e) Distilling material destroyed in, or removed from the premises before distillation, including residue of beer returned to the producing brewery;

(f) The quantity of fusel oils or other chemicals removed from the production system, including the disposition thereof, with the name of the consignee, if any, together with the results of alcohol content tests performed on those fusel oils or chemicals; and

(g) The kind and quantity of distillates removed from the production system pursuant to § 19.307.

(26 U.S.C. 5207)

§ 19.585 Production and withdrawal records.

(a) *Production of spirits.* The following rules apply to the maintenance of production records:

(1) A proprietor must maintain daily production account records of the kind and quantity of distilled spirits produced. The records must show the gauge of spirits in each receiving tank and the production gauge (in proof gallons) of spirits removed from each tank. If packages are filled according to the production gauge for immediate withdrawal from bond, the proprietor must record the details of the individual packages filled;

(2) A proprietor must maintain daily records of spirits lost or destroyed prior to the production gauge; and

(3) A proprietor must maintain production account records in a manner that will ensure the tracing of spirits through the distilling system to the mash or other material from which the spirits were produced and that will clearly establish the identity of the spirits.

(b) *Withdrawals from production.* A proprietor must maintain daily records of the distilled spirits withdrawn from the production account. This includes withdrawals for:

(1) Tax payment;

(2) Use of the United States;

(3) Hospital, scientific or educational use;

(4) Export;

(5) Transfer to a foreign trade zone;

(6) Transfer to customs bonded manufacturing warehouse;

(7) Use as supplies on vessels and aircraft;

(8) Use in wine production;

(9) Transfer in bond to other bonded premises;

(10) Transfer to storage operations;

(11) Transfer to processing operations; and

(12) Research, development, or testing.

(26 U.S.C. 5207)

§ 19.586 Byproduct spirits production record.

Each proprietor who manufactures substances other than spirits in a

process that produces spirits as a byproduct must maintain daily production records of:

(a) The kind and quantity of materials received and used in production;

(b) The kind and quantity of spirits produced and disposed of; and

(c) The kind and quantity of other substances produced.

(26 U.S.C. 5207)

Storage Records

§ 19.590 Storage operations.

(a) *Receipts.* A proprietor must maintain daily records of the kind and quantity of distilled spirits or wines received in the storage account. The proprietor must use copies of gauge records, transfer records, and tank records of wines or spirits to record spirits or wines received into storage. Receipts into storage include:

(1) Receipts of spirits or wines for deposit into storage;

(2) Receipts by transfer in bond;

(3) Receipts of spirits from customs custody; and

(4) Receipts of spirits returned to bond.

(b) *Storage activities.* A proprietor must maintain daily records of the activities and operations within the storage account at the plant, including records regarding:

(1) The mingling of spirits;

(2) Spirits in tanks;

(3) Spirits or wines filled into packages from tanks and retained for storage;

(4) Spirits of less than 190 degrees of proof or wines transferred from one tank to another;

(5) The transfer of spirits or wine from one package to another; and

(6) The addition of oak chips to spirits and the addition of caramel to brandy or rum.

(c) *Withdrawals from storage.* A proprietor must maintain daily records of the kind and quantity of distilled spirits or wines withdrawn from the storage account, including records regarding:

(1) Taxpayment;

(2) Use by the United States;

(3) Hospital, scientific or educational use;

(4) Export;

(5) Transfer to a foreign trade zone;

(6) Transfer to a customs bonded manufacturing warehouse;

(7) Use as supplies on vessels and aircraft;

(8) Transfer to a bonded winery;

(9) Transfer to a customs bonded warehouse;

(10) Use for research, development, or testing;

- (11) Transfer to processing operations;
 (12) Transfer to production operations;
 (13) Transfer in bond to other bonded premises;
 (14) Destruction; and
 (15) Loss.

(26 U.S.C. 5207)

§ 19.591 Package summary records.

(a) *General.* A proprietor must keep current summary records for each kind of spirits or wine in packages, showing each spirits or wine deposited in, withdrawn from, and remaining in, the storage account. A proprietor must keep separate records for domestic spirits, imported spirits, Virgin Islands spirits, Puerto Rican spirits, and wine. A proprietor may keep package records for spirits according to the season or the year in which the packages were filled with spirits.

(b) *Arrangement of records.* The proprietor must prepare and arrange separately package summary records:

- (1) For domestic spirits, alphabetically by State and by the plant number and name of the producer or warehouseman;
- (2) For imported spirits, alphabetically by the country of origin and by the name of the producer;
- (3) For Puerto Rican or Virgin Islands spirits, by the name of the producer in Puerto Rico or the Virgin Islands; and
- (4) For wine, by the kind and the tax rate imposed by 26 U.S.C. 5041.

(c) *Details of records.* Package summary records must show the following details:

- (1) The date on which each of the summarized transactions occurred;
- (2) For spirits, the number of packages and the proof gallons covered by the summary record;
- (3) For wine, the number of packages and the wine gallons covered by the summary record;
- (4) Any gains or shortages disclosed by inventory or when an account is closed; and
- (5) The gallon balances on summary records for spirits and wines remaining in the account at the end of each month.

(d) *Consolidation.* A proprietor must consolidate package summary records at the end of each month, or for lesser periods when required by the appropriate TTB officer, to show, for all types of containers and kinds of spirits, the total proof gallons received in, withdrawn from, and remaining in the storage account.

(26 U.S.C. 5207)

§ 19.592 Tank record of wine and spirits of less than 190 degrees of proof.

A proprietor must keep a record for each tank (including each bulk

conveyance) containing wine or spirits of less than 190 degrees of proof. The record must show deposits into, withdrawals from, and the balance remaining in, each tank in the storage account. A proprietor must prepare a new record each time wine or spirits are deposited into an empty tank and must make entries each day that transactions occur. Tank records must show the following details:

- (a) The identification of the tank;
- (b) The tank record serial number, beginning with "1" for each record initiated on or after January 1 of each calendar year;
- (c) The date of each transaction;
- (d) For spirits, the kind of spirits and, as applicable,—

(1) For domestic spirits, the plant number and name of the producer, or, for blended rums or brandies, the plant number and name of the warehouseman;

(2) For imported spirits, the country of origin and the name and plant number of the warehouseman;

(3) For Puerto Rican or Virgin Islands spirits, the name of the producer;

(4) The number and average proof gallon content of packages of spirits dumped in the tank, or a notation indicating the deposit of spirits in the tank by pipeline; and

(5) If subject to age labeling requirements under part 5 of this chapter, the age of the youngest spirits in years, months and days, each time that spirits are deposited;

(e) For wine, the kind and the tax rate imposed by 26 U.S.C. 5041;

(f) The wine gallons of wine, or proof gallons of spirits, deposited into the tank;

(g) The wine gallons of wine, or proof gallons of spirits, withdrawn from the tank;

(h) Any related transaction form or record and its serial number for deposits and withdrawals;

(i) The wine gallons of wine, or proof gallons of spirits, remaining in the tank, recorded at the end of each month; and

(j) Any gain or loss disclosed by inventory or on emptying of the tank.

(26 U.S.C. 5207)

§ 19.593 Tank summary record for spirits of 190 degrees or more of proof.

(a) *General.* A proprietor must keep a tank summary record for spirits of 190 degrees or more of proof held in storage tanks. The record must show the proof gallons deposited into, withdrawn from, and remaining in the tanks in the storage account. The proprietor must prepare a separate tank summary record for each kind of spirits of 190 degrees or more of proof. The proprietor must

make an entry for each day on which a transaction occurs, and the entry must summarize the individual transactions shown on the deposit records.

(b) *Arrangement of records.* The proprietor must prepare and arrange the tank summary records as follows:

(1) For domestic spirits, by the name of the producer or warehouseman;

(2) For imported spirits, by the name of the warehouseman who received the spirits from customs custody; and

(3) For spirits from Puerto Rico or the Virgin Islands, by the name of the producer in Puerto Rico or the Virgin Islands.

(c) *Details of records.* Tank summary records must show the following details:

(1) The kind of spirits;

(2) The date of the transactions summarized;

(3) The proof gallons deposited;

(4) The proof gallons withdrawn;

(5) The proof gallons remaining in tanks; and

(6) Any gain or loss disclosed by inventory or on emptying of the tanks covered by the tank summary record.

(26 U.S.C. 5207)

Processing Records

§ 19.596 Processing records in general.

A proprietor who processes spirits must maintain daily records of transactions and operations in the processing account relating to:

(a) The manufacture of distilled spirits products;

(b) Finished products;

(c) The denaturation of spirits; and

(d) The manufacture of articles.

(26 U.S.C. 5207)

§ 19.597 Manufacturing records.

(a) *Receipts.* A proprietor must maintain daily records of the spirits, wines, and alcoholic flavoring materials received into the processing account for the manufacture of distilled spirits products. Total receipts must be summarized showing the amount of:

(1) Spirits received from storage or production at the same plant;

(2) Spirits received from other plants by transfer in bond;

(3) Spirits received from customs custody;

(4) Spirits received by return to bond;

(5) Wines received from the storage at the same plant;

(6) Wines received by transfer in bond; and

(7) Alcoholic flavoring materials received.

(b) *Additional receipt information.*

The records described in paragraph (a) of this section must also show the name and plant number of the producer or

processor (or the warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees or more of proof received from storage) for domestic spirits, the name of the importer and the country of origin for imported spirits, and the name and address of the producer for wines and alcoholic flavoring materials.

(c) *Usage.* A proprietor must maintain daily records of the spirits, wines, and alcoholic flavoring materials and other ingredients used in the manufacture of distilled spirits products as provided in § 19.598.

(d) *Bottling or packaging.* A proprietor must maintain daily records of the bottling or packaging of each batch of spirits as provided in § 19.599.

(e) *Other dispositions.* A proprietor must maintain daily records of all other dispositions of spirits, wines and alcoholic flavoring materials, including, but not limited to, records regarding the following:

- (1) Spirits, wines, and alcoholic flavoring materials removed from the distilled spirits plant premises;
- (2) Transfers in bond;
- (3) Spirits transferred to the production account for redistillation;
- (4) Redistillation of spirits, including the production of gin or vodka by other than original and continuous distillation;
- (5) Voluntary destruction of spirits or wines; and
- (6) Losses of spirits, wines and alcoholic flavoring materials.

(26 U.S.C. 5207)

§ 19.598 Dump/batch records.

A proprietor who processes, mixes, or blends spirits in the processing account must maintain “dump/batch” records setting forth detailed information regarding the processing of the spirits. The dump/batch records must contain each of the following items of information that applies to the processing in question:

- (a) Serial number of the record or batch number;
- (b) Name and distilled spirits plant number of the producer;
- (c) Kind and age of the spirits used, together with a notation, if applicable, that the spirits—
 - (1) Were treated with oak chips;
 - (2) Contain added caramel;
 - (3) Were imported; or
 - (4) Are from Puerto Rico or the Virgin Islands;

(d) Serial number of the tank or container to which ingredients are added for use;

(e) Serial or identification number of the tank or container from which spirits are removed;

(f) Quantity by ingredient of other alcoholic ingredients used, showing wine in wine gallons, the percentage of alcohol by volume and proof, and alcoholic flavoring materials in proof gallons;

(g) Serial number of the source transaction record (for example, the record for spirits previously dumped);

(h) Date of each transaction;

(i) Quantity, by ingredient (other than water), of nonalcoholic ingredients used;

(j) Formula number;

(k) Quantity of ingredients used in the batch that have been previously dumped, reported on dump records, and held in tanks or containers;

(l) Total quantity in proof gallons of all alcoholic ingredients used;

(m) Identification of each record to which spirits are transferred;

(n) Quantity of each lot transferred;

(o) Date of each transfer;

(p) Total quantity in proof gallons of the product transferred;

(q) Batch gain or loss; and

(r) For each batch to be tax determined in accordance with § 19.247, the effective tax rate.

(26 U.S.C. 5207)

§ 19.599 Bottling and packaging record.

A proprietor who bottles or packages spirits must prepare a “bottling and packaging” record for each lot of spirits bottled or packaged. The bottling and packaging record must contain the following information:

(a) Bottling tank number;

(b) Serial number of the record (beginning with “1” at the start of each calendar or fiscal year);

(c) Formula number (if any) under which the batch was produced;

(d) Serial number of the dump/batch record from which the spirits were received;

(e) Kind of distilled spirits product (including age, if claimed);

(f) Details of the tank gauge (including proof, wine gallons, proof gallons, and, if applicable, obscuration);

(g) The date the bottles or packages were filled;

(h) The size of the bottles or packages filled, the number of bottles per case, and the number of cases or packages filled;

(i) Serial numbers by brand name of the cases or other containers filled;

(j) Proof of the spirits bottled or packaged (if different from the proof recorded under paragraph (f) of this section);

(k) Total quantity bottled, packaged or otherwise disposed of in bulk;

(l) Losses or gains of the distilled spirits product; and

(m) If labeled as bottled in bond, a statement to that effect.

(26 U.S.C. 5207)

§ 19.600 Alcohol content and fill test record.

A proprietor must maintain a record of the results of all tests of alcohol content and quantity (fill) conducted. The record must include information that will enable TTB officers to determine whether the proprietor is complying with the requirements of § 19.356. The record of alcohol content and fill tests must contain, at a minimum, the following information:

- (a) Date and time of the test;
- (b) Bottling tank number;
- (c) Serial number of the bottling record;
- (d) Bottling line designation;
- (e) Size of the bottle filled;
- (f) Number of bottles tested;
- (g) Labeled alcohol content;
- (h) Alcohol content found by the test;
- (i) Percentage of variation from 100 percent fill; and
- (j) Corrective action taken, if any.

(26 U.S.C. 5207, 5555)

§ 19.601 Finished products records.

(a) *Bottling and packaging.* A proprietor must maintain daily transaction records and a daily summary record of the kind and quantity of finished products bottled or packaged within the processing account at the distilled spirits plant. These records must show:

- (1) The beginning and ending quantity of bottled or packaged spirits on hand;
- (2) The spirits bottled or packaged; and

(3) Inventory overages.

(b) *Disposition of finished products.* A proprietor must also maintain daily records of the disposition of finished products from the processing account at the distilled spirits plant. These disposition records must show any spirits:

- (1) Transferred in bond (packages);
- (2) Withdrawn tax determined;
- (3) Withdrawn free of tax for U.S., hospital, scientific, or educational use;
- (4) Withdrawn without payment of tax for addition to wine;
- (5) Withdrawn for exportation, for vessels and aircraft supplies and for transfer to a customs bonded warehouse;

(6) Transferred to the production account for redistillation;

(7) Withdrawn for research, development or testing (including government samples);

(8) Voluntarily destroyed;

(9) Dumped for further processing;

(10) Recorded losses or shortages of finished product; and

(11) Disposed of as samples of the finished product.

(26 U.S.C. 5207)

§ 19.602 Redistillation record.

If a proprietor redistills spirits in the processing account (as in the production of gin or vodka by redistillation), the proprietor must prepare a record of the redistillation. The record must show the kind and quantity of the spirits entered into the distilling system and the kind and quantity of the spirits removed from the distilling system upon completion of the process.

(26 U.S.C. 5207)

§ 19.603 Liquor bottle record.

A proprietor must maintain records of the receipt, use, and disposition of liquor bottles.

(26 U.S.C. 5207)

§ 19.604 Rebottling, relabeling, and reclosing records.

(a) If a proprietor dumps spirits for rebottling, the proprietor must prepare in accordance with § 19.599 a bottling and packaging record that covers the rebottling operation.

(b) If a proprietor relabels or recloses bottled products in accordance with § 19.363, the proprietor must maintain records of the operation that reflect the following:

(1) The identity of the spirits relabeled or reclosed;

(2) The date of the transaction;

(3) The serial numbers of any cases involved; and

(4) The total number of bottles.

(26 U.S.C. 5207)

Denaturation and Article Manufacture Records

§ 19.606 Denaturation records.

(a) *General.* A processor who is authorized to denature spirits must maintain daily records of denaturation showing the following information:

(1) Spirits that are received for, and used in, denaturation;

(2) Spirits, denatured spirits, recovered denatured spirits, spirits residues, and articles that are redistilled in the processing account for denaturation;

(3) Kind and quantity of denaturants received and used in denaturation of spirits or otherwise disposed of;

(4) Conversion of denatured alcohol formulas in accordance with § 19.392;

(5) Denatured spirits produced, received, stored in tanks, filled into containers, removed, or otherwise disposed of;

(6) Recovered denatured spirits or recovered articles received, restored, or redenatured;

(7) Packages of denatured spirits filled, with a separate record for each formula number and filed in numerical order according to the serial number or lot identification number of the packages;

(8) Losses of denatured spirits; and

(9) Disposition of denatured spirits.

(b) *Record of denaturation.* Each time that a proprietor denatures spirits, the proprietor must prepare a record that shows the formula number, the tank in which denaturation takes place, the proof gallons of the spirits before denaturation, the quantity of each denaturant used (in gallons, or in pounds or ounces), and the wine gallons of denatured spirits produced.

(26 U.S.C. 5207)

§ 19.607 Article manufacture records.

A processor who is authorized to manufacture articles must maintain daily records arranged by the name and authorized use code of the article and showing the following:

(a) Quantity, by formula number of denatured spirits used in the manufacture of the article;

(b) Quantity of each article manufactured; and

(c) Quantity of each article removed, or otherwise disposed of, including the name and address of the person purchasing or otherwise disposing of the article.

(26 U.S.C. 5207)

Tax Records

§ 19.611 Records of tax determination in general.

(a) *Taxable withdrawals.* Except as otherwise provided in this part, a proprietor must gauge and determine the tax on spirits when they are withdrawn from bond. When spirits are withdrawn from bond, the proprietor must also prepare a record of the tax determination in accordance with paragraph (b) of this section.

(b) *Form of record.* A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Although neither the proof gallons nor the effective tax rate must be shown on the record of tax determination, each invoice or shipping document must contain information sufficient to enable TTB officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. For purposes of this part, the total proof gallons calculated from each invoice or shipping document constitutes a single withdrawal.

(26 U.S.C. 5207)

§ 19.612 Summary record of tax determinations.

Each proprietor who withdraws distilled spirits on determination of tax, but before payment of tax, must maintain a daily summary record of tax determinations. The summary record must show for each day on which tax determinations occur:

(a) The serial numbers of the records of tax determination, the total proof gallons rounded to the nearest tenth proof gallon on which tax was determined at each effective tax rate, and the total tax; or

(b) The serial numbers of the records of tax determination, the total tax for each record of tax determination, and the total tax.

(26 U.S.C. 5207)

§ 19.613 Average effective tax rate records.

(a) *Daily record.* For each distilled spirits product to be tax determined using an average effective tax rate in accordance with § 19.249, the proprietor must prepare a daily summary record showing:

(1) The serial number of the batch record of each batch of the product that will be bottled or packaged, in whole or in part, for domestic consumption;

(2) The proof gallons in each such batch derived from distilled spirits, eligible wine, and eligible flavors; and

(3) The tax liability of each such batch determined as follows—

(i) Proof gallons of all distilled spirits (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed in 26 U.S.C. 5001;

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b)(1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors, to the extent that those distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) *Monthly records.* At the end of each month during which the product is manufactured, the proprietor must:

(1) Determine the total proof gallons and total tax liability for each summary record prescribed by paragraph (a) of this section;

(2) Add the sums derived under paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons.

(26 U.S.C. 5207)

§ 19.614 Inventory reserve records.

(a) *General.* For each eligible distilled spirits product to be tax determined in accordance with § 19.250, the proprietor must establish an inventory reserve account, in accordance with this section.

(b) *Deposit records.* For each batch of the bottled or packaged product, the proprietor must enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.599, showing:

- (1) The name of the product;
- (2) The bottling and packaging record serial number;
- (3) The date the bottling or packaging was completed;
- (4) The total proof gallons bottled and packaged; and
- (5) The effective tax rate of the product computed in accordance with § 19.246.

(c) *Depletions.* The inventory reserve account for each product must be depleted in the same order in which the deposit records were entered into the account. The proprietor must record a depletion for each disposition (for example, a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record:

- (1) The transaction date;
- (2) The transaction record serial number;
- (3) The proof gallons disposed of; and
- (4) The proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the proprietor must deplete the remaining quantity, close the deposit record, and deplete the remainder of the transaction from the next deposit record.

(26 U.S.C. 5207)

§ 19.615 Standard effective tax rate records.

For each product to be tax determined using a standard effective tax rate in accordance with § 19.248, a proprietor must prepare a record of the standard effective tax rate computation showing, for one proof gallon of the finished product, the following information:

- (a) The name of the product;
- (b) The least quantity of each eligible flavor that will be used in the product, in proof gallons, or 0.025 proof gallon, whichever is less;
- (c) The least quantity of each eligible wine that will be used in the product, in proof gallons;
- (d) The greatest effective tax rate applicable to the product, calculated in accordance with § 19.246 with the

values indicated in paragraphs (a) and (b) of this section; and

(e) The date on which the use of the standard effective tax rate commenced.

(26 U.S.C. 5207)

Other Required Records**§ 19.616 Record of samples.**

(a) *Required records.* A proprietor must maintain records of all samples taken under §§ 19.434 and 19.435. The sample record must show the:

- (1) The date that the samples were taken;
- (2) The account from which taken;
- (3) The purpose for which taken;
- (4) The size and number of samples taken;
- (5) The kind of spirits;
- (6) The disposition of each sample (for example, destroyed, returned to containers or the distilling system, retained for library purposes); and
- (7) The name and address of the recipient of the sample if a sample is to be analyzed or tested elsewhere than at the distilled spirits plant where taken.

(b) *Sample schedule.* When a proprietor takes samples pursuant to an established schedule, the proprietor may maintain the schedule as the required record if it contains the information required by paragraphs (a)(2) through (a)(7).

(26 U.S.C. 5207)

§ 19.617 Destruction record.

Each time that a proprietor voluntarily destroys spirits, denatured spirits, articles, or wines, the proprietor must prepare a record of the destruction that sets forth:

- (a) The identification of the spirits, denatured spirits, articles, or wines, including kind, quantity, elements of gauge, name and permit number of the producer, warehouseman or processor, and identity and type of container;
- (b) The date, time, place and manner of the destruction;
- (c) A statement that the spirits had, or had not, previously been withdrawn and returned to bond; and
- (d) The name and title of any representative of the proprietor who accomplished or supervised the destruction.

(26 U.S.C. 5207)

§ 19.618 Gauge record.

When a gauge record is required by this part, the proprietor must prepare the gauge record in a manner that shows:

- (a) The serial number of the gauge record, commencing with "1" at the start of each calendar or fiscal year;
- (b) From the following, the applicable circumstances requiring the gauge—

(1) Production gauge and entry for deposit in the storage or processing account at the distilled spirits plant where the spirits were produced;

(2) Packaging of spirits or wine filled from a tank in the storage account at the same distilled spirits plant;

(3) Transfer from the processing or storage account to the production account for redistillation;

(4) Repackaging of spirits of 190 degrees or more of proof; or

(5) Gauge on return to bond in production or processing operations of spirits, denatured spirits, recovered spirits, recovered denatured spirits, articles, recovered articles, or spirits residues;

(c) The date of the gauge;

(d) Any related form or record (identification, serial number and date);

(e) The kind of spirits or formula number for denatured spirits;

(f) The proof of distillation (not required for denatured spirits, spirits for redistillation, or spirits of 190 degrees or more of proof);

(g) When containers are to be filled, the type and number of containers;

(h) The age of the spirits;

(i) The name and distilled spirits plant number of the producer or warehouseman; and

(j) The following gauge data—

(1) Package identification, tank number, volumetric or weight gauge details, proof, and wine gallons;

(2) Cooperage identification ("C" for charred, "REC" for recharred, "P" for plain, "PAR" for paraffined, "G" for glued, or "R" for reused, and "PS" if a barrel has been steamed or water soaked before filling);

(3) Entry proof for whiskey;

(4) Proof gallons per filled package; and

(5) Total proof gallons of spirits or wine gallons of denatured spirits, recovered denatured spirits, articles, spirits residues, or wine.

(26 U.S.C. 5207)

§ 19.619 Package gauge record.

When this part or part 28 of this chapter requires a proprietor to gauge packages of spirits, the proprietor must prepare a package gauge record in a manner that shows:

(a) The date the record is prepared;

(b) The identity of the related transaction form or record, and its serial number;

(c) The name and distilled spirits plant number of the producer or processor. For blended rums or brandies the proprietor must enter the name and plant number of the blending warehouseman. For spirits of 190 degrees or more of proof, the proprietor

must enter the name and plant number of the producer or warehouseman, as appropriate and, where the packages have already been marked, the name and distilled spirits plant number marked thereon. For imported spirits, the proprietor must enter the name of the warehouseman who received the spirits from customs custody and the name of the importer. For Virgin Islands or Puerto Rican spirits, the proprietor must enter the name of the producer in the Virgin Islands or Puerto Rico;

(d) The proof of distillation for spirits not over 190 degrees proof; and

(e) For each package—

- (1) The serial or identification number;
- (2) The designation for wooden barrels (“C” for charred, “REC” for recharred, “P” for plain, “PAR” for paraffined, “G” for glued, “R” for reused, and “PS” if a barrel has been steamed or water soaked before filling);
- (3) The kind of spirits;
- (4) The gross weight determined at the time of the original gauge or regauge or at the time of shipment;
- (5) The present tare on regauge;
- (6) The net weight for filling gauge or regauge;
- (7) The proof;
- (8) The proof gallons for regauge;
- (9) The original proof gallons; and
- (10) The receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

(26 U.S.C. 5207)

§ 19.620 Transfer record—consignor’s responsibility.

When this part requires a consignor proprietor to prepare a transfer record covering spirits, denatured spirits, or wines shipped in bond from his distilled spirits plant, the transfer record must include:

- (a) A serial number, commencing with “1” on January 1 of each year;
- (b) The serial number and date of TTB Form 5100.16 (not required for wine spirits withdrawn without payment of tax for use in wine production);
- (c) The name and distilled spirits plant number of the consignor proprietor;
- (d) The name and distilled spirits plant number or bonded wine cellar number of the consignee;
- (e) The account from which the spirits or wines were removed for transfer (that is, the production, storage, or processing account);
- (f) A description of the spirits, denatured spirits, or wine, including—
 - (1) The name and plant number of the producer, warehouseman, or processor (not required for denatured spirits or

wine). For imported spirits transferred in bond between distilled spirits plants, the transfer record must show the name and plant number of the warehouseman or processor who received the spirits from customs custody. For Virgin Islands or Puerto Rican spirits, the transfer record must show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen that have been mixed in the processing account, the transfer record must show the name of the processor;

(2) The kind of spirits or wines. For denatured spirits, the transfer record must show the kind and formula number. For alcohol, the transfer record must show the material from which it was produced. For bulk spirits and for alcohol in packages, the transfer record must show the kind and proof. For other spirits and wines, the transfer record must show the kind designation as specified in part 4 or part 5 of this chapter, as appropriate;

(3) The age (in years, months, and days) and year of production;

(4) The number of packages or cases with their lot identification numbers or serial numbers and dates of fill;

(5) The type of container (if the spirits, denatured spirits or wines are to be transferred by pipeline, the transfer record must show “P/L”);

(6) The proof gallons for distilled spirits, or wine gallons for denatured spirits or wine; and

(7) For distilled spirits products that contain eligible wine or eligible flavors, the transfer record must show the elements necessary to compute the effective tax rate as follows—

- (i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);
- (ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and
- (iii) Proof gallons of distilled spirits derived from eligible flavors;
- (g) A notation to indicate when spirits are being transferred in bond from a production facility to another distilled spirits plant;
- (h) The identification of the conveyance;
- (i) The identity of the seals, locks or other devices affixed to the conveyance or package (permanent seals affixed to a conveyance that remain intact need not be recorded on the transfer record when a permanent record is maintained);
- (j) The date of transfer; and
- (k) The signature and title of the consignor, with a penalties of perjury statement as prescribed in § 19.45.

(26 U.S.C. 5207)

§ 19.621 Transfer record—consignee’s responsibility.

(a) When a proprietor receives wine by transfer in bond from a bonded wine cellar as the consignee, that proprietor must complete the transfer record covering the transfer in accordance with § 24.284 of this chapter.

(b) When a proprietor receives spirits from an alcohol fuel plant or from customs custody, or receives spirits, denatured spirits, and wines from the bonded premises of another distilled spirits plant as the consignee, that proprietor must record the results of the receipt by including the following on the related transfer record:

- (1) The date of receipt;
- (2) A notation that the securing devices on the conveyance were, or were not, intact on arrival (not applicable to denatured spirits or spirits transferred in unsecured conveyances);
- (3) The gauge of spirits, denatured spirits, or wine showing the tank number, proof (percent of alcohol by volume for wine) and specifications of the weight or volumetric determination of quantity, wine gallons or proof gallons received, and any losses or gains;
- (4) A notation of any excessive in-transit loss, missing packages, tampering, or apparent theft;
- (5) The account into which the spirits, denatured spirits, or wines were deposited (that is, production, storage or processing); and
- (6) The signature and title of the consignee proprietor, with a penalties of perjury statement as prescribed in § 19.45.

(c) When spirits are transferred from customs custody as provided in subpart P of this part, the transfer record must contain the information specified in § 27.138 of this chapter.

(26 U.S.C. 5207)

§ 19.622 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

(a) *General.* If a proprietor in connection with plant operations conducts wholesale liquor dealer operations, or operates a taxpaid storeroom on, or in the immediate vicinity of, general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, that proprietor must maintain daily records covering the receipt and disposition of all distilled spirits and wines and all reclosing and relabeling operations at those premises. The proprietor must keep separate records for each of those premises.

(b) *Receipt and disposition records.* The records covering receipt and

disposition of distilled spirits and wines required under paragraph (a) of this section must show:

(1) The date of the transaction (or date of discovery in the case of casualty or theft);

(2) The name and address of each consignor or consignee, as the case may be;

(3) The brand name;

(4) The kind of spirits;

(5) The actual quantity of distilled spirits involved (proof and proof gallons if in packages, wine gallons or liters and proof if in bottles);

(6) The package identification or serial numbers of the packages involved;

(7) The name of the producer; and

(8) The country of origin in the case of imported spirits.

(c) *Case dispositions.* In addition to the records required under paragraph (b) of this section, the appropriate TTB officer may, upon notice, require the proprietor to record the case serial numbers for dispositions.

(d) *Reclosing or relabeling.* The records of reclosing and relabeling required under paragraph (a) of this section must include:

(1) The date of the transaction;

(2) The serial numbers of the cases involved;

(3) The total number of bottles; and

(4) The name of the bottler.

(26 U.S.C. 5114, 5555)

§ 19.623 Record of inventories.

(a) *General.* When conducting an inventory required by this part, the proprietor must prepare a record of the inventory taken. The record must include the following:

(1) The date of the inventory;

(2) The identity of the container(s);

(3) The kind and quantity of spirits, denatured spirits, and wines;

(4) Any losses (whether by theft, voluntary destruction or otherwise), gains or shortages; and

(5) The proprietor's signature, or the signature of the person taking the inventory, with the penalties of perjury statement as prescribed in § 19.45.

(b) *Overages, gains, or losses.* A proprietor must record in the daily records of operations, tank records, dump/batch records, bottling and packaging records, or denaturation records, as appropriate, any overages, gains, or losses disclosed by an inventory.

(c) *Retention.* A proprietor must retain inventory records and make them available for inspection by TTB officers.

(26 U.S.C. 5207)

§ 19.624 Removal of Puerto Rican and Virgin Islands spirits and rum imported from all other areas.

(a) *General.* A proprietor must maintain separate accounts, in proof gallons, of Puerto Rican spirits having an alcoholic content of at least 92 percent rum, of Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of rum imported from all other areas removed from the processing account on determination of tax. A proprietor may determine the quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients by using one of the methods referred to in paragraph (b), (c), or (d) of this section. The proprietor must report these quantities on the monthly report of operations referred to in § 19.632.

(b) *Standard method.* For purposes of maintaining the separate accounts referred to in paragraph (a) of this section, a proprietor may determine the quantities of spirits in those specified categories based on the least amount of those spirits that may be used in each product as stated in the approved TTB F 5110.38, Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

(c) *Averaging method.* For purposes of the separate accounts referred to in paragraph (a) of this section, a proprietor may determine the quantities of spirits in those specified categories by computing the average quantity of those spirits contained in all batches of the same product formulation manufactured during the preceding 6-month period. The average must be adjusted at the end of each month in order to include only the preceding 6-month period.

(d) *Alternative method.* If a proprietor wishes to use a method for determining the quantities of spirits as an alternative for a method prescribed in paragraphs (b) or (c) of this section, the proprietor must file an application with the appropriate TTB officer. The written application must specifically describe the proposed alternative method and must explain the reasons for using the alternative method.

(26 U.S.C. 5555, 7652)

§ 19.625 Shipping record for spirits and specially denatured spirits withdrawn free of tax.

(a) *General.* A proprietor must prepare a shipping record when:

(1) Spirits are withdrawn free of tax in accordance with §§ 19.424(a) through (c);

(2) Specially denatured spirits are withdrawn free of tax in accordance with §§ 19.424(d) and 19.427; and

(3) Samples of specially denatured spirits in excess of five gallons are withdrawn in accordance with § 19.427(c);

(b) *Form of record.* The shipping record referred to in paragraph (a) of this section may be any commercial document, such as an invoice or bill of lading, so long as it reflects the following information:

(1) The name and address of the consignor;

(2) A serial number;

(3) The date of shipment;

(4) The name, address, and permit number of consignee;

(5) The kind of spirits;

(6) The proof of the spirits;

(7) The formula number(s), for specially denatured spirits;

(8) The number and size of the shipping containers;

(9) The package identification numbers or serial numbers of the shipping containers; and

(10) The total wine gallons (specially denatured spirits) or the total proof gallons (tax-free alcohol).

(c) *Disposition of the shipping record.* The proprietor must forward a copy of the shipping record to the company that receives the spirits and must retain a copy for his files.

(26 U.S.C. 5207)

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

(a) *General.* When a proprietor ships distilled spirits to a manufacturer of nonbeverage products, the proprietor must prepare a record of the shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record.* The record of shipment referred to in paragraph (a) of this section may consist of either the record of tax determination required by § 19.611 or any other document that contains the necessary information specified in paragraph (c) of this section.

(c) *Required information.* The record of shipment required under this section must contain the following information:

(1) The name, address, and registry number of the proprietor;

(2) The date of shipment;

(3) The name and address of the consignee;

(4) The kind, proof, and quantity of distilled spirits in each container;

(5) The number of shipping containers of each size;

(6) The package identification numbers or serial numbers of containers;

(7) The serial number of the applicable record of tax determination; and

(8) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(26 U.S.C. 5201, 5207)

§ 19.627 Alternating premises record.

When distilled spirits plant bonded premises are alternated to or from bonded or taxpaid wine, brewery, manufacturer of nonbeverage products, or general premises, under an approved alternation plan described in the plant registration, the proprietor must record in a logbook, or must maintain in commercial records retrievable and available for TTB inspection upon request, the following information:

- (a) The date and hour of the alternation;
- (b) The kind of premises being curtailed, including the plant identification number, if applicable;
- (c) The kind of premises being extended, including the plant identification number, if applicable;
- (d) The identity of the special diagrams in the registration documents depicting the premises before and after the alternation; and
- (e) The purpose of the alternation.

(26 U.S.C. 5555)

Filing Forms and Reports

§ 19.631 Submission of transaction forms.

When required to submit a transaction form to the appropriate TTB officer under this part, the proprietor must submit the form no later than the close of business of the third business day following the day on which the transaction took place.

(26 U.S.C. 5207)

§ 19.632 Submission of monthly reports.

(a) Each proprietor must submit monthly reports of his distilled spirits plant operations to TTB in accordance with paragraph (b) of this section. The proprietor must submit the original reports to TTB and must retain a copy for his records. The required monthly report forms are as follows:

- (1) Monthly Report of Production Operations, TTB F 5110.40, except that no report is required when production operations are suspended as provided in § 19.292;
- (2) Monthly Report of Storage Operations, TTB F 5110.11;
- (3) Monthly Report of Processing Operation, TTB F 5110.28; and
- (4) Monthly Report of Processing (Denaturing) Operations, TTB F 5110.43.

(b) Each proprietor must submit the monthly reports specified in paragraph (a) of this section to the Director, National Revenue Center, not later than

the 15th day of the month following the close of the reporting period. A proprietor may submit monthly reports in either paper format or electronically via TTB Pay.gov.

(26 U.S.C. 5207)

§ 19.634 Computer-generated reports and transaction forms.

TTB will accept computer-generated reports of operations and transaction forms made using a computer printer on plain white paper without pre-approval from TTB if they conform to the following standards:

- (a) The computer-generated report or form must approximate the physical layout of the corresponding TTB report or form, although the typeface may vary;
- (b) The text of the computer-generated report or form including each line entry, must exactly match the official TTB report or form; and
- (c) Each penalty of perjury statement specified for the TTB report or form must be reproduced in its entirety.

(26 U.S.C. 5207)

Subpart W—Production of Vinegar by the Vaporizing Process

Vinegar Plants in General

§ 19.641 Application.

(a) *In general.* This subpart covers the production of vinegar by the vaporizing process. It prescribes rules regarding the qualification, location, construction, and operation of vinegar plants and the maintenance of records of operations at vinegar plants.

(b) *Application of other regulations.* As a general rule, the provisions of subparts A through V and subpart X of this part do not apply to vinegar plants using the vaporizing process. However, the following sections do apply to vinegar plants using the vaporizing process: § 19.1 (definitions); § 19.11 (right of entry and examination); § 19.12 (furnishing facilities and assistance); § 19.52 (restriction on locations of plants); § 19.55 (other businesses); § 19.79 (registry of stills); § 19.573 (location of required records); § 19.574 (availability of records); § 19.575 (retention of records); § 19.576 (preservation of records).

(26 U.S.C. 5501–5505)

Qualification, Construction, and Equipment Requirements for Vinegar Plants

§ 19.643 Qualification requirements.

Before beginning the business of manufacturing vinegar by the vaporizing process, a person must make written application to the appropriate TTB officer and receive approval of the

application from TTB. The application must include:

- (a) The applicant's name and principal business address (including the plant address if different from the applicant's principal business address);
- (b) A description of the plant premises;
- (c) A description of the operations to be conducted; and
- (d) A description of each still, including the name and address of the owner, the kind of still and its capacity, and the purpose for which the still was set up.

(26 U.S.C. 5502)

§ 19.644 Changes after original qualification.

If there is any change in the information that was provided in an approved application, the proprietor of the vinegar plant must immediately notify the appropriate TTB officer in writing of the change. The notice must identify the change and the effective date of the change.

(26 U.S.C. 5502)

§ 19.645 Notice of permanent discontinuance of business.

If the proprietor of a vinegar plant decides to permanently discontinue operations, the proprietor must so notify the appropriate TTB officer in writing. The proprietor must include in the notice a statement regarding the status of each still.

(26 U.S.C. 5502)

§ 19.646 Construction and equipment requirements.

The proprietor of a vinegar plant must construct and equip the plant to ensure that:

- (a) The distilled spirits vapors that are separated by the vaporizing process from the mash are condensed only by introducing them into the water or other liquid used in making the vinegar; and
- (b) The distilled spirits produced are accurately accounted for and are secure from unlawful removal from the premises or from unauthorized use.

(26 U.S.C. 5502)

Rules for Operating Vinegar Plants

§ 19.647 Authorized operations.

After approval of an application by TTB, a plant qualified for the production of vinegar may only:

- (a) Produce vinegar by the vaporizing process; and
- (b) Produce distilled spirits of 30 degrees of proof or less for use in the manufacture of vinegar on the vinegar plant premises.

(26 U.S.C. 5501)

§ 19.648 Conduct of operations.

A vinegar manufacturer qualified under this subpart may:

- (a) Separate by a vaporizing process the distilled spirits from a mash; and
- (b) Condense the distilled spirits vapors by introducing them into the water or other liquid to make the vinegar.

(26 U.S.C. 5504)

§ 19.649 Restrictions on alcohol content.

No person may remove from the vinegar plant premises vinegar or other fluid or any other material containing more than 2 percent alcohol by volume.

(26 U.S.C. 5504)

Required Records for Vinegar Plants**§ 19.650 Daily records.**

Each manufacturer of vinegar by the vaporizing process must keep accurate and complete daily records of production operations. It is not necessary to create records to satisfy this requirement if the records kept by the manufacturer in the ordinary course of business contain all required information. The required information consists of the following:

- (a) The kind and quantity of fermenting or distilling materials received on the premises;
- (b) The kind and quantity of materials fermented or mashed;
- (c) The proof gallons of distilled spirits produced;
- (d) The proof gallons of distilled spirits used in the manufacture of vinegar;
- (e) The wine gallons of vinegar produced; and
- (f) The wine gallons of vinegar removed from the premises.

(26 U.S.C. 5504)

Liability for Distilled Spirits Tax**§ 19.651 Liability for distilled spirits tax.**

The distilled spirits excise tax imposed by 26 U.S.C. 5001 must be paid on any distilled spirits produced in, or removed from, the premises of a vinegar plant in violation of law or regulations.

(26 U.S.C. 5505)

Subpart X—Distilled Spirits for Fuel Use**§ 19.661 Scope.**

This subpart covers the establishment and operation of alcohol fuel plants.

(26 U.S.C. 5181)

General**§ 19.662 Definitions.**

As used in this subpart, the following terms have the meanings indicated.

Alcohol fuel plant. A special type of distilled spirits plant authorized under 26 U.S.C. 5181 and established under this subpart solely for producing, processing, and storing, and using or distributing distilled spirits to be used exclusively for fuel use.

Bonded premises. The premises of an alcohol fuel plant where distilled spirits are produced, processed, and stored, and used or distributed as described in the application for alcohol fuel producer permit. The term includes the premises of small alcohol fuel plants exempt from bonding requirements under § 19.673(e).

Fuel alcohol. Distilled spirits that have been made unfit for beverage use at an alcohol fuel plant as provided in this subpart.

Large plant. An alcohol fuel plant that produces (including receives) more than 500,000 proof gallons of spirits per calendar year.

Make unfit for beverage use. Add materials to distilled spirits that will preclude their beverage use without impairing their quality for fuel use as prescribed and authorized by the provisions of this subpart.

Medium plant. An alcohol fuel plant that produces (including receives) more than 10,000 but not more than 500,000 proof gallons of spirits per calendar year.

Permit. The document issued pursuant to 26 U.S.C. 5181 and this subpart authorizing the person named to engage in business as an alcohol fuel plant.

Plant. An alcohol fuel plant.

Proprietor. The person qualified under this subpart to operate an alcohol fuel plant.

Small plant. An alcohol fuel plant that produces (including receives) not more than 10,000 proof gallons of spirits per calendar year.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not fuel alcohol unless specifically stated. The term does not include spirits produced from petroleum, natural gas, or coal.

Transfer in bond. The transfer of spirits between alcohol fuel plants or between a distilled spirits plant qualified under 26 U.S.C. 5171 and an alcohol fuel plant.

(26 U.S.C. 5181)

§ 19.663 Application of other provisions.

The provisions of 26 U.S.C. Chapter 51 and the regulations in subparts A through W of this part do not apply to

alcohol fuel plants except for the following:

- (a) 26 U.S.C. 5181;
- (b) The definitions contained in § 19.1, unless the same term is defined in this subpart;
- (c) Any provision incorporated by reference in this subpart;
- (d) Any provision requiring the payment of tax; and
- (e) Any provision applicable to distilled spirits that deals with penalty, seizure, or forfeiture.

(26 U.S.C. 5181)

§ 19.665 Alternate methods or procedures.

(a) *General.* The appropriate TTB officer may approve the use of an alternate method or procedure that varies from the regulatory requirements in this subpart or from any regulatory requirements in subparts A through W of this part that have been incorporated by reference in this subpart. The appropriate TTB officer may approve the use of an alternate method or procedure only if the proprietor shows good cause for its use and the alternate method or procedure:

- (1) Is not contrary to law;
- (2) Will not have the effect of merely waiving an existing regulatory requirement;
- (3) Is consistent with the purpose and effect of the method or procedure prescribed in this subpart;
- (4) Provides equal security to the revenue; and
- (5) Will not cause an increase in cost to the Government and will not hinder TTB's administration of this subpart.

(b) *Exceptions.* TTB will not authorize the use of an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(26 U.S.C. 5181)

§ 19.666 Application for and use of an alternate method or procedure.

(a) *Application.* If a proprietor wishes to use an alternate method or procedure as described in § 19.665, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval. The application must identify the method or procedure specified in the regulation, must describe the proposed alternate method or procedure in detail, and must explain why the alternate method or procedure is needed.

(b) *Approval and use.* The proprietor may not use an alternate method or procedure until the appropriate TTB officer has in writing approved the proprietor's letterhead application. During the period that the proprietor is authorized to use the alternate method

or procedure, the proprietor must comply with any conditions imposed on its use by TTB. TTB may withdraw the approval to use the alternate method or procedure if TTB finds that the revenue is jeopardized, that the alternate method or procedure hinders effective administration of the laws or regulations, that the proprietor has violated any of the conditions imposed by TTB, or that the circumstances that gave rise to the need for the alternate method or procedure no longer exist.

(c) *Retention.* The proprietor must retain each alternate method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(26 U.S.C. 5181)

§ 19.667 Emergency variations from requirements.

(a) *Application.* A proprietor may request emergency approval of the use of a method or procedure relating to construction, equipment, and methods of operation that represents a variance from the requirements of this subpart or from any regulatory requirement in subparts A through W of this part that have been incorporated by reference in this subpart. When a proprietor wishes to use an emergency method or procedure, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval; the proprietor may send the application via regular mail, e-mail, or facsimile transmission. The application must describe the proposed emergency method or procedure and the emergency situation it will address. For purposes of this section, an emergency is considered to exist only if it results from a weather or other natural event or from an accident or other event not involving an intentional act on the part of the proprietor.

(b) *Approval.* The appropriate TTB officer may approve in writing the use of an emergency method or procedure if the proprietor demonstrates that an emergency exists and the proposed method or procedure:

- (1) Is not contrary to law;
- (2) Is necessary to address the emergency situation;
- (3) Will afford the same security and protection to the revenue as intended by the regulations; and
- (4) Will not hinder the effective administration of this subpart.

(c) *Terms of emergency method or procedure approval and use.*

(1) The proprietor may not use an emergency method or procedure until the application has been approved by TTB except when the emergency

method or procedure requires immediate implementation to correct a situation that threatens life or property. In a situation involving a threat to life or property, the proprietor may implement the corrective action while concurrently notifying the appropriate TTB officer by telephone of the action and filing the required written application. Use of the emergency method or procedure must conform to any conditions specified in the approval.

(2) The proprietor must retain the emergency method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(3) The emergency method or procedure will automatically terminate when the situation that created the emergency no longer exists. TTB may withdraw the approval to use the emergency method or procedure if TTB finds that the revenue is jeopardized, that the emergency method or procedure hinders effective administration of the laws or regulations, or that the proprietor has failed to follow any of the conditions specified in the approval. When use of the emergency method or procedure terminates, the proprietor must revert to full compliance with all applicable regulations.

(26 U.S.C. 5181)

Liability for Taxes

§ 19.669 Distilled spirits taxes.

(a) Proprietors may withdraw distilled spirits free of tax from an alcohol fuel plant if the spirits are withdrawn exclusively for fuel use in accordance with this subpart. However, TTB will require payment of the tax if the spirits are diverted to beverage use or to another use not authorized by this subpart.

(b) The following provisions of this part apply to distilled spirits for fuel use:

- (1) Imposition of tax liability (§§ 19.222, 19.223, 19.225);
- (2) Assessment of tax (§§ 19.253, 19.254); and
- (3) Claims for tax (§§ 19.262 and 19.263).

(26 U.S.C. 5001, 5181)

§ 19.670 Special (occupational) tax.

(a) *General rule.* Except during the suspension period described in § 19.201(b) when special tax stamps are not issued, the proprietor of an alcohol fuel plant established under this subpart is subject to a special (occupational) tax as prescribed in subpart H this part and

must hold a separate special tax stamp to cover the alcohol fuel operations.

(b) *Exemption for small plants.* The proprietor of a small plant exempt from bonding requirements under § 19.673(e) is not required to pay special (occupational) tax. However, once the proprietor's annual production (including receipts) exceeds 10,000 proof gallons in any calendar year, the proprietor must pay special tax as provided in subpart H of this part. The proprietor must pay the special (occupational) tax for the tax year (July 1–June 30) that starts during the calendar year in which production (including receipts) exceeds 10,000 proof gallons. The proprietor must pay the tax regardless of whether an application for change of plant type under § 19.685 has been filed or approved.

(c) *Medium or large plants.* If a proprietor operates a medium plant or a large plant with bona fide production operations at which annual production (including receipts) is 10,000 proof gallons or less in any calendar year, the proprietor is exempt from special (occupational) tax for the tax year (July 1 through June 30) that starts during the calendar year in which production (including receipts) is 10,000 proof gallons or less. This exemption applies regardless of whether an application for change of plant type under § 19.685 has been filed or approved.

(26 U.S.C. 5081)

Obtaining a Permit

§ 19.672 Types of plants.

There are three types of alcohol fuel plants: small plants, medium plants, and large plants. All alcohol fuel plants are classified according to the amount of spirits that they will produce and receive during each calendar year. When applying for a permit, an applicant should apply for the type of permit that fits the applicant's needs based on the type of alcohol fuel plant the applicant intends to operate.

(26 U.S.C. 5181)

§ 19.673 Small plant permit applications.

(a) *General.* Any person wishing to establish a small plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer. Except as otherwise provided in § 19.674(d), a person may not commence operations before issuance of the permit.

(b) *Application information.* The applicant for a small plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced; and

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored.

(c) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application, unless the applicant will not conduct bona fide production operations.

(d) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish, as part of the application for a permit under this section, any additional information required by TTB to determine whether the application should be approved.

(e) *Bonds.* The applicant is not required to provide a bond in order to establish a small plant, unless the applicant will not conduct bona fide production operations. Plants for the receipt of spirits without production must furnish a bond in accordance with § 19.699 with a penal sum as prescribed in § 19.700. The appropriate TTB officer must approve the bond before issuance of the permit.

(26 U.S.C. 5181)

§ 19.674 TTB action on small plant applications.

(a) *Notice of receipt.* Within 15 days of receipt of an application for a small plant permit, the appropriate TTB officer will send a written notice of receipt to the applicant. The notice will include a statement as to whether the application meets the requirements of § 19.673. If the application does not meet the requirements of § 19.673, the appropriate TTB officer will return the application to the applicant, and a new 15-day period will commence upon receipt of an amended or corrected application.

(b) *Action on application.* Within 45 days from the date that the appropriate TTB officer sent the applicant a notice

of receipt of a completed application for a small plant permit, the appropriate TTB officer will either issue the permit or give notice in writing to the applicant stating in detail the reason that a permit will not be issued. Denial of an application will not prejudice any later application for a permit by the same applicant.

(c) *Failure to give notice.* If the notice of receipt required by paragraph (a) is not sent, and the applicant has a receipt indicating that the appropriate TTB officer received the application, the 45-day period provided for in paragraphs (b) and (d) of this section will commence on the fifteenth day after the date the appropriate TTB officer received the application.

(d) *Presumption of approval.* If, within 45 days from the date of the notice to the applicant of receipt of a completed application for a small plant permit, the appropriate TTB officer has not notified the applicant of issuance of the permit or denial of the application, the application will be deemed approved and the applicant may proceed as if a permit had been issued.

(e) *Limitation.* The provisions of paragraphs (a) and (c) of this section apply only to the first application submitted for any one small plant in any calendar quarter and to an amended or corrected first application.

(26 U.S.C. 5181)

§ 19.675 Medium plant permit applications.

(a) *General.* Any person wishing to establish a medium plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer.

(b) *Application information.* The applicant for a medium plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced;

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored;

(7) A statement of the maximum total proof gallons of spirits that will be

produced and received during a calendar year;

(8) Information identifying the principal persons involved in the business. This identifying information must include the person's name, address, title, social security number, date of birth, and place of birth;

(9) A statement indicating whether or not the applicant or any other person involved in the business has been convicted of a felony or misdemeanor under Federal or State law. The statement may exclude convictions for misdemeanor traffic violations; and

(10) A statement of the amount and source of funds invested in the business.

(c) *Bond.* The applicant for a medium plant permit must provide a bond in accordance with § 19.699 with a sufficient penal sum as prescribed in § 19.700. The applicant must submit the bond on form TTB F 5110.56, Distilled Spirits Bond, and the appropriate TTB officer must approve the bond before issuance of the permit.

(d) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application.

(e) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish, as part of the application for a permit under this section, any additional information required by TTB to determine whether the application should be approved.

(f) *Approval of permit.* The applicant may not commence operations before approval of the application and issuance of the medium plant permit.

(26 U.S.C. 5181)

§ 19.676 Large plant permit applications.

(a) *General.* Any person wishing to establish a large plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer.

(b) *Application information.* The applicant for a large plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced;

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored;

(7) A statement of the maximum total proof gallons of spirits that will be produced and received during a calendar year;

(8) Information identifying the principal persons involved in the business. This identifying information must include the person's name, address, title, social security number, date of birth and place of birth;

(9) A statement indicating whether or not the applicant or any other person involved in the business has been convicted of a felony or misdemeanor under Federal or State law. The statement may exclude convictions for misdemeanor traffic violations;

(10) A statement of the amount and source of funds invested in the business; and

(11) A statement identifying the type of business organization and the persons having an interest in the business. The applicant must support this statement by providing the information specified in § 19.677.

(c) *Bond.* The applicant for a large plant permit must provide a bond in accordance with § 19.699 with a sufficient penal sum as prescribed in § 19.700. The applicant must submit the bond on form TTB F 5110.56, Distilled Spirits Bond, and the appropriate TTB officer must approve the bond before issuance of the permit.

(d) *Power of attorney.* The applicant for a large plant permit, or the proprietor of the plant if different from the applicant, must execute and file with the appropriate TTB officer form TTB F 5000.8, Power of Attorney, for each person authorized to sign or act on behalf of the proprietor unless that authority has been furnished elsewhere in the application.

(e) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application.

(f) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish as part of the application for a permit under this section, any additional information

required by TTB to determine whether the application should be approved.

(g) *Approval of permit.* The applicant may not commence operations before approval of the application and issuance of the large plant permit.

(26 U.S.C. 5181)

§ 19.677 Large plant applications—organizational documents.

In addition to the information required by § 19.676, any person who wants to establish a large plant must provide with the application the documents and other information specified in paragraphs (a) through (d) of this section, as applicable, and must make those and related documents available for inspection by TTB as provided in paragraph (e) of this section.

(a) *Corporate documents.* If the applicant is a corporation, the applicant must provide the following:

(1) The corporate charter or a certificate of corporate existence or incorporation;

(2) A list of officers and directors with their names and addresses, other than officers and directors who will have no responsibilities in connection with the operation of the alcohol fuel plant;

(3) Certified minutes or extracts of board of directors meetings, showing those individuals authorized to sign for the corporation;

(4) A statement showing the number of shares of each class of stock or other basis of ownership, authorized and outstanding, and the voting rights of the respective owners or holders; and

(5) A list of the offices or positions, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(b) *Partnership documents.* If the applicant is a partnership, the applicant must provide a copy of the articles of partnership or association, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Limited liability company/limited liability partnership documents.* If the applicant is a limited liability company or limited liability partnership or other entity recognized by law as a person, the applicant must provide a copy of the articles of organization, the operating agreement and the names and addresses of all members and managers.

(d) *Statement of interest.*

(1) The application must include the names and addresses of the 10 persons that have the largest stock ownership, by stock class, or other interest in the corporation, limited liability company/

limited liability partnership, or other legal entity, and the nature and amount of the stock or other interest of each, whether the interest is recorded in the name of the interested party or in the name of another for the interested party. If a corporation is wholly owned or controlled by another corporation, the appropriate TTB officer may request that the applicant furnish the same information for persons of the parent corporation.

(2) In the case of an individual owner or a partnership, the application must include the name and address of each person interested in the large plant, whether the interest is recorded in the name of the interested party or in the name of another for the interested party.

(e) *Availability of documents.* An applicant must make available to any appropriate TTB officer upon request all originals of documents submitted under this section and any additional related organizational documents such as articles of incorporation, by-laws, operating agreements and State certifications.

(26 U.S.C. 5181, 5271)

§ 19.678 Criteria for issuance of permit.

As a general rule, the appropriate TTB officer will issue an alcohol fuel plant permit to any person who completes the required application for a permit and, when required, furnishes a bond.

However, the appropriate TTB officer may begin proceedings to deny an application for a permit, in accordance with part 71 of this chapter, if the appropriate TTB officer determines that

(a) 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 business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or the regulations issued thereunder;

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

(c) The premises where the applicant proposes to conduct the operations are not adequate to protect the revenue.

(26 U.S.C. 5181, 5271)

§ 19.679 Duration of permit.

The proprietor of an alcohol fuel plant may conduct the operations authorized by the permit on a continuing basis unless:

(a) The proprietor voluntarily surrenders the permit;

(b) TTB suspends or revokes the permit pursuant to § 19.697; or

(c) The permit is automatically terminated under its own terms or in accordance with § 19.684.

(26 U.S.C. 5181)

§ 19.680 Registration of stills.

The description of stills provided with the application for an alcohol fuel plant permit under this subpart will fulfill the requirement to register a still under § 29.55 of this chapter.

(26 U.S.C. 5179, 5181)

Changes to Permit Information

§ 19.683 Changes affecting permit applications.

(a) *General.* If there is a change relating to any of the information contained in, or considered a part of, the application on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, the proprietor must amend the information previously submitted within 30 days of the change unless another time period is specified in this subpart.

(b) *Amended TTB F 5110.74.* Except when a letterhead application or letterhead notice procedure is followed under this subpart, the proprietor must submit an amended application to the appropriate TTB officer on form TTB F 5110.74 within 30 days of a change referred to in paragraph (a) of this section if the change affects the terms and conditions of the permit.

(c) *Letterhead applications.* For the changes specified in §§ 19.685(c), 19.686, and 19.690 of this subpart, the proprietor may submit a letterhead application to the appropriate TTB officer for a change instead of filing an amended form TTB F 5110.74. A letterhead application must be on letterhead signed by an authorized representative of the permit holder. The letterhead application must identify the alcohol fuel plant to which the application applies. The letterhead application change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.74 if administrative difficulties occur as a result of the letterhead application.

(d) *Letterhead Notices.* For the changes specified in §§ 19.687 and 19.695 of this subpart only a letterhead notice to the appropriate TTB officer is required. A letterhead notice must be on letterhead signed by an authorized representative of the permit holder. A letterhead notice does not require approval action by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit

an amended application on form TTB F 5110.74 if administrative difficulties occur as a result of the letterhead notice.

(26 U.S.C. 5172, 5271, 5181)

§ 19.684 Automatic termination of permits.

(a) *Permits not transferable.* An alcohol fuel plant permit is not transferable and, except as otherwise provided in paragraph (b) of this section, will automatically terminate if:

(1) The operations that are authorized by the permit are leased, sold, or transferred to another person; or

(2) The permit holder is dissolved on a date certain or upon an event specified by the laws of the State where the permit holder operates.

(b) *Corporations.* In the case of a corporation holding a permit under this subpart, if actual or legal control of that corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permit may remain in effect until the expiration of 30 days after the change, whereupon the permit will automatically terminate. However, if operations are to be continued after the change in control, and an application for a new permit is filed within 30 days of the change, the outstanding permit may remain in effect until final action is taken on the new application. When final action is taken on the application, the outstanding permit will automatically terminate.

(26 U.S.C. 5181, 5271)

§ 19.685 Change in type of alcohol fuel plant.

(a) *Small plants.* If the proprietor of a small plant intends to increase production (including receipts) to more than 10,000 proof gallons of spirits per calendar year, the proprietor must first obtain an amended permit by filing an application for a medium plant or a large plant, as appropriate, under § 19.675 or § 19.676. If any of the required information is already on file with TTB, that information may be incorporated by reference in the new application. The proprietor must also provide a new or strengthening bond in accordance with §§ 19.699 and 19.700.

(b) *Medium plants.* If the proprietor of a medium plant intends to increase production (including receipts) to more than 500,000 proof gallons of spirits per calendar year, the proprietor must first obtain an amended permit by filing an application for a large plant under § 19.676. If any of the required information is already on file with TTB, that information may be incorporated by reference in the new application. If the

penal sum of the proprietor's current bond is below the amount specified for the new production level, the proprietor must obtain a new or strengthening bond in accordance with § 19.700.

(c) *Curtailment of activities.* A proprietor of a medium or large plant who curtails operations to a level whereby the proprietor is eligible to requalify as a small or medium plant may so qualify by submitting a letterhead application to the appropriate TTB officer for approval. If the appropriate TTB officer approves the application, the proprietor automatically will be relieved of those regulatory requirements that apply only to the superseded qualification. In addition, in the case of a change to small plant status, the proprietor may be allowed to terminate the bond in accordance with the procedure set forth in § 19.170 of this part.

(26 U.S.C. 5271, 5181)

§ 19.686 Change in name of proprietor.

When there is a change the name of the individual, firm, corporation, or other entity holding the permit, the proprietor must file an application to amend the permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, or file a letterhead application to amend the permit within 30 days of the change. The proprietor is not required to file a new bond or consent of surety in this case.

(26 U.S.C. 5172, 5271, 5181)

§ 19.687 Changes in officers, directors, members, managers, or principal persons.

If there is a change in the list of officers, directors, members, managers, or other principal persons furnished under the provisions of §§ 19.675, 19.676, or § 19.677, the proprietor must submit a letterhead notice to the appropriate TTB officer within 30 days of the change. The letterhead notice must identify each change and must include the following identifying information for each new officer, director, member, manager, or other principal person: Name, address, title, social security number, date of birth, and place of birth.

(26 U.S.C. 5181)

§ 19.688 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at an alcohol fuel plant, the following requirements apply to the outgoing proprietor and to the new, incoming proprietor:

(1) The outgoing proprietor must comply with the notice requirements of § 19.695; and

(2) The incoming successor proprietors must—

(i) File and obtain a permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181; and

(ii) File the required bond, if any.

(b) *Fiduciary responsibilities.* A successor to the proprietorship of an alcohol fuel plant who is an administrator, executor, receiver, trustee, assignee, or other fiduciary must comply with paragraph (a)(2) of this section. In addition, the following rules apply to a successor who is a fiduciary:

(1) The successor may furnish a consent of surety to extend the terms of the outgoing proprietor's bond instead of filing a new bond;

(2) The successor may incorporate by reference in the application on form TTB F 5110.74 any information that is still valid and that was contained in the application filed by the outgoing proprietor;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document appointing the successor as a fiduciary; and

(4) The effective dates of the qualifying documents filed will be the date of the court order, the date specified in the court order for assuming control or the date control is assumed if the fiduciary was not appointed by a court.

(26 U.S.C. 5172)

§ 19.689 Continuing partnerships.

(a) If there is a death or insolvency of a partner in the business that holds a permit under this subpart, the surviving partner or partners may continue to operate under the permit if:

(1) The partnership is not immediately terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have the exclusive right to control and possession of the partnership assets for purpose of liquidation and settlement; and

(3) In the case of a plant required to file a bond, a consent of surety is filed under which the surety and the surviving partner or partners agree to remain liable on the bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file an application in their own name and receive a permit in accordance with § 19.688(a).

(26 U.S.C. 5172, 5181)

§ 19.690 Change in location.

If there is a change in the location of the alcohol fuel plant or of the area included within the plant premises, the proprietor must:

(a) File an application to amend the permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, or a letterhead application to amend the permit;

(b) File a new bond on form TTB F 5110.56 or a consent of surety on form TTB F 5000.18 if a bond is required; and

(c) Not begin operations at the new location prior to approval of the amended application and issuance of the amended permit.

(26 U.S.C. 5172, 5173, 5181, 5271)

Alternating Proprietorship

§ 19.692 Qualifying for alternating proprietorship.

(a) *General.* A proprietor may alternate use of an alcohol fuel plant or part of an alcohol fuel plant with one or more proprietors qualified under this subpart. In order to do so, each proprietor must file and receive approval of the applications and bonds required by this subpart. Each proprietor must also conduct operations and keep records in accordance with this subpart. Where operations by alternating proprietors will be limited to part of an alcohol fuel plant, that part must be suitable for qualification as a separate alcohol fuel plant.

(b) *Qualifying documents.* Each person desiring to operate an alcohol fuel plant as an alternating proprietor must file the following with the appropriate TTB officer:

(1) An application on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, to cover the proposed alternation;

(2) A diagram of the premises, in duplicate, showing the arrangement for the alternation of the premises. Where operations by alternating proprietors are limited to parts of an alcohol fuel plant, a diagram designating the parts that are to be alternated must be submitted. A diagram must be submitted for each arrangement under which the premises will be operated. The diagram must be in sufficient detail to establish the boundaries of the alcohol fuel plant or any part of it that will be involved in the alternation;

(3) Evidence of an existing operations bond (if any), consent of surety, or new operations bond to cover the proposed alternation of premises; and

(4) Any additional information required by the appropriate TTB officer.

(26 U.S.C. 5171, 5181, 5271)

§ 19.693 Operating requirements for alternating proprietorships.

(a) *Alternation journal.* Once the applications submitted under § 19.692 have been approved by the appropriate TTB officer, the alcohol fuel plant, or parts of the alcohol fuel plant, may be alternated. The outgoing and incoming proprietor must make entries in an alternation journal when the alcohol fuel plant, or parts of it are alternated. The outgoing and incoming proprietor must enter the following information in the alternation journal:

- (1) Name or trade name of the proprietor;
- (2) Alcohol fuel plant permit number;
- (3) Date and time of alternation;
- (4) Quantity of spirits transferred in proof gallons.

(b) *Commencement of operations.*

Except for spirits transferred to the incoming proprietor, the outgoing proprietor must remove all spirits from areas, rooms, or buildings to be alternated, prior to the effective date and time shown in the alternation journal. Fuel alcohol may be transferred to the incoming proprietor or may be retained by the outgoing proprietor in areas, rooms, or buildings to be alternated when the areas, rooms, or buildings are secured with locks, the keys to which are in the custody of the outgoing proprietor. Whenever operation of the areas, rooms, or buildings is to be resumed by a proprietor following suspension of operations by an alternating proprietor, the outgoing proprietor (except the proprietor of a small plant not required to file a bond) must furnish a consent of surety on form TTB F 5000.18 to continue in effect the operations bond covering his operations. The proprietor must do this prior to alternating the premises.

(c) *Records.* Each alternating proprietor must maintain separate records and submit separate reports in accordance with § 19.720. Entries in each proprietor's records must be in accordance with §§ 19.714 through 19.718 of this subpart. The following requirements also apply:

(1) Each alternating proprietor must show all transfers of spirits in the records;

(2) The outgoing proprietor must show in his production and disposition records the quantity of spirits and fuel alcohol transferred to the incoming proprietor;

(3) The incoming proprietor must show in his receipt record the quantity of spirits received by transfer;

(4) Each proprietor must include spirits transferred in the determinations

of alcohol fuel plant size and bond amounts; and

(5) The provisions of § 19.685 regarding change of alcohol fuel plant type apply to each proprietor.

(26 U.S.C. 5171, 5181, 5271)

Discontinuance of Business and Permit Suspension or Revocation

§ 19.695 Notice of permanent discontinuance.

When a proprietor permanently discontinues operations as an alcohol fuel plant, the proprietor must file a letterhead notice with the appropriate TTB officer along with the following:

- (a) The original copy of the alcohol fuel plant permit and the proprietor's request that the permit be cancelled;
- (b) A written statement disclosing whether or not all spirits, including fuel alcohol, have been lawfully disposed of, and whether or not there are any spirits in transit to the premises; and
- (c) A report on form TTB 5110.75, Alcohol Fuel Plant Report covering the discontinued operations, with the report marked, "Final Report."

(26 U.S.C. 5172, 5181, 5271)

§ 19.697 Permit suspension or revocation.

TTB may begin proceedings to revoke or suspend an alcohol fuel plant permit in accordance with the procedures in part 71 of this chapter if the appropriate TTB officer has a reason to believe that a person holding a permit:

- (a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51 or the regulations issued thereunder;
- (b) Has violated the conditions of the permit;
- (c) Has made any false statement as to any material fact in the application for the permit;
- (d) Has failed to disclose any material information required to be furnished under this part;
- (e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor;
- (f) Has been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense; or

(g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

(26 U.S.C. 5271)

Bonds

§ 19.699 General bond requirements.

(a) *Operations bond.* Any person who plans to establish a large plant, a medium plant, or a small plant without production operations must provide an operations bond on form TTB F 5110.56, Distilled Spirits Bond, in duplicate, with the original permit application. If a proprietor fails to pay any liability covered by the bond, TTB may seek payment from the proprietor, from the surety on the bond, or from both the proprietor and the surety. Additional provisions applicable to bonds for alcohol fuel plants are found in subpart F of this part §§ 19.155 through 19.157 and §§ 19.167 through 19.173.

(b) *Corporate surety.* A company that issues bonds is called a "corporate surety." Proprietors must obtain the surety bonds required by this subpart from a corporate surety approved by the Secretary of the Treasury. The Department of the Treasury publishes a list of approved corporate sureties in Treasury Department Circular No. 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Circular No. 570 is published annually in the **Federal Register**. The most current edition of the circular is posted at the website of the Financial Management Service, Department of the Treasury, at <http://www.fms.treas.gov/c570>. Printed copies of Circular No. 570 are available for purchase from the Government Printing Office.

(c) *Alternative to a corporate surety.* A proprietor may also guarantee payment under a bond without using a corporate surety, by filing a bond that guarantees payment of the liability by pledging and depositing one or more acceptable negotiable securities having a par value (face amount) equal to or greater than the penal sums of the

required bonds. Should the proprietor fail to pay one or more of the guaranteed liabilities, TTB may take action to sell the deposited securities to satisfy the debt. Pledged securities will be released to the proprietor if there are no outstanding liabilities when the bond is terminated; the provisions of § 19.173 apply to the release of pledged securities under this subpart. A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Public Debt, Office of the Commissioner, Government Securities Regulations Staff. Current information and guidance from the Bureau of the Public Debt Web site may be found at <http://www.publicdebt.treas.gov>.

(31 U.S.C. 9301, 9303, 9304, 9306)

(26 U.S.C. 5173, 5181)

§ 19.700 Amount of bond.

A proprietor must determine the penal sum of the bond based on the total quantity of distilled spirits that will be produced and received during a calendar year. The method for computing required bond amounts is as follows:

(a) *Small plants without production operations.* A proprietor who operates a small plant that receives not more than 10,00 proof gallons of spirits per year and does not conduct bona fide production operations must provide a bond with a penal sum of \$1,000.

(b) *Medium plants.* A proprietor who operates a medium plant that produces and receives more than 10,000 but not more than 20,000 proof gallons of spirits per year must provide a bond with a penal sum of at least \$2,000.00. The proprietor must increase the penal sum of the bond by \$1,000 for each additional 10,000 gallons, or fraction of 10,000 gallons, that he will produce and receive over 20,000 gallons. The maximum bond for a medium plant is \$50,000.00, representing the penal sum applicable to 500,000 proof gallons. The following table provides examples of required minimum bond amounts:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
10,000	20,000	\$2,000
20,000	30,000	3,000
90,000	100,000	10,000
190,000	200,000	20,000
490,000	500,000	50,000

(c) *Large Plants.* A proprietor who operates a large plant that produces and receives more than 500,000 but not more than 510,000 proof gallons of spirits per year must provide a bond

with a penal sum of at least \$52,000.00. The proprietor must increase the penal sum of the bond by \$2,000 for each additional 10,000 gallons, or fraction of 10,000 gallons, that he will produce and

receive over 510,000 gallons. The maximum bond for a large plant is \$200,000.00. The following table provides examples of required minimum bond amounts:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
500,000	510,000	\$52,000
510,000	520,000	54,000
740,000	750,000	100,000
990,000	1,000,000	150,000
1,240,000	200,000

(d) New or strengthening bonds. A proprietor must obtain a new bond or a strengthening bond in accordance with § 19.167 if the level of production and receipts at the alcohol fuel plant increases so that the current bond no longer reflects the required minimum penal sum.

(26 U.S.C. 5173, 5181)

Requirements for Construction, Equipment, and Security

§ 19.703 Construction and equipment.

A proprietor must construct and arrange the buildings and enclosures where distilled spirits will be produced, processed, or stored so as to ensure adequate security and deter the diversion of spirits. Distilling equipment must be constructed to prevent unauthorized removal of spirits, from the point where distilled spirits come into existence until production is complete and the quantity of spirits has been determined. A proprietor also must equip tanks and other vessels so that they may be locked and must provide a method for determining the quantity of spirits in each vessel.

(26 U.S.C. 5178)

§ 19.704 Security.

(a) *General.* The proprietor of an alcohol fuel plant must provide adequate security measures at the alcohol fuel plant in order to protect against the unauthorized removal of spirits.

(b) *Storage.* The proprietor must store spirits in a building or a storage tank, or within an enclosure, that will be kept locked when operations are not being conducted.

(c) *Additional security.* The appropriate TTB officer may require additional security measures for the premises if the alcohol fuel plant's security is found to be inadequate. The additional measures required may depend upon past security problems experienced at the alcohol fuel plant,

the volume of alcohol produced, the risk to tax revenue, and any safety requirements. Additional security measures may include, but are not limited to:

- (1) A fence around the alcohol fuel plant;
- (2) Flood lights;
- (3) A security or alarm system;
- (4) A guard service; or
- (5) Locked or barred windows.

(26 U.S.C. 5178, 5202)

TTB Rights and Authorities

§ 19.706 Supervision of operations.

TTB may assign appropriate TTB officers to supervise operations at an alcohol fuel plant at any time. Appropriate TTB officers may exercise certain rights and authorities at an alcohol fuel plant. Those rights and authorities are set forth in the following provisions of this part: § 19.11 (right of entry and examination); § 19.12 (furnishing facilities and assistance); § 19.13 (assignment of officers and supervision of operations); § 19.17 (detention of containers); § 19.18 (samples for the United States); and § 19.282 (general requirements for gauging and measuring equipment).

(26 U.S.C. 5006, 5201, 5202, 5203, 5204, 5207, 5213, 5555)

Accounting for Spirits

§ 19.709 Gauging.

(a) *Gauging equipment and methods.* A proprietor of an alcohol fuel plant must perform periodic gauges of the distilled spirits and fuel alcohol at the alcohol fuel plant. The procedures for the gauging of spirits set forth in part 30 of this chapter also apply under this subpart. In addition, the following rules for the gauging of distilled spirits and fuel alcohol under this subpart also apply:

- (1) The proprietor must determine the proof of spirits by using a glass cylinder, hydrometer, and thermometer;

(2) The proprietor must ensure that hydrometers, thermometers, and other equipment used to determine proof, volume, or weight are accurate;

(3) The proprietor may determine the quantity of spirits or fuel alcohol either by volume or weight;

(4) To determine quantity by volume, the proprietor may use a tank or receptacle with a calibrated sight glass installed, a calibrated dipstick, conversion charts, an accurate mass flow meter, or other devices approved by the appropriate TTB officer;

(5) Unless the proprietor chooses to do so, the proprietor is not required to determine the proof of fuel alcohol manufactured, on hand, or removed; and

(6) The proprietor may account for fuel alcohol in wine gallons;

(b) *Verification by TTB.* TTB officers may at any time verify the accuracy of the gauging equipment used.

(c) *When gauges are required.* A proprietor must gauge spirits and record the results in the records required by § 19.718, at the following times:

- (1) Upon completing the production of distilled spirits;
- (2) On the receipt of spirits at the plant;
- (3) Prior to the addition of materials to render the spirits unfit for beverage use;

(4) Before withdrawal from plant premises or other disposition of spirits (including fuel alcohol); and

(5) When spirits are inventoried.

(26 U.S.C. 5201, 5204)

§ 19.710 Inventory of spirits.

A proprietor of an alcohol fuel plant must take a physical inventory of all spirits and fuel alcohol on the bonded premises at the end of each calendar year. The proprietor must record the results of this physical inventory in the records required by § 19.718.

(26 U.S.C. 5201)

Recordkeeping

§ 19.714 General requirements for records.

A proprietor of an alcohol fuel plant must maintain records that accurately reflect the operations and transactions at the alcohol fuel plant. The records must contain sufficient information that will allow appropriate TTB officers to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been used or otherwise lawfully disposed of.

(26 U.S.C. 5207)

§ 19.715 Format of records.

(a) Proprietors of alcohol fuel plants are not required under this subpart to keep their records in any particular format or media. A proprietor may keep required records on paper, microfilm or microfiche, diskette or other electronic medium. However, the records that a proprietor maintains must be readily retrievable in, or convertible to, hard-copy format for review by TTB officers as necessary.

(b) Required records may consist of commercial documents maintained in the ordinary course of business, rather than records prepared expressly to meet the requirements of this subpart, if those documents:

- (1) Contain all of the information required by this subpart;
- (2) Reflect general standards of clarity and accuracy; and
- (3) Can be readily understood by TTB personnel.

(c) Where the format or arrangement of the record is such that the information is not readily understandable, the appropriate TTB officer may require the proprietor to present the information in a format or arrangement that will facilitate the review of the information.

(26 U.S.C. 5207)

§ 19.716 Maintenance and retention of records.

(a) A proprietor of an alcohol fuel plant may keep the records required by this subpart at the alcohol fuel plant where operations or transactions occur, or at a central recordkeeping location maintained by the proprietor. If the proprietor keeps the required records at any location other than the alcohol fuel plant where operations or transactions occur, the proprietor must notify the appropriate TTB officer of the location where the records are kept. The proprietor must make those records available at the alcohol fuel plant premises to which they relate during normal business hours for the purpose of a TTB audit or inspection. The proprietor must produce those records

at that location within two days of notice by the appropriate TTB officer.

(b) A proprietor of an alcohol fuel plant must maintain any records required by this subpart for a period of not less than three years from the date of creation of the record or the date of the last entry required to be made in the record, whichever is later.

(c) A proprietor of an alcohol fuel plant may be required to reproduce records in order to maintain their readability and availability for inspection. Whenever any record might become unreadable or otherwise unsuitable for its intended or continued use, the proprietor is responsible for reproducing the record by a process that accurately and legibly reproduces the original record.

(d) For records kept on electronic media, the provisions of § 19.574 apply. (26 U.S.C. 5207)

§ 19.717 Time for making entries in records.

A proprietor of an alcohol fuel plant must record entries required by this subpart in the proprietor's records on a daily basis, as the transaction or operation occurs, but not later than the close of the next business day after the occurrence of the transaction or operation. However, if a proprietor prepares supplemental or auxiliary records when an operation or transaction occurs and those records contain all of the information required under this subpart, the proprietor may make entries in the required records not later than the close of business on the third business day following the day on which the transaction or operation occurred.

(26 U.S.C. 5207)

§ 19.718 Required records.

A proprietor of an alcohol fuel plant must maintain records that accurately reflect the operations and transactions occurring at the plant. These records must include production, receipt, manufacture, and disposition records.

(a) *Production, receipt, manufacture records.* The proprietor must maintain records of all production, receipts, and manufacture at the alcohol fuel plant. This includes records of:

- (1) The quantity and proof of spirits produced;
- (2) The kind and quantity of materials used to produce spirits, if the proprietor is a medium plant or large plant;
- (3) The proof gallons of spirits on-hand;
- (4) The proof gallons of spirits received. The proprietor may use a copy of the consignor's invoice or other document received with the shipment if

the proprietor records the date of receipt and quantity received;

(5) The quantities and types of materials added to each lot of spirits to render the spirits unfit for beverage use; and

(6) The quantity of fuel alcohol manufactured. Fuel alcohol may be recorded in wine gallons.

(b) *Disposition records.* The proprietor must maintain records of all dispositions of spirits and fuel alcohol removed from the alcohol fuel plant. Records for dispositions of fuel alcohol and spirits must be maintained separately. Required records include:

(1) The amount of fuel alcohol removed. The commercial record or other document required by § 19.729 will constitute the required record;

(2) The amount of spirits transferred. For all spirits transferred to another qualified distilled spirits plant or alcohol fuel plant the proprietor must maintain the commercial invoice or other documentation required by § 19.405 and § 19.734;

(3) Record of other dispositions. If the proprietor has other dispositions of spirits or fuel alcohol such as losses, destruction or redistillation, the proprietor must keep a record of those dispositions. The record must include the quantity of spirits (in proof gallons) or fuel alcohol (in wine gallons), the date of disposition, and the purpose for which used or the nature of any other disposition;

(4) Testing records. If the proprietor conducts testing and analysis of samples of spirits or fuel alcohol in accordance with § 19.749, the proprietor must keep a record of the date of the testing and the amount of spirits (in proof gallons) or fuel alcohol (in wine gallons) tested.

(26 U.S.C. 5181, 5207)

§ 19.719 Spirits made unfit for beverage use in the production process.

If an alcohol fuel plant makes spirits unfit for beverage use before the spirits are removed from the production process, for example by the in-line addition of materials or by the addition of materials to receptacles where spirits are first deposited, the proprietor must determine the quantity and proof of the spirits produced for purposes of the production records by:

(a) Determining the proof of each lot of spirits by procuring a representative sample of each lot, prior to the addition of any materials for rendering the spirits unfit for beverage use, and then proofing the spirits; and

(b) Determining the quantity (proof gallons) of spirits produced by subtracting the quantity of materials added to render the spirits unfit for

beverage use from the quantity of fuel alcohol (in gallons) produced and multiplying the resulting figure by the proof of the spirits divided by 100.

(26 U.S.C. 5181, 5207)

Reports

§ 19.720 Reports.

Each proprietor of an alcohol fuel plant must submit to the appropriate TTB officer an annual report of operations on form TTB F 5110.75, Alcohol Fuel Plant Report, for each calendar year. The proprietor must submit this report by January 30 following the end of the calendar year.

(26 U.S.C. 5207)

Redistillation

§ 19.722 General rules for redistillation of spirits or fuel alcohol.

The proprietor of an alcohol fuel plant may receive and redistill spirits. The proprietor may also receive fuel alcohol for redistillation and recovery of the spirits contained in the fuel alcohol. The following general rules apply to redistillation activities at an alcohol fuel plant:

(a) The proprietor must separately identify in the required records any spirits and fuel alcohol received for redistillation;

(b) The proprietor must keep all spirits and fuel alcohol received for redistillation physically separate from each other and from other spirits and fuel alcohol until they are redistilled;

(c) Spirits recovered by redistillation will be treated the same as spirits that have not been redistilled; and

(d) All provisions of this subpart and 26 U.S.C. Chapter 51, including provisions regarding liability for tax applicable to spirits when originally produced, apply to spirits recovered by distillation.

(26 U.S.C. 5181)

§ 19.723 Effect of redistillation on plant size and bond amount.

The redistillation of spirits at an alcohol fuel plant may affect the alcohol fuel plant size category and the resulting bond penal sum amount. The following rules apply in this regard:

(a) Spirits originally produced by the alcohol fuel plant and subsequently recovered by redistillation are not includable in the determination of plant size and bond amount; and

(b) Spirits originally produced elsewhere and subsequently recovered by redistillation at the alcohol fuel plant are includable in the determination of plant size and bond amount.

(26 U.S.C. 5181)

§ 19.724 Records of redistillation.

(a) Except as otherwise provided in paragraph (b) of this section, a proprietor must record in a separate record the following information for spirits and fuel alcohol received at the alcohol fuel plant for redistillation:

(1) Date of receipt;

(2) Identification as spirits or fuel alcohol;

(3) Quantity received;

(4) From whom received;

(5) Reason for redistillation;

(6) Date redistilled; and

(7) The quantity of spirits recovered by redistillation.

(b) A proprietor may use a document required by § 19.729 or § 19.734 or any other commercial record covering spirits or fuel alcohol received in lieu of the record required by paragraph (a) of this section, provided that it contains all of the information required by paragraph (a) of this section, including any such information added to it by the proprietor.

(26 U.S.C. 5181, 5223)

Rules for Use, Withdrawal, and Transfer of Spirits

§ 19.726 Prohibited uses, transfers, and withdrawals.

No person may withdraw, use, sell or otherwise dispose of distilled spirits, including fuel alcohol, produced under this subpart for any purpose other than for fuel use. The law imposes criminal penalties on any person who withdraws, uses, sells or otherwise disposes of distilled spirits, including fuel alcohol, produced under this subpart for other than fuel use.

(26 U.S.C. 5181, 5601)

§ 19.727 Use on premises.

A proprietor may use spirits as a fuel on the premises of the alcohol fuel plant where they were produced without having to make them unfit for beverage use. A proprietor using spirits in this way must keep the applicable records concerning such use as provided in § 19.718(b)(3).

(26 U.S.C. 5181)

§ 19.728 Withdrawal of spirits.

Before withdrawal of spirits from the premises of an alcohol fuel plant, the proprietor must render the spirits unfit for beverage use as provided in this subpart. Spirits rendered unfit for beverage use may be withdrawn free of tax from the alcohol fuel plant premises if they will be used exclusively for fuel.

(26 U.S.C. 5181, 5214)

§ 19.729 Withdrawal of fuel alcohol.

(a) For each shipment or other removal of fuel alcohol from the alcohol fuel plant premises, the consignor proprietor must prepare a commercial invoice, sales slip, or similar document that shows:

(1) The date of the withdrawal;

(2) The quantity of fuel alcohol removed;

(3) A description of the shipment that includes the number and size of containers, tank trucks, etc.; and

(4) The name and address of the consignee.

(b) The consignor proprietor must retain in its records a copy of the document described in paragraph (a) of this section.

(26 U.S.C. 5181)

Transfer of Spirits Between Alcohol Fuel Plants

§ 19.733 Authorized transfers between alcohol fuel plants.

A proprietor may remove spirits from the bonded premises of an alcohol fuel plant, including the premises of a small plant, for transfer in bond to another alcohol fuel plant. A proprietor of an alcohol fuel plant may also receive spirits from another alcohol fuel plant. The following conditions apply to such transfers:

(a) The transfer of spirits must be pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond in accordance with § 19.403;

(b) Bulk conveyances in which spirits are transferred must be secured with locks, seals, or other devices in accordance with § 19.441;

(c) It is not necessary to render the spirits unfit for beverage use prior to the transfer;

(d) The transferred spirits may not be withdrawn, used, sold, or disposed of for other than fuel use; and

(e) Each proprietor must adhere to the requirements for transfers between alcohol fuel plants prescribed in §§ 19.734 through 19.736, as applicable.

(26 U.S.C. 5212, 5181)

§ 19.734 Consignor for in-bond shipments.

A proprietor who ships distilled spirits in bond to another alcohol fuel plant is the "consignor" of the shipment. When shipping spirits in bond, the consignor must:

(a) Ship the spirits pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond;

(b) Prepare a duplicate commercial invoice or shipping document for each shipment of spirits that includes the following:

(1) The quantity of the spirits transferred;

(2) The proof of the spirits transferred;

(3) A description of the shipment that includes the number and size of drums, barrels, tank trucks, etc.;

(4) The consignor's name, address, and permit number and the name, address, and permit number of the proprietor of the alcohol fuel plant who will receive the spirits; and

(5) The serial numbers of seals, locks or other devices used to secure the shipment; and

(c) Forward the original invoice or shipping document with the shipment to the proprietor of the receiving alcohol fuel plant and retain a copy in the alcohol fuel plant's records.

(26 U.S.C. 5212)

§ 19.735 Reconsignment while in transit.

A consignor may reconsign an in-bond shipment of spirits while the shipment is in transit or upon arrival at the premises of the consignee for any bona fide reason such as when the spirits transferred in bond are found to be unsuitable for the intended purpose or the spirits were shipped in error. The consignor may reconsign the shipment to himself or to another consignee who is qualified to receive the spirits. In either case, an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5100.16 must have been previously approved for the new consignee and must be on file at the alcohol fuel plant. The bond of the new consignee of the spirits will cover the spirits while they are in transit after reconsignment. When reconsigning a shipment, the consignor must notify the original consignee that the transfer has been cancelled and must make a notation on the original invoice or shipping document that the shipment was reconsigned. The consignor must also prepare a new invoice or shipping document for the new consignee and must mark the new invoice or shipping document "reconsignment."

(26 U.S.C. 5181, 5212)

§ 19.736 Consignee for in-bond shipments.

(a) *General.* A proprietor who receives spirits in bond from another alcohol fuel plant is the "consignee" of the shipment. When receiving spirits in bond, the consignee must:

(1) Examine each conveyance and notify the appropriate TTB officer immediately if any of the locks, seals, or other devices that secure each conveyance do not arrive at the premises intact;

(2) Determine the quantity of spirits received and record the quantity and

date of receipt on the invoice or shipping document sent with the shipment; and

(3) Retain the invoice or shipping document as part of the records required by § 19.718.

(b) *Portable containers.* A consignee who receives spirits in barrels, drums, or other portable containers that are not secured by seals or other devices must verify the contents of each container. The consignee must record the quantity received in each container on a list and must attach the list to the invoice or shipping document received with the shipment.

(c) *Bulk conveyances or pipelines.* A consignee who receives spirits in bulk conveyances or by pipeline must gauge the spirits received and record the quantity determined on the invoice or shipping document received with the shipment. The appropriate TTB officer may waive the requirement for gauging spirits received by pipeline if requested in writing by the consignee and if there is no jeopardy to the revenue.

(26 U.S.C. 5181, 5204, 5212)

Transfer of Spirits to and From Distilled Spirits Plants

§ 19.739 Authorized transfers to or from distilled spirits plants.

Except for spirits produced from petroleum, natural gas, or coal, a proprietor of an alcohol fuel plant may receive spirits in bond from a distilled spirits plant qualified under subpart D of this part. A proprietor of an alcohol fuel plant may also transfer spirits in bond from the alcohol fuel plant to a distilled spirits plant qualified under subpart D. The following conditions apply to such transfers:

(a) Bulk conveyances in which spirits are transferred must be secured with locks, seals, or other devices in accordance with § 19.441;

(b) It is not necessary to render the spirits unfit for beverage use prior to the transfer;

(c) The transferred spirits may not be withdrawn, used, sold, or disposed of for other than fuel use;

(d) An alcohol fuel plant proprietor transferring spirits filled into portable containers to the bonded premises of a distilled spirits plant must mark the containers as required by § 19.752(b);

(e) The procedures in §§ 19.403 through 19.406 and § 19.620 apply to the transfer of spirits from an alcohol fuel plant to a distilled spirits plant; and

(f) The procedures in §§ 19.403, 19.405, 19.407 and § 19.771 apply to the transfer of spirits from a distilled spirits plant to an alcohol fuel plant.

(26 U.S.C. 5181, 5212)

Receipt of Spirits From Customs Custody

§ 19.742 Authorized transfers from customs custody.

A proprietor of an alcohol fuel plant may withdraw from customs custody spirits imported or brought into the United States in bulk containers and may transfer those spirits without payment of tax to the proprietor's alcohol fuel plant subject to the following conditions:

(a) The transfer of the spirits may only be to an alcohol fuel plant that is required to file, and has filed, a bond;

(b) The spirits must not have been produced from petroleum, natural gas, or coal;

(c) The alcohol fuel plant must further manufacture or process the spirits after receipt;

(d) The proprietor of the alcohol fuel plant may only redistill or denature the spirits if the imported spirits are 185 degrees or more of proof and will be withdrawn for fuel use; and

(e) The proprietor of the alcohol fuel plant must follow the procedures for receiving spirits prescribed in § 19.736 and subpart L of part 27 of this chapter.

(26 U.S.C. 5232)

Materials for Making Spirits Unfit for Beverage Use

§ 19.746 Authorized materials.

(a) *General.* The appropriate TTB officer determines what materials make spirits unfit for beverage use but do not impair the quality of the spirits for fuel use. Spirits treated with materials authorized under this section will be considered rendered unfit for beverage use and eligible for withdrawal as fuel alcohol.

(b) *Authorized materials.* Subject to the specifications in paragraph (c) of this section, proprietors are authorized to render spirits unfit for beverage use by adding to each 100 gallons of spirits any of following materials in the quantities specified:

(1) Two gallons or more of—

(i) Gasoline or automotive gasoline (for use in engines that require unleaded gasoline, the Environmental Protection Agency and manufacturers specifications may require that unleaded gasoline be used to render spirits unfit for beverage use);

(ii) Natural gasoline;

(iii) Kerosene;

(iv) Deodorized kerosene;

(v) Rubber hydrocarbon solvent;

(vi) Methyl isobutyl ketone;

(vii) Mixed isomers of nitropropane;

(viii) Heptane;

(ix) Ethyl tertiary butyl ether (ETBE);

(x) Raffinate;
 (xi) Naphtha; or
 (xii) Any combination of the materials listed in (b)(1)(i) through (xi) of this section; or

(2) Five gallons or more of Toluene;
 or

(3) One-eighth ($\frac{1}{8}$) ounce of denatonium benzoate N.F. and 2 gallons of isopropyl alcohol.

(c) *Specifications*—(1) Specifications for gasoline, unleaded gasoline, kerosene, deodorized kerosene, rubber hydrocarbon solvent, methyl isobutyl ketone, mixed isomers of nitropropane, heptane, toluene, and isopropyl alcohol are found in part 21, subpart E, of this chapter.

(2) Natural gasoline must meet the following specifications:

(i) Natural gasoline (drip gas) is a mixture of butane, pentane, and hexane hydrocarbons extracted from natural gas.

(ii) Distillation range: no more than 10% of the sample may distill below 97 ° F.; at least 50% shall distill at or below 156 ° F.; and at least 90% shall distill at or below 209 ° F.

(3) Raffinate must meet the following specifications:

(i) Octane (R+M/2): 66–70;

(ii) Distillation, in Degrees F: 10%: 120–150; 50%: 144–180; 90%: 168–200; end point: 216–285;

(iii) API Gravity: 76–82; and

(iv) Reid Vapor Pressure: 5–11.

(4) Naphtha must meet the following specifications:

(i) API Gravity @ 60/60 Degrees F: 64–70;

(ii) Lb/Gal: 5.845–6.025;

(iii) Density: .7022–.7238;

(iv) Reid Vapor Pressure: 8 P.S.I.A. Max.;

(v) Distillation in Degrees F: I.B.P.: 85 Max.; 10%: 130 Max.; 50%: 250 Max.; 90%: 340 Max.; end point: 380;

(vi) Copper Corrosion: 1; and

(vii) Sabolt Color: 28 Min.

(d) *Published list*. The appropriate TTB officer periodically publishes a list of materials that may be used to make spirits unfit for beverage use in addition to those listed in paragraph (b) of this section. The list can be found at <http://www.ttb.treas.gov>. The list will specify the material name and quantity required to render spirits unfit for beverage use.

(26 U.S.C. 5181)

§ 19.747 Other materials.

If a proprietor wishes to use a material to render spirits unfit for beverage use that is not authorized under § 19.746 or that is not on the published list of materials, the proprietor may submit an application for approval to the appropriate TTB officer. The application must include the name of the material and the quantity of material that the proprietor proposes to add to each 100 gallons of spirits. The appropriate TTB officer may require the proprietor to submit an eight-ounce sample. The proprietor may not use any proposed material until the appropriate TTB officer approves its use. Any material that impairs the quality of the spirits for fuel use will not be approved. The proprietor must retain as part of the records available for inspection by appropriate TTB officers any application approved by the appropriate TTB officer under this section.

(26 U.S.C. 5181)

Rules for Taking Samples

§ 19.749 Samples.

The following rules apply to the testing and analysis of samples of spirits and fuel alcohol for purposes of this subpart:

(a) A proprietor may take samples of spirits and fuel alcohol for on-site testing and analysis at the proprietor's alcohol fuel plant;

(b) A proprietor may not remove samples of spirits from the premises of the alcohol fuel plant for testing and analysis;

(c) A proprietor may remove samples of fuel alcohol from the premises of the alcohol fuel plant for testing and analysis at a qualified laboratory;

(d) A proprietor of an alcohol fuel plant must account for all samples in the record required by § 19.718(b)(4); and

(e) A proprietor of an alcohol fuel plant must indicate on each container that the spirits or fuel alcohol inside is a sample.

(26 U.S.C. 5181)

Marking Requirements

§ 19.752 Marks.

(a) *Fuel alcohol*. A proprietor of an alcohol fuel plant must place a conspicuous and permanent warning mark or label on each container of 55 gallons or less of fuel alcohol that the proprietor will withdraw from the plant premises. The proprietor must place the mark or label on the head or side of the container and must use plain, legible letters. The proprietor may place other marks or labels on the container if the other marks or labels do not obscure the required warning. The required warning is as follows:

WARNING

FUEL ALCOHOL

MAY BE HARMFUL OR FATAL IF SWALLOWED

(b) *Spirits*. If a proprietor intends to transfer barrels, drums, or similar portable containers of spirits to a distilled spirits plant qualified under subpart D of this part, the proprietor must mark or label each container. The proprietor must place the mark or label on the head or side of the container and must use plain, legible letters. The proprietor may place other marks or labels on the container if the other

marks or labels do not obscure the required marks or labels. The required mark or label each container must contain the following information:

(1) Quantity in wine gallons;

(2) Proof of the spirits;

(3) Name, address, and permit number of the alcohol fuel plant;

(4) The words "Spirits—For Alcohol Fuel Use Only"; and

(5) The serial number of the container. Serial numbers must be assigned as follows—

(i) Consecutively commencing with "1";

(ii) When the numbering system of any series reaches "1,000,000" the proprietor may begin the series again by adding an alphabetical prefix or suffix to the series; and

(iii) When there is a change in proprietorship or a change in the

individual, firm, corporate name, or trade name, the series in use at the time of the change may be continued.

(26 U.S.C. 5181, 5206)

Subpart Y—Paperwork Reduction Act

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

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Display.* The following display identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

		Section where contained	Current OMB Control No.	Section where contained	Current OMB Control No.
		19.122	1513–0048	19.236	1513–0083
		19.123	1513–0048		1513–0088
		19.126	1513–0040	19.237	1513–0045
		19.127	1513–0088		1513–0083
		19.128	1513–0040	19.238	1513–0045
		19.129	1513–0040		1513–0083
			1513–0088	19.239	1513–0045
		19.130	1513–0040		1513–0083
			1513–0088		1513–0088
		19.131	1513–0040	19.240	1513–0045
			1513–0088		1513–0083
		19.132	1513–0013		1513–0088
			1513–0040	19.242	1513–0045
			1513–0088		1513–0083
		19.133	1513–0013	19.243	1513–0045
			1513–0040	19.246	1513–0045
		19.134	1513–0013	19.247	1513–0045
			1513–0040	19.248	1513–0045
			1513–0088	19.249	1513–0045
		19.135	1513–0040	19.253	1513–0088
		19.141	1513–0013	19.256	1513–0045
			1513–0044	19.257	1513–0045
		19.142	1513–0044	19.261	1513–0048
		19.143	1513–0013	19.262	1513–0030
			1513–0044		1513–0045
		19.154	1513–0044		1513–0088
		19.155	1513–0013	19.263	1513–0030
		19.156	1513–0014		1513–0045
		19.168	1513–0013		1513–0088
		19.170	1513–0048	19.264	1513–0030
		19.171	1513–0048		1513–0045
		19.172	1513–0048		1513–0088
		19.187	1513–0080	19.265	1513–0030
		19.189	1513–0080		1513–0088
		19.191	1513–0080	19.266	1513–0030
		19.192	1513–0048		1513–0045
		19.198	1513–0048		1513–0088
		19.201	1513–0088	19.267	1513–0045
			1513–0113		1513–0088
		19.202	1513–0113	19.268	1513–0088
		19.203	1513–0113	19.269	1513–0030
		19.205	1513–0088		1513–0045
			1513–0113	19.281	1513–0048
		19.206	1513–0088	19.283	1513–0056
			1513–0113	19.284	1513–0056
		19.207	1513–0088	19.286	1513–0056
			1513–0048	19.287	1513–0056
		19.208	1513–0088	19.288	1513–0056
			1513–0113	19.289	1513–0056
		19.209	1513–0014		1513–0056
			1513–0088	19.292	1513–0044
			1513–0113	19.293	1513–0047
		19.210	1513–0113	19.294	1513–0047
		19.211	1513–0113	19.295	1513–0047
		19.212	1513–0113	19.303	1513–0056
		19.213	1513–0113	19.305	1513–0039
		19.214	1513–0113		1513–0056
		19.222	1513–0045	19.306	1513–0056
			1513–0088	19.307	1513–0056
		19.225	1513–0045	19.308	1513–0047
		19.226	1513–0045	19.309	1513–0047
		19.226	1513–0056	19.312	1513–0056
		19.227	1513–0045	19.322	1513–0039
		19.230	1513–0045		1513–0056
			1513–0083	19.324	1513–0039
		19.231	1513–0045		1513–0056
		19.233	1513–0045	19.327	1513–0039
			1513–0083	19.329	1513–0039
			1513–0088	19.331	1513–0056
		19.234	1513–0045	19.333	1513–0056
			1513–0083	19.343	1513–0041
			1513–0088	19.352	1513–0048
		19.235	1513–0088	19.353	1513–0041

Section where contained	Current OMB Control No.
19.11	1513–0088
19.13	1513–0048
19.26	1513–0048
19.27	1513–0048
19.28	1513–0048
19.33	1513–0048
19.35	1513–0048
19.37	1513–0048
19.54	1513–0048
19.55	1513–0048
	1513–0081
19.56	1513–0048
19.59	1513–0013
19.60	1513–0013
	1513–0048
19.71	1513–0048
19.72	1513–0048
19.73	1513–0048
19.74	1513–0048
19.75	1513–0048
19.76	1513–0048
19.77	1513–0046
	1513–0048
19.78	1513–0014
	1513–0048
19.79	1513–0048
19.91	1513–0040
19.92	1513–0040
19.93	1513–0040
19.94	1513–0040
19.95	1513–0040
19.97	1513–0040
19.112	1513–0048
19.113	1513–0048
19.113	1513–0088
19.114	1513–0048
19.115	1513–0048
19.116	1513–0013
	1513–0048
	1513–0088
19.117	1513–0013
	1513–0048
19.118	1513–0013
	1513–0048
19.119	1513–0048
	1513–0088
19.120	1513–0048
	1513–0088
19.121	1513–0048

Section where contained	Current OMB Control No.	Section where contained	Current OMB Control No.	Section where contained	Current OMB Control No.
19.354	1513-0088	19.574	1513-0039	19.650	1513-0081
19.357	1513-0041		1513-0045		1513-0088
19.360	1513-0041		1513-0049	19.665	1513-0052
	1513-0056		1513-0056	19.666	1513-0052
19.362	1513-0041		1513-0088	19.667	1513-0052
19.363	1513-0041	19.575	1513-0039	19.669	1513-0088
19.371	1513-0056		1513-0045	19.670	1513-0088
	1513-0088		1513-0049		1513-0113
19.372	1513-0048		1513-0056	19.673	1513-0051
	1513-0056		1513-0088	19.675	1513-0051
	1513-0088	19.576	1513-0039	19.676	1513-0014
19.381	1513-0049		1513-0045		1513-0051
19.383	1513-0056		1513-0049		1513-0051
19.384	1513-0048		1513-0056	19.677	1513-0051
19.386	1513-0049		1513-0088	19.680	1513-0051
19.387	1513-0049	19.577	1513-0039	19.683	1513-0051
19.388	1513-0048		1513-0045		1513-0052
19.389	1513-0056		1513-0056	19.684	1513-0051
19.392	1513-0048		1513-0088	19.685	1513-0051
19.393	1513-0049	19.580	1513-0039		1513-0052
19.394	1513-0056		1513-0045		1513-0088
19.402	1513-0056		1513-0049	19.686	1513-0051
19.403	1513-0038		1513-0088		1513-0088
19.404	1513-0038	19.581	1513-0039	19.687	1513-0052
19.405	1513-0038		1513-0045		1513-0088
	1513-0056		1513-0049	19.688	1513-0051
19.406	1513-0038	19.584	1513-0088		1513-0088
	1513-0056	19.585	1513-0047	19.689	1513-0051
19.407	1513-0056	19.586	1513-0047		1513-0088
19.411	1513-0039	19.590	1513-0039	19.690	1513-0051
19.414	1513-0056	19.591	1513-0039		1513-0088
19.419	1513-0056	19.592	1513-0039	19.692	1513-0051
19.420	1513-0048	19.593	1513-0039		1513-0052
19.425	1513-0056	19.596	1513-0041		1513-0088
19.427	1513-0056	19.597	1513-0041	19.695	1513-0052
19.431	1513-0056	19.598	1513-0041	19.709	1513-0052
19.434	1513-0048	19.599	1513-0041	19.710	1513-0052
	1513-0056	19.600	1513-0041	19.714	1513-0052
19.435	1513-0056	19.601	1513-0041	19.715	1513-0052
19.436	1513-0045	19.602	1513-0041		1513-0088
	1513-0083	19.603	1513-0041	19.716	1513-0052
19.441	1513-0048	19.604	1513-0041		1513-0088
19.452	1513-0030	19.606	1513-0049	19.717	1513-0052
	1513-0056	19.607	1513-0049	19.718	1513-0052
19.454	1513-0056	19.611	1513-0045		1513-0088
19.457	1513-0056		1513-0088	19.719	1513-0052
19.459	1513-0048	19.612	1513-0045	19.720	1513-0052
	1513-0056		1513-0088	19.724	1513-0052
19.461	1513-0045	19.613	1513-0045	19.727	1513-0052
19.462	1513-0030	19.614	1513-0045	19.729	1513-0052
	1513-0039	19.615	1513-0045		1513-0052
	1513-0048	19.616	1513-0056	19.733	1513-0052
	1513-0056	19.617	1513-0056	19.734	1513-0052
19.464	1513-0030	19.618	1513-0056	19.735	1513-0038
	1513-0045	19.619	1513-0056		1513-0052
19.465	1513-0045	19.620	1513-0038	19.736	1513-0052
	1513-0056		1513-0056	19.739	1513-0052
	1513-0083	19.621	1513-0056	19.746	1513-0052
19.478	1513-0080	19.623	1513-0056	19.747	1513-0052
19.487	1513-0048	19.624	1513-0041	19.749	1513-0052
19.513	1513-0020	19.626	1513-0056		1513-0052
19.571	1513-0039	19.627	1513-0044		1513-0052
	1513-0045	19.632	1513-0039	19.752	1513-0052
	1513-0049		1513-0041		
	1513-0056		1513-0047		
	1513-0088		1513-0049		
19.572	1513-0049		1513-0088		
19.573	1513-0039	19.641	1513-0081		
	1513-0049	19.643	1513-0081		
	1513-0056	19.644	1513-0081		
	1513-0088	19.645	1513-0081		

Signed: July 31, 2007.

John J. Manfreda,
Administrator.

Approved: November 14, 2007.

Timothy E. Skud,
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and Trade Enforcement).*

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