

## § 40.231

an approved application, of the specified tobacco products in the described packages, and do not include any manufacturing processes. If the regional director (compliance) approves the application, he may assign an ATF officer to supervise the repackaging or he may authorize the manufacturer to repack-age the products without supervision by so stating on a copy of the applica-tion returned to the manufacturer. Where the manufacturer is authorized to repack-age he shall record the date of repackaging on the approved applica-tion and retain it as part of his records.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

### EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

#### § 40.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. For the purposes of this section, the term "employee" shall mean those persons whose duties require their presence in the factory of whose duties relate to the manufacture, distribution, or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such product furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer

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for sale, or give away products so furnished.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

#### § 40.232 Experimental purposes.

A manufacturer of tobacco products may use tobacco products for experimental purposes without determination and payment of tax as set forth in this section.

(a) *What are experimental purposes?* Experimental purposes are operations or tests carried out under controlled conditions to discover an unknown scientific principle or fact, to gather or confirm data about a known scientific principle or fact, or to test manufacturing, packaging, or other such equipment. Examples of uses for experimental purposes are:

(1) Use by manufacturers to determine scientific facts relating to tobacco products, such as their chemical content;

(2) Use by producers of packaging machines to test the operation of such machines; and

(3) Use by laboratories, hospitals, medical centers, institutes, colleges, or universities, for scientific, technical, or medical research.

(b) *What purposes are not experimental?* The uses of tobacco products outside the factory premises for advertising or consumer testing or as salespersons' or customers' samples are not experimental purposes.

(c) *Use in factory.* A manufacturer of tobacco products may use tobacco products without determination and payment of tax for experimental purposes in a factory.

(d) *Use outside factory.* A manufacturer may remove tobacco products in bond for experimental purposes outside a factory. When tobacco products are shipped for experimental purposes outside the factory, the proprietor of the factory remains liable for the taxes imposed by 26 U.S.C. 5701 until the occurrence of one of the following events:

(1) The tobacco products are returned to the premises of the factory from which they were shipped; or

(2) The tobacco products are destroyed during or after their use for experimental purposes.

(e) *Record of use.* In addition to the records prescribed by § 40.183, a manufacturer who removes tobacco products in bond for experimental purposes outside a factory must prepare and maintain a record containing the following information:

(1) Name and address of the consignee;

(2) Kind and quantity of tobacco products removed;

(3) Description of packaging, if any, of the tobacco products removed;

(4) Description of how and when the consignee will use the tobacco products; and

(5) Disposition of any remaining tobacco products after the consignee's use.

(Approved by the Office of Management and Budget under Control Number 1512-0562)

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. ATF-478, 67 FR 19333, Apr. 19, 2002]

#### § 40.233 Transfer in bond.

A manufacturer of tobacco products may transfer tobacco products in bond, to the factory of any manufacturer of tobacco products. The transfer of tobacco products in bond to the premises of an export warehouse proprietor shall be in accordance with the provisions of part 44 of this chapter. Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-421, 64 FR 71924, Dec. 22, 1999]

#### § 40.234 Removal for use of the United States.

The removal of tobacco products in bond, for use of the United States,

shall be in accordance with the provisions of part 45 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

#### § 40.235 Removal for export purposes.

The removal of tobacco products in bond, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 44 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 40.236 Release from customs custody.

The release of tobacco products from customs custody, in bond, for transfer to the premises of a tobacco products factory, shall be in accordance with the provisions of part 275 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### OTHER PROVISIONS RELATING TO TOBACCO PRODUCTS

#### § 40.251 Emergency storage.

In cases of emergency, the regional director (compliance) may authorize, for a stated period, the temporary storage of tobacco products at a place outside the factory without the application for amended permit required under § 40.114, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue. Application for authorization to so store tobacco products shall be submitted to the regional director (compliance) by letter, in duplicate. All tobacco products so stored outside the factory shall