

§ 40.45

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will not bring a price equal to the tax due and payable thereon and the expenses incident to the sale thereof. Where the products are not sold the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such products are sold they shall be released by the officer having custody thereof only after they are properly packaged and taxpaid. A receipt from the regional director (compliance) evidencing payment of tax on such products shall be presented to the officer having custody of the products, which tax shall be considered part of the sales price. Where tobacco products which have been packaged under the provisions of part 44 or part 45 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package "Federal Tax Paid (date)" before the officer having custody of the products releases them:

Provided, That if the purchaser is a qualified manufacturer of tobacco products, or for products packaged under part 44 a qualified export warehouse proprietor, the products may be released without such marking of the packages if the manufacturer or proprietor does not intend to place such products on the domestic market for taxable products but will dispose of them otherwise, such as by destruction or return to bond through claim for refund, and files a written statement to that effect, in original only, with the officer having custody of the products. In the case of products forfeited under the internal revenue laws the sale shall be subject to the provisions of part 172 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

§ 40.45 Alternate methods or procedures.

A manufacturer of tobacco products, on specific approval by the Director as

provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a manufacturer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 40.46 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements

are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications.

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 40.47 Other businesses within factory.

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. Where a manufacturer desires to engage in another business within the factory he shall submit a written application to do so, in triplicate, to the regional director (compliance) for the region in which the factory is located, for his transmittal to the Director. A manufacturer shall not engage in such other business until the application is approved by the Director. The manufacturer shall retain, as

part of his records, any authorization of the Director under this section.

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.48 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this part becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

§ 40.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 40. Some of the authorities in this part are redelegated to “appropriate ATF officers”. The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.30, Delegation Order—Delegation of the Director’s Authorities in 27 CFR Part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150-5190, or from the ATF web site (<http://www.atf.treas.gov/>).

[T.D. ATF-420, 64 FR 71940, Dec. 22, 1999, as amended by T.D. ATF-457, 66 FR 32220, June 14, 2001; T.D. ATF-460, 66 FR 39094, July 27, 2001]

Subpart E—Qualification Requirements for Manufacturers

§ 40.61 Qualification—General.

(a) *Who must qualify.* Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit,