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**Subpart A—Scope of Regulations**

**§ 40.1 Manufacture of tobacco products and cigarette papers and tubes.**

This part contains regulations relating to the manufacture of tobacco products and cigarette papers and tubes; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products.

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996]

**§ 40.2 Territorial extent.**

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

**Subpart B—Definitions**

**§ 40.11 Meaning of terms.**

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not listed which are in the same general class.

*Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to

the administration or enforcement of this part by ATF Order 1130.30, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes.

*Associate Director (Compliance Operations).* The Associate Director (Compliance Operations) in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

*ATF.* The Bureau of Alcohol, Tobacco and Firearms.

*ATF officer.* An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

*Bank.* Any commercial bank.

*Banking day.* Any day during which a bank is open to the public for carrying on substantially all its banking functions.

*CFR.* The Code of Federal Regulations.

*Chewing tobacco.* Any leaf tobacco that is not intended to be smoked.

*Cigar.* Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition for cigarette).

*Cigarette.* (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

*Cigarette paper.* Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

*Cigarette tube.* Cigarette paper made into a hollow cylinder for use in making cigarettes.

*Commercial bank.* A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve Sys-

tem member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

*Determine.* To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

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

*Director of the service center.* The Director, Internal Revenue Service Center, in any of the Internal Revenue regions.

*District director.* A district director of internal revenue.

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

*Export warehouse.* A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid for subsequent 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.

*Export warehouse proprietor.* Any person who operates an export warehouse.

*Factory.* The premises of a manufacturer of tobacco products as described in his permit issued under 26 U.S.C. chapter 52, or the premises of a manufacturer of cigarette papers and tubes on which such business is conducted.

*Fiscal year.* The period which begins October 1 and ends on the following September 30.

*In bond.* The status of tobacco products and cigarette papers and tubes,

which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

*Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

*Large cigars.* Cigars weighing more than three pounds per thousand.

*Manufacturer of cigarette papers and tubes.* Any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

*Manufacturers of tobacco products.* Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

*Package.* The immediate container in which tobacco products or cigarette papers or tubes are put up in by the manufacturer and offered for sale or delivery to the consumer.

*Permit number.* The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the regional director (compliance); for example, "TP-999-Utah".

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

*Pipe tobacco.* Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

*Region.* A Bureau of Alcohol, Tobacco and Firearms Region.

*Regional Director (compliance).* The principal regional official responsible for administering regulations in this part.

*Removal or remove.* The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling of other unlawful importation of such articles into the United States.

*Roll-your-own tobacco.* Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

*Sale price.* The price for which large cigars are sold by the manufacturer, determined in accordance with § 40.22 and used for computation of the tax.

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

*Service center director.* A director of an internal revenue service center.

*Sets.* Any collection, grouping, or packaging of cigarette papers made up by any person for delivery to the consumer as a unit.

*Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

*Small cigars.* Cigars weighing not more than three pounds per thousand.

*Smokeless tobacco.* Any snuff or chewing tobacco.

*Snuff.* Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

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

*Tobacco products.* Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

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

U.S.C. The United States Code.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), (82 Stat. 959), and Sec. 38, Arms Export Control Act (90 Stat. 744) Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13553, Mar. 31, 1978; 44 FR 55854, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3007, Jan. 13, 1981; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-289, 54 FR 48839, Nov. 27, 1989; T.D. ATF-384, 61 FR 54085, Oct. 17, 1996; T.D. ATF-424, 64 FR 71930, Dec. 22, 1999; T.D. ATF-420, 64 FR 71939, Dec. 22, 1999; T.D. ATF, 457, 66 FR 32220, June 14, 2001; T.D. ATF-460, 66 FR 39094, July 27, 2001; T.D. ATF-467, 66 FR 49532, Sept. 28, 2001]

**Subpart C—Taxes**

**§ 40.21 Cigar tax rates.**

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the years:		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars per thousand .....	\$1.125	\$1.594	\$1.828
Large cigars per thousand*			
• percentage of sale price .....	12.75%	18.063%	20.719%
• but not to exceed→ .....	\$30	\$42.50	\$48.75

\*For large cigars, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand.

(b) See § 40.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

[ T.D. ATF-420, 64 FR 71939, Dec. 22, 1999]

**§ 40.22 Determination of sale price of large cigars.**

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases.*—(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold

on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price.*—(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased