

by the manufacturer of such articles to cover the operations of his factory as required by section 5711, I.R.C., and regulations issued thereunder.

(72 Stat. 1418, as amended, 1421, as amended; 26 U.S.C. 5704, 5711)

[T.D. 6871, 31 FR 57, as amended by T.D. ATF-243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986]

#### § 45.33 Return of shipment to factory.

Tobacco products, and cigarette papers and tubes which have been removed, under this part, may be returned to the factory without internal revenue supervision.

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

[T.D. 6871, 31 FR 57, as amended by T.D. ATF-243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986]

#### § 45.34 Loss or shortage in shipment.

Immediately upon receipt of information of a loss of all or part of a shipment, or of a shortage therein, of tobacco products, or cigarette papers or tubes removed under this part, the manufacturer shall notify the appropriate TTB officer, furnish all pertinent details with respect to the loss or shortage, and either pay the tax due thereon in accordance with the provisions of § 45.36, or file claim for remission of the tax liability under the provisions of part 40 of this chapter, as the case may be.

(72 Stat. 1417, 1419, as amended; 26 U.S.C. 5703, 5705)

[T.D. 6871, 31 FR 57, as amended by T.D. ATF-243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986; T.D. ATF-384, 61 FR 54096, Oct. 17, 1996; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

#### § 45.35 Liability for tax.

The manufacturer who removes tobacco products, or cigarette papers or tubes under this part shall be liable for the taxes imposed thereon by 26 U.S.C. 5701, until such tobacco products, or cigarette papers or tubes are received by the Federal agency. Any person who possesses tobacco products, or cigarette papers or tubes in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable

for a tax equal to the tax on such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

[T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55856, Sept. 28, 1979; T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 45.36 Payment of tax.

Any tax which becomes due and payable on tobacco products, and cigarette papers and tubes removed under this part shall be paid to appropriate TTB officer, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment: *Provided*, That a manufacturer of tobacco products or cigarette papers or tubes may pay any tax for which he becomes liable under this part by an appropriate adjustment in his current tax return Form 5000.24. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

[T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

#### § 45.37 Assessment.

Whenever any person required by law to pay tax on tobacco products, and cigarette papers and tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to

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show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

[T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55856, Sept. 28, 1979; T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

### Subpart E—Packaging Requirements

#### § 45.41 Packages.

All tobacco products, and cigarette papers and tubes shall, before removal under this part, be put up by the manufacturer in packages which shall be of such construction as will securely contain the articles therein and maintain the mark, notice, and label thereon, as required by this subpart. No package of tobacco products, or cigarette papers or tubes shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery, or (b) any indecent or immoral picture, print, or representation.

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

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 45.42 Mark.

Every package of tobacco products shall before removal from the factory under this part, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 40.65 of this chapter may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are both packaged and removed by the same manufacturer, either at the same

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or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the appropriate TTB officer. Before using the alternative, the manufacturer shall notify the appropriate TTB officer in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the appropriate TTB officer shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

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

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

#### § 45.43 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “chewing tobacco” or “snuff.” As an alternative, packages of chewing tobacco may be designated “Tax Class C,” and packages of snuff may be designated “Tax Class M.”

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total