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PART VIII



DEPARTMENT OF THE TREASURY

**Bureau of Alcohol, Tobacco
and Firearms**



**TAXATION OF LARGE
CIGARS**

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF-40; Reference No. 305]

LARGE CIGAR

Taxation; Revision of Procedures

On December 3, 1976, there was published in the FEDERAL REGISTER (41 FR 53055) a notice of proposed rulemaking setting forth proposed amendments to the above-captioned regulations. The purpose of the amendments is to revise procedures relating to the taxation of large cigars (cigars weighing more than three pounds per thousand). The amendments are required by section 2128 of Pub. L. 94-455 (Tax Reform Act of 1976), which was approved on October 4, 1976. Section 2128 changed the basis for taxation of large cigars from seven tax classes, divided according to retail price, to a percentage tax based on the wholesale price. The new tax rate is 8½ percent of the wholesale price, with a maximum rate of \$20 per thousand cigars.

Interested persons have been afforded an opportunity to participate in the making of these amendments by submission of views, comments, and suggestions. Due consideration has been given to all these expressions of public opinion. Some suggestions have been adopted; others have not. The reasons for the Bureau's decisions in each instance are discussed below. Except as specifically discussed in this document, the amendments as adopted are the same as those contained in the notice.

(1) *Editorial changes.* The statutory citation following § 275.81 has been amended to conform to FEDERAL REGISTER standards. The definitions of "ATF officer", "regional regulatory administrator", and "region", have been modified where they appear in §§ 270.11, 275.11, 290.11, 295.11, and 296.72 as part of a program to standardize these definitions throughout regulations of the Bureau of Alcohol, Tobacco and Firearms. Other minor editorial and conforming changes have also been made.

(2) *TSUSA schedules.* The proposals contained a definition in § 275.11 of "TSUS" (Tariff Schedules of the United States), but the U.S. International Trade Commission has informed us that this should be "TSUSA" (Tariff Schedules of the United States Annotated). Accordingly, this change has been made. Furthermore, the Commission indicated that it will amend these schedules to add new items 170.7225 through 170.7290, corresponding to the new ATF statistical classes A through H. This will remove the necessity of providing for a combination, under certain circumstances, of classes G and H, in § 297.37. Section 275.-37 is therefore changed to reflect this development.

(3) *Determination of wholesale price.* A number of comments were received, from both government and industry, regarding the proposed rules for determination of wholesale price in §§ 270.22 and

275.39. Some minor changes have been made as a result of these comments. In paragraph (a) of each of these sections, the next-to-last sentence is re-worded for improved clarity. In paragraph (f), the second sentence is made into a separate paragraph (g) entitled "Removals for sales to retailers only". Paragraphs (g) and (h) are accordingly re-numbered as paragraphs (h) and (i).

One comment from industry, relating to the paragraph entitled "Change in wholesale price", suggested that the wholesale price tax base should not change until the actual effective date of the price change. If the change proposed by this comment were to be adopted, a manufacturer or importer would be able to remove and taxpay a large quantity of cigars during the period immediately preceding an intended wholesale price increase, thereby taking advantage of the lower tax rate. The cigars could then be sold after the effective date of the price increase, and the manufacturer or importer would obtain a tax advantage. Another industry suggestion with respect to this issue proposed that the tax rate should change as of the date a price change is announced, with an exception for cigars "removed to a distribution warehouse, controlled by the manufacturer, in anticipation of the change". This suggestion avoids some difficulties of the other suggestion discussed above, but it is still unacceptable because it would in effect permit the manufacturer to unilaterally determine the time of change in tax rate. The Bureau believes that the intent of Pub. L. 94-455 (and the predecessor statutory provisions) is that large cigars be taxed on the basis of the taxable price at which they will in fact be sold, to the best of the taxpayer's ability to determine or predict that price at the time of the taxable removal. Under the regulations as proposed and adopted, cigars removed even before the announcement or effective date of an intended price change, which the manufacturer or importer has reason to know will not be sold to retailers until after the effective date, are taxed according to the new wholesale price. The Bureau feels that the rule as adopted is in harmony with the intent of Congress and adequately protects the public revenue while not imposing any unusual administrative burden on the taxpayer. Furthermore, the rule as adopted is patterned after Revenue Ruling 69-470 (Internal Revenue Cumulative Bulletin 1969-2, 274), which provided a similar rule regarding retail price changes under the former system of taxation.

Another industry comment was made that the rule as proposed was unclear and therefore "legally defective under the 'void for vagueness' doctrine". The Bureau disagrees with this contention. As mentioned above, a basically similar rule has been in effect since 1969, under Revenue Ruling 69-470, without any known difficulties of interpretation by either government or industry. Nevertheless, in the interest of maximum public understanding, this paragraph has been re-written in what is hoped will be perceived as clearer language.

(4) *Marks on packages.* Several industry comments objected to the requirement that wholesale price be marked on the cigar packages. The most significant objection was that the cost of this requirement would be excessive to industry without corresponding benefits to the government. The Bureau feels that more time will be required to study the industry claims. Consequently, the effective date of the price marking requirements in §§ 270.214, 275.73, 290.186, 290.253, and 295.44 will be postponed for at least six months. If the Bureau decides, after thorough study, to make these requirements effective, notification in the FEDERAL REGISTER will be published at least 90 days prior to the effective date. In the interim period, manufacturers and importers will be permitted to use up existing stocks of packaging materials imprinted with the previously required information, without any additional package markings. Consequently, after February 1, 1977, and until further notice, no wholesale price information will be required on packages. During the next three or four months, the Bureau will conduct a study to determine what problems are experienced without such package information, and the relative significance of the problems in relation to operational problems and costs of including wholesale price information on the packages. Additional input from interested members of the public which would be useful to this study is solicited. Because a notice of proposed rulemaking has already been published, and because the present document in effect extends the public comment period with respect to this subject, no additional notice of proposed rulemaking will be published unless the Bureau decides to propose requirements that are substantially different from those published in the notice of December 3, 1976.

(5) *Manufacturers' records.* A manufacturer of cigars commented that, because of multiple wholesale prices, the record of removals subject to tax set forth in § 270.183(e) would present a significant burden for him. He stated that many of his sales are of private label cigars to retailers, and it would be relatively easy for him to calculate the total billing price for each day, but it would not be so easy to compute the number of cigars removed at each wholesale price. Part of this complexity he attributes to the myriad of private brand cigars and variations he produces. Consequently, he suggested as an alternative to the proposed requirement that only the total wholesale price of each day's removals be required to be shown in the record. The Bureau recognizes that record-keeping under the new system of taxation may be more detailed for some manufacturers because there will be more wholesale prices than there were tax classes under the former system. However, it is not felt that there is sufficient basis at present for a major change in record-keeping procedure such as the one proposed. The requirement for removals to be shown separately by wholesale price is expected to be important for auditing purposes, and is essential if

statistics in the proposed form are to be provided. On the other hand, this industry comment does call attention to a possible simplification for manufacturers which should receive further consideration. If study indicates that a change such as the one proposed is practical and would be beneficial, a notice of proposed rulemaking on this subject may be published in the future. Public comments which would be helpful in this study are solicited.

Another industry comment pointed out that in § 270.183(e), the exception to permit cigars with a wholesale price of more than \$235.294 per thousand to be shown without further price breakdown, was omitted. This omission was deliberate. The purpose of requiring exact wholesale price in this instance is to facilitate audit of records, since it is expected that commercial records of removals will indicate exact wholesale prices. The situation in § 270.183(i) is different, since in that case package markings without specific information for wholesale prices above \$235.294 per thousand may be the only source of the required information. During the period of suspension of package marking requirements, as discussed above, only the total number of tax determined large cigars need be shown under § 270.183(i). Section 270.183(i) is amended accordingly.

(6) *Claims by manufacturers and importers.* Because of the period of suspension of package marking requirements, claims by manufacturers and importers for refund or credit of tax on large cigars withdrawn from the market must be for the lowest tax rate on that brand and size of cigar established during the record retention period (three to four years), unless a higher amount can be clearly demonstrated by specific documentation. This provision will cover situations when the absence of package markings indicating wholesale price may make it impossible to determine the exact amount to be refunded or credited. Sections 270.311, 275.170, and 275.172 are amended to include this new provision.

(7) *Export warehouses.* During the period of suspension of package marking requirements, the records, reports, and inventories under §§ 290.142, 290.143, and 290.147 need only show the total number of large cigars. Wholesale price need not be shown, since the absence of package markings may make it impossible to determine the applicable wholesale price. Section 290.143 is amended because it contains a specific reference to wholesale price. When it is necessary for export warehouse proprietors to establish tax liability on large cigars, the liability will be at the maximum rate of \$20 per thousand unless a lower tax liability can be clearly demonstrated. This provision applies to completion of Form 2150 and to establishment of tax liabilities on shortages and losses. Section 290.67 is amended to include this new provision.

(8) *Wholesale price of imported cigars.* The U.S. Customs Service pointed out that there might be procedural problems

under the proposed § 275.39, as it related to liquidation of import entries. Consequently, slight modifications have been made in § 275.39(i) as adopted.

(9) *Effective date.* Several industry comments stressed the need for a minimum of thirty days between publication and effective date, in order to comply with anticipated package marking requirements. Since these package marking requirements are being suspended for at least another six months, this objection to a February 1 effective date is no longer relevant. The proposed amendments not related to package markings are being adopted in virtually the same form as published in the FEDERAL REGISTER on December 3, 1976. All interested parties have had constructive notice of the amendments since that time, and the Bureau believes that most interested persons have had actual notice. Since the amendments are necessary to implement section 2128 of Pub. L. 94-455, which permits the cigar industry to take advantage of the reduced tax rate effective February 1, 1977, it is found that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), for making the amended regulations effective less than thirty days from the date of publication. Accordingly, these regulations shall become effective on February 1, 1977, which is the effective date of section 2128 of Pub. L. 94-455.

The following regulations are issued under the authority contained in 28 U.S.C. 7805 (68A Stat. 917).

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

PARAGRAPH A. The regulations in 27 CFR Part 270 are amended as follows:

1. Section 270.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "regional regulatory administrator", and "ATF officer" are added; the introductory language is re-worded; the definitions of "Commissioner" and "regional commissioner" are deleted; and the definitions of "assistant regional commissioner", "determined or determination", "Director", "internal revenue officer", and "region" are revised. As amended, § 270.11 reads as follows:

§ 270.11 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.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and func-

tions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

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.

Cigarette. * * *

Determined or determination. When used with respect to the tax on cigars and cigarettes, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C.

Internal revenue officer. An ATF officer as defined in this section.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement), as provided in § 270.22(i).

2. Section 270.21 is amended to reflect the new large cigar tax rate of 8½ percent of the wholesale price, which replaces the old system of tax classes based on the retail price. As amended, § 270.21 reads as follows:

§ 270.21 Cigar tax rates.

(a) *Present rates.* On cigars, manufactured in or imported into the United States, the following taxes are imposed by law:

- (1) *Small cigars.* 75 cents per thousand.
- (2) *Large cigars.* 8½ percent of the wholesale price, but not more than \$20 per thousand.

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, are taxed at the same rate as similar cigars removed for sale.

(b) *Previous rates for large cigars.* Prior to February 1, 1977, the following tax rates were in effect for large cigars:

(1) If removed to retail at not more than 2½ cents each, \$2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, \$3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, \$4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, \$7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, \$10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, \$15 per thousand; and

(7) If removed to retail at more than 20 cents each, \$20 per thousand.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 270.22 is completely revised to set out rules for properly determining the wholesale price of large cigars. As revised, § 270.22 reads as follows:

§ 270.22 Determination of wholesale price of large cigars.

(a) *General rule.* All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the manufacturer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 270.11 and in this section. "Suggested delivered price" is the price at which the manufacturer intends for the cigars to be sold to retailers, and based on which the manufacturer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the manufacturer is the best evidence of whether the manufacturer's suggested delivered price is properly set. While it is not expected that a manufacturer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the manufacturer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section).

(b) *Pricing for different packaging.* If different bona fide wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size

(1) Are distinctive from other such cigars because of physical imperfections,

(2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) The manufacturer has a separate wholesale price for such cigars, then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If a manufacturer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the manufacturer making the taxable removals.

(g) *Removals for sale to retailers only.* If a manufacturer makes taxable removals of a brand and size of cigars for arm's length sales to retailers only, the tax is based on the manufacturer's selling price, applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 270.11.

(h) *Change in wholesale price.* When a manufacturer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the manufacturer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the manufacturer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision which can reasonably be expected to be sold to retailers under the new wholesale price must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change

considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the manufacturer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 270.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by manufacturers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If a manufacturer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the manufacturer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the manufacturer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part, pending the determination by the Assistant Director (Regulatory Enforcement). If the wholesale price used by the manufacturer for tax payment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the manufacturer shall make an adjustment in his tax return to correct the amount of tax paid. Any tax adjustment shall be made on the return covering the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

4. Section 270.162 is amended to show that the tax on large cigars is now based on the wholesale price rather than the tax class, with a maximum tax of \$20 per thousand on cigars with a wholesale price of more than \$235.294 per thousand. A change in terminology is also made which reflects the establishment of the Bureau of Alcohol, Tobacco and Firearms. The amended portions of § 170.162 read as follows:

§ 270.162 Semimonthly tax return.

(a) *Requirement for filing.* Every manufacturer of tobacco products shall file, for each of his factories, a semi-monthly tax return on Form 3071, in triplicate, with the district director of the internal revenue district in which the factory is located, for each return period, including any period during which a manufacturer begins or discontinues business. He shall file the return at the time specified in § 270.165 regard-

less of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, where the manufacturer requests by letter, in duplicate, and the regional regulatory administrator grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for any period for which tax is not due or payable. The manufacturer shall retain the receipted copy of each tax return transmitted to him by the district director.

(b) *Information to be included.* The manufacturer shall show on the return (1) His employer identification number, (2) The numbers of small cigarettes, large cigarettes, and small cigars removed subject to tax during the return period, (3) The number and the total wholesale price of all large cigars with a wholesale price of not more than \$235.294 per thousand which were removed subject to tax during the return period, (4) The number of large cigars with a wholesale price of more than \$235.294 per thousand which were removed subject to tax during the return period, and (5) The tax due. The manufacturer shall serially number each return on Form 3071, commencing with the number "1" on the first return filed in any calendar year, and shall make a written declaration that the return is made under penalties of perjury.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703); sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

5. Section 270.183 is amended to require that large cigars be recorded by wholesale price rather than by the former tax classes, and to provide a breakdown of products removed for "export purposes" to show the respective quantities removed for export directly from the factory and transferred to export warehouses. During the suspension of package marking requirements, only the total number of large cigars on which the tax has been determined need be shown. As amended, § 270.183 reads as follows:

§ 270.183 Record of cigars and cigarettes.

The record of a manufacturer of tobacco products shall show the date and total quantity of all cigars and cigarettes, by kind (small cigars—large cigars; small cigarettes—large cigarettes);

- (a) Manufactured;
- (b) Received in bond by—
 - (1) Transfer from other factories,
 - (2) Release from customs custody, and
 - (3) Transfer from export warehouses;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (by wholesale price for large cigars);
- (f) Removed, in bond, for—
 - (1) Export,
 - (2) Transfer to export warehouses,
 - (3) Transfer to other factories,
 - (4) Use of the United States,
 - (5) Experimental purposes of factory premises;

(g) Otherwise disposed of, without determination of tax, by—

- (1) Consumption by employees on factory premises,
- (2) Consumption by employees of factory premises, together with the number of employees to whom furnished,
- (3) Use for experimental purposes on factory premises,
- (4) Loss,
- (5) Destruction, and
- (6) Reduction to tobacco;
- (h) Disclosed as a shortage by inventory; and
- (i) On which the tax has been determined (by wholesale price for large cigars, except that those over \$235.294 per thousand may optionally be shown as if the wholesale price were \$236 per thousand) and which are—
 - (1) Received, and
 - (2) Disposed of.

However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 270.214(d)), the record under paragraph (i) of this section relating to large cigars on which the tax has been determined need only show the total number of these cigars, until notification in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

6. Section 270.184 is amended to require the records supporting removals of large cigars subject to tax to show the wholesale price, rather than the tax class under the former system of taxation. As amended, § 270.184 reads as follows:

§ 270.184 Record in support of removals subject to tax.

Every manufacturer of tobacco products shall keep a supporting record of cigars and cigarettes removed from his factory subject to tax and shall make entries in the record at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, and the kind and quantity of cigars or cigarettes removed. In the case of large cigars the wholesale price shall also be shown, except that if the price is more than \$235.294 per thousand, an indication in the supporting record to that effect will suffice. Where the cigars or cigarettes are delivered within the factory directly to the consumer, the name and address of the person to whom delivered need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. Such invoices or other commercial records which do not show specifically the tax classification of cigars or cigarettes (including wholesale price of large cigars) will be acceptable if they contain adequate information to readily enable an ATF officer to ascertain the applicable tax.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

7. A new § 270.187 is added to require that manufacturers keep records of the wholesale prices of large cigars. The new § 270.187 reads as follows:

§ 270.187 Record of large cigar wholesale prices.

Every manufacturer of tobacco products who removes large cigars from his factory shall keep the records required by this section.

(a) *Basic record of wholesale prices.*

The manufacturer shall keep a record to show each wholesale price (suggested delivered price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 270.22(h)), which is applicable to large cigars removed. No later than the tenth business day in January of each year the manufacturer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The manufacturer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.*

The manufacturer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show that information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 270.202(b).

8. The existing material in § 270.202 is designated as paragraph (a), and a new paragraph (b) is added to require reports concerning wholesale prices of large cigars. As revised, § 270.202 reads as follows:

§ 270.202 Reports.

(a) *Monthly report.* * * *

(b) *Report of wholesale prices for large cigars.* Every manufacturer of tobacco products who removes large cigars from his factory, and who issues announcements such as those described in this paragraph, shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the manufacturer issues within his organization or to the trade about establishment or changes of wholesale prices. Only one copy of an announcement need be submitted even if it relates to cigars removed subject to

tax from more than one factory. If this copy does not show the actual date when the announcement was issued, or identify the factory or factories from which removals of the cigars covered by the announcement are made, then the copy shall be annotated to show this information. The factory or factories shall be identified either by permit number(s) or by name, city and state. If an intra-organizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the manufacturer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5722).)

9. A new § 270.203 is added to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. New § 270.203 reads as follows:

§ 270.203 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

(a) *Class A.* large cigars with a wholesale price of not more than \$33.00 per thousand.

(b) *Class B.* large cigars with a wholesale price of more than \$33.00 per thousand but not more than \$51.00 per thousand.

(c) *Class C.* large cigars with a wholesale price of more than \$51.00 per thousand but not more than \$66.00 per thousand.

(d) *Class D.* large cigars with a wholesale price of more than \$66.00 per thousand but not more than \$105.00 per thousand.

(e) *Class E.* large cigars with a wholesale price of more than \$105.00 per thousand but not more than \$120.00 per thousand.

(f) *Class F.* large cigars with a wholesale price of more than \$120.00 per thousand but not more than \$154.00 per thousand.

(g) *Class G.* Large cigars with a wholesale price of more than \$154.00 per thousand but not more than \$235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price of more than \$235.294 per thousand.

10. Section 270.214 is revised to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 270.214 reads as follows:

§ 270.214 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than \$235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were \$236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of \$80.00 per thousand the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of \$65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price for \$450 per thousand, the wholesale price would be expressed as either "MP450," "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d)), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of \$80 per thousand and 20 Panatelas with a wholesale price of \$100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

10a. Section 270.311 is amended to indicate that during the suspension of package marking requirements (see § 270.214(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale

price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 270.311(b) reads as follows:

§ 270.311 Action by claimant.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 270.214(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 270.185) except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the manufacturer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. B. The regulations in 27 CFR Part 275 are amended as follows:

1. Section 275.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "ATF officer", "Chief, Puerto Rico Operations", "regional regulatory administrator", and "TSUSA" are added; the introductory language is re-worded; and the definitions of "assistant regional commissioner", "collector of customs", "computation or computed", "determination or determined", "internal revenue officer", and "regional director" are modified. As amended, § 275.11 reads as follows:

§ 275.11 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.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

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.

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms.

Collector of customs. A district director of customs as defined in this section.

Computation or computed. When used with respect to the tax on cigars and cigarettes of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars being shipped to the United States; that the payment, in Puerto Rico, of the tax on such products is to be deferred under Subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated, that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or determination. When used with respect to the internal revenue tax on cigars, cigarettes, and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

Internal revenue officer. An ATF officer as defined in this section.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional director. A regional regulatory administrator as defined in this section.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

TSUSA. The Tariff Schedules of the United States Annotated, as published by the United States International Trade Commission.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(1).

2. Section 275.31 is amended to reflect the new tax rate on large cigars, which is 8½ percent of the wholesale price. The old system of tax classes has been changed by statute. As amended, § 275.31 reads as follows:

§ 275.31 Cigars.

(a) **Present rates.** On cigars imported or brought into the United States, the following internal revenue taxes are imposed by law:

- (1) **Small cigars.** 75 cents per thousand.
- (2) **Large cigars.** 8½ percent of the wholesale price, but not more than \$20 per thousand.

Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale.

(b) **Previous rates for large cigars.** Prior to February 1, 1977, the following tax rates were in effect for large cigars:

- (1) If removed to retail at not more than 2½ cents each, \$2.50 per thousand;
- (2) If removed to retail at more than 2½ cents each and not more than 4 cents each, \$3 per thousand;
- (3) If removed to retail at more than 4 cents each and not more than 6 cents each, \$4 per thousand;
- (4) If removed to retail at more than 6 cents each and not more than 8 cents each, \$7 per thousand;
- (5) If removed to retail at more than 8 cents each and not more than 15 cents each, \$10 per thousand;
- (6) If removed to retail at more than 15 cents each and not more than 20 cents each, \$15 per thousand; and
- (7) If removed to retail at more than 20 cents each, \$20 per thousand.

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1414, as

amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 275.37 is revised to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. Also, the center heading above § 275.37 is modified to reflect the change from tax classes to statistical classes. As amended, the center heading and § 275.37 read as follows:

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

§ 275.37 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

- (a) **Class A.** Large cigars with a wholesale price of not more than \$33.00 per thousand,
- (b) **Class B.** Large cigars with a wholesale price of more than \$33.00 per thousand but not more than \$51.00 per thousand,
- (c) **Class C.** Large cigars with a wholesale price of more than \$51.00 per thousand but not more than \$66.00 per thousand,
- (d) **Class D.** Large cigars with a wholesale price of more than \$66.00 per thousand but not more than \$105.00 per thousand,
- (e) **Class E.** Large cigars with a wholesale price of more than \$105.00 per thousand but not more than \$120.00 per thousand,
- (f) **Class F.** Large cigars with a wholesale price of more than \$120.00 per thousand but not more than \$154.00 per thousand,
- (g) **Class G.** Large cigars with a wholesale price of more than \$154.00 per thousand but not more than \$235.294 per thousand, and
- (h) **Class H.** Large cigars with a wholesale price of more than \$235.294 per thousand.

4. A new § 275.39 is added to set out rules for properly determining the wholesale price of large cigars. New § 275.39 reads as follows:

§ 275.39 Determination of wholesale price of large cigars.

(a) **General rule.** All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the importer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 275.11 and in this section. "Suggested delivered price" is the price at which the importer intends for the cigars to be sold to retailers and based on which the importer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the importer is the best evidence of whether the importer's suggested delivered price is properly set. While it is not expected that an

importer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the importer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section.)

(b) *Pricing for different packaging.* If different wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size

- (1) Are distinctive from other such cigars because of physical imperfections,
- (2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and
- (3) The importer has a separate wholesale price for such cigars; then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If an importer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If an importer makes taxable removals of cigars for exclusive distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the importer making the taxable removals.

(g) *Removals for sales to retailers only.* If an importer makes taxable removals of cigars exclusively for arm's length sales to retailers only, the tax is based on the importer's selling price applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 275.11.

(h) *Change in wholesale price.* When an importer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the importer had reason to believe that the cigars would be sold under the

new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the importer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the importer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 275.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by importers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If an importer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the importer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the importer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part pending the determination by the Assistant Director (Regulatory Enforcement). On each entry document on which the importer so estimates the tax, he shall include a conspicuous statement on all copies as follows: "Request this entry not be liquidated until ATF has ruled on the taxable wholesale price of these cigars." If the wholesale price used by the importer for tax payment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the importer shall pay any additional amount due or make claim for overpayment by advising the district director of customs of the additional amount due or overpaid, in accordance with customs procedure. If the wholesale price used by the importer is the same as that determined by the Assis-

tant Director (Regulatory Enforcement), the importer shall so notify the district director of customs and request that liquidation of the entry proceed. The importer shall take the appropriate action within fifteen calendar days following the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

5. Section 275.73 is received to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 275.73 reads as follows:

§ 275.73 Notice for cigars.

(a) *General requirement.* Every package of cigars, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than \$235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were \$236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of \$80.00 per thousand the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of \$65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of \$450 per thousand, the wholesale price would be expressed as either "IP450", "IPDEK", "IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d)), the number of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of \$80 per thousand and 20 Panatelas with a wholesale price of \$100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20

Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 275.81(c) (4) is amended to require importers to show, on the customs entry form, information about the wholesale price of large cigars which is necessary for computation of the internal revenue tax. As amended, § 275.81(c) (4) reads as follows:

§ 275.81 Taxpayment.

(c) *Required information.*

(4) *For cigars.* The importer will show:

(i) The number imported under each TSUSA item number;

(ii) For large cigars with a wholesale price of not more than \$235.294 per thousand, the number and total wholesale price of such cigars;

(iii) For large cigars with a wholesale price of more than \$235.294 per thousand, the number of such cigars;

(iv) The applicable tax rate (\$0.75 per thousand for small cigars, 8½ percent of the wholesale price for large cigars with a wholesale price of not more than \$235.294 per thousand, and \$20.00 per thousand for large cigars with a wholesale price of more than \$235.294 per thousand); and

(v) The tax due.

(68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

7. Section 275.105 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.105 reads as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such cigars, cigarettes, and cigarette papers and tubes. The Officer-in-Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Regional Regulatory Administrator,

Bureau of Alcohol, Tobacco and Firearms, New York, N.Y. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the ATF officer assigned by the Chief, Puerto Rico Operations, to inspect the cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the cigars, cigarettes, and cigarette papers and tubes, or, if less than the quantity of cigars, cigarettes, and cigarette papers and tubes covered by the return is released, to show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand, (c) The number of large cigars with a wholesale price of more than \$235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes, in fact released and will return such copy to the taxpayer.

(68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

8. Section 275.106 is amended to replace the detailed instructions for completion, by the ATF officer, of Form 3074 (including an instruction for "class of large cigars") with a simplified instruction for completion of "other information required by that form." Preparation of Form 3075 will be required of the shipper, rather than the ATF officer, although the ATF officer must still certify that the tax has been prepaid. Nomenclature changes are also made to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.106 reads as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The ATF officer, assigned to inspect Puerto Rican cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States in accordance with § 275.105, will prepare, for each shipping container, a statement on Form 3074 that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed Form 3074 to the outside of each shipping container in which the articles are packed. Such statement, Form 3074, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. In addition, the shipper will prepare Form 3075, in quintuplicate, identifying the cigars, cigarettes, and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid thereon. The ATF officer will then (a) Present one copy to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; (b)

Promptly mail two copies to the district director of customs at the port of entry; (c) Mail one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; and (d) Retain the remaining copy. Noncommercial mail shipments of cigars, cigarettes, and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

9. Section 275.107 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.107 reads as follows:

§ 275.107 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss; the cigars, cigarettes, and cigarette papers and tubes reported shipped in such container; and the cigars, cigarettes, and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars, cigarettes, or cigarette papers or tubes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand, (c) The number of large cigars with a wholesale price of more than \$235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes. If the district director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the cigars, cigarettes, and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

10. Section 275.110 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to

make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.110 reads as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where cigars or cigarettes are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer shall calculate the tax and shall prepare an original and six copies of Form 2987. He shall enter on such form under the penalties of perjury (a) The numbers of small cigarettes, large cigarettes, and small cigars to be shipped, (b) The number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand to be shipped, (c) The number of large cigars with a wholesale price of more than \$235.294 per thousand to be shipped, (d) The amount of the tax to be paid on such products under the provisions of this subpart, and (e) The name and address of the consignee in the United States to whom such products are being shipped; and shall date and execute the agreement to pay the amount of tax which shall be computed on such products covered by the Form 2987. The Form 2987 shall be serially numbered by the bonded manufacturer beginning with the number "1" on January 1 of each year. The bonded manufacturer shall then request the Chief, Puerto Rico Operations, to assign an ATF officer to inspect the cigars and cigarettes, verify the tax calculation with respect to such products, and release such products for shipment in accordance with § 275.111. The bonded manufacturer shall present all copies of the prepared Form 2987 to the ATF officer assigned. The date of certification of Form 2987 by the ATF officer shall be treated as the date of computation of tax. Cigars and cigarettes may be released for shipment to the United States in accordance with the provisions of this section only after computation of tax.

11. Section 275.111 is amended to rephrase the instructions for completion, by the ATF officer, of Form 2989. The phrase, "quantity and kind of cigars and cigarettes and class of large cigars" is replaced with the simpler phrase, "other information required by that form." Nomenclature changes are also made to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.111 reads as follows:

§ 275.111 Inspection of shipment and certification by ATF officer.

On receipt of the original and six copies of the Form 2987 completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the cigars and cigarettes covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the cigars and cigarettes for shipment to the United

States. Such officer will then promptly distribute the certified Form 2987 by (a) Mailing the original to the Officer-in-Charge; (b) Mailing two copies to the district director of customs at the port of entry; (c) Mailing one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; (d) Returning two copies to the bonded manufacturer who will attach one copy to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; and (e) Submitting one copy to the Chief, Puerto Rico Operations. The ATF officer will also prepare, for each shipping container, a statement on Form 2989 that the tax on the cigars and cigarettes to be shipped to the United States has been computed and show the name and address of the bonded manufacturer, date of tax computation, and the other information required by that form. The bonded manufacturer shall affix the completed Form 2989 to the outside of each shipping container in which the products are packed. Such statement, Form 2989, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container.

12. Section 275.112 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.112 reads as follows:

§ 275.112 Tax return.

The internal revenue taxes imposed by 26 U.S.C. 7652(a), with respect to cigars and cigarettes manufactured in Puerto Rico and shipped to the United States on computation of tax under the provisions of this subpart shall be paid on the basis of a semimonthly tax return. The bonded manufacturer of such products shall file with the Officer-in-Charge a tax return, Form 2988, in triplicate, for each semimonthly return period. The bonded manufacturer shall show on the return (a) The serial numbers of all Forms 2987 certified during the return period, (b) The numbers of small cigarettes, large cigarettes, and small cigars upon which the tax has been computed during the return period, (c) The number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand upon which the tax has been computed during the return period, (d) The number of large cigars with a wholesale price of more than \$235.294 per thousand upon which the tax has been computed during the return period, and (e) The tax due. The bonded manufacturer shall execute the return, Form 2988, under the penalties of perjury. He shall file a return for each return period at the time specified in § 275.113, regardless of whether tax is due for that return period. However, where the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and

Firearms, New York, N.Y., grants specific authorization, the bonded manufacturer need not file a tax return during the term of such authorization for any period in which tax liability was not incurred under the provisions of this subpart.

13. Section 275.117 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.117 reads as follows:

§ 275.117 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 2987 is contained in the shipment. He will then execute his certificate on the three copies of the Form 2987 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the cigars and cigarettes reported shipped in such container, and the cigars and cigarettes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars and cigarettes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand, and (c) The number of large cigars with a wholesale price of more than \$235.294 per thousand. If the district director of customs finds that the full amount of tax due has not been computed, he will require the difference due to be paid to him prior to release of the cigars and cigarettes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

14. Section 275.139 is amended to replace "class" of large cigars with "wholesale price", and to add a qualification that if the wholesale price is more than \$235.294 per thousand, it may be shown as if it were \$236 per thousand. During the suspension of package marking requirements (see § 275.73(d)), only the total number of large cigars received need be shown. As amended, § 275.139 reads as follows:

§ 275.139 Records.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives cigars, cigarettes, or cigarette papers or tubes of Puerto Rican manufacture, without payment of internal revenue tax, under his bond, shall keep a separate record which will show the date and quantity and kind of cigars and cigarettes, the wholesale price of large cigars (if not more than \$235.294 per thousand; if more than this, the wholesale price may be

shown as if it were \$236 per thousand), the date and number of books or sets of cigarette papers of each different numerical content, and the number of cigarette tubes: (a) Received, (b) Removed subject to tax, (c) Removed for tax-exempt purposes, and (d) Otherwise disposed of. However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 275.73(d)), the record under (a) of large cigars received need only show the total number of these cigars, until notification is given in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

15. A new § 275.153 is added to require that proprietors of customs class 6 manufacturing warehouses, who remove large cigars for consumption in the United States, keep records and submit reports concerning the wholesale prices for such cigars. As added, § 275.153 reads as follows:

§ 275.153 Records and reports.

A proprietor of a customs bonded manufacturing warehouse, class 6, who removes cigars for sale or consumption in the United States, shall keep records and make reports as prescribed in §§ 275.181-183.

15a. Section 275.170 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.170 reads as follows:

§ 275.170 Destruction or reduction to tobacco, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific

documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

15b. Section 275.172 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.172 reads as follows:

§ 275.172 Return to nontaxpaid status, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

16. A new Subpart J is added immediately following § 275.174, to require that importers of large cigars keep records and submit reports concerning the wholesale prices and taxpayment of large cigars imported for sale within the United States. As added, the new Subpart J reads as follows:

Subpart J—Records and Reports

Sec.

- 275.181 Records of large cigars.
- 275.182 Availability of records.
- 275.183 Report of wholesale prices for large cigars.

Subpart J—Records and Reports

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States shall keep the records required by this section.

(a) *Basic record of wholesale prices.* The importer shall keep a record to show each wholesale price (suggested delivery price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(i)), which is applicable to large cigars removed (entered or withdrawn). No later than the tenth business day in January of each year the importer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The importer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed (entered or withdrawn) which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.* The importer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show this information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 275.183.

(c) *Copies of entry and withdrawal forms.* The importer shall keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of wholesale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and wholesale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the regional regulatory administrator finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he may so notify the importer in writing, after which time the importer shall keep the record required under paragraph (a) of this section.

§ 275.182 Availability of records.

The records required under § 275.181 shall be kept by the importer at his usual place of business unless otherwise authorized in writing by the regional regulatory administrator, and shall be made

available for inspection by any ATF officer upon his request. (For retention period, see § 275.22.)

§ 275.183 Report of wholesale prices for large cigars.

Every person who imports large cigars for sale within the United States and who issues announcements such as those described in this section shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the importer issues within his organization or to the trade about establishment or change of wholesale prices. If this copy does not show the actual date when issued, it shall be annotated to show this information. If an intraorganizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the importer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued. (See § 275.181 for requirement to keep records of large cigar wholesale prices.)

PART 290—EXPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

PAR. C. The regulations in 27 CFR Part 290 are amended as follows:

1. The Table of Contents is amended to delete §§ 290.12 through 290.54 and to group all definitions into a single section, § 290.11. The amended portion of the Table of Contents reads as follows:

* * * * *

Subpart B—Definitions

Sec.
290.11 Meaning of terms.

* * * * *

Subpart C—General

* * * * *

§§ 290.12—290.54 [Deleted]

2. Sections 290.12 through 290.54 are deleted. The definitions are grouped together into one section, § 290.11, for the sake of conformity to other regulations. Further, the definitions of "assistant regional commissioner", "Director, Alcohol, Tobacco and Firearms Division", "director of customs" and "internal revenue officer" are modified and the definition of "regional commissioner" is dropped to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "district director of customs", "regional regulatory administrator", and "wholesale price" are added. As amended, § 290.11 reads as follows:

§ 290.11 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.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

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.

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 definition of "cigarette" given in this section).

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

(b) 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 (a) of the section.

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

Cigarette papers. Taxable books or sets of cigarette papers.

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

Customs warehouse. A customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

Director, or Director, Alcohol, Tobacco and Firearms Division. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226

Director of customs. A district director of customs as defined in this section.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Exportation or export. A severance of cigars, cigarettes, or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of cigars, cigarettes, and

cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-mile limit or international boundary, as the case may be.

Export warehouse. A bonded internal revenue warehouse for the storage of cigars, cigarettes, 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 cigars, cigarettes, or cigarette papers and tubes in which he carries on such business.

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

In bond. The status of cigars, cigarettes, 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 or an export warehouse, (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.

I.R.C. The Internal Revenue Code of 1954, as amended.

Internal revenue officer. An ATF officer as defined in this section.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, except that such term shall not include (a) A person who produces cigars or cigarettes solely for his own personal consumption or use; or (b) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which cigars, cigarettes, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer.

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

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Removal or remove. The removal of cigars, cigarettes, or cigarette papers or

tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

State. "State" shall, for the purposes of this part, be construed to include the District of Columbia.

Tobacco products. Cigars and cigarettes. The term does not include smoking tobacco, chewing tobacco, or snuff.

United States. "United States" when used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

Zone operator. The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

2a. Section 290.67 is amended to provide that, during the suspension of package marking requirements (see §§ 290.186 (d) and 290.253 (d)), tax liability on large cigars must be based on the maximum tax rate of \$20 per thousand, unless a lower rate can be clearly demonstrated. The existing material in § 290.67 is redesignated as paragraph (a), and the new provision is placed in a new paragraph (b). As amended, § 290.67 reads as follows:

§ 290.67 Payment of tax.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax liability on the contents, because of the suspension of package notice requirements as provided in §§ 290.186 (d) and 290.253 (d), and because packages indicating the former tax classes may continue to be used without alteration. Consequently, the amount of tax liability shall be based on the maximum tax rate of \$20 per thousand unless the person liable for the tax establishes that a lower tax rate is applicable.

2b. Section 290.143 is amended to replace "taxable class" with "wholesale price" in relation to large cigars, and to change terminology to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. During the suspension of package marking requirements (see §§ 290.186 (d) and 290.253 (d)), only

the total number of all large cigars held need be shown. As amended, § 290.143 reads as follows:

§ 290.143 General.

Every export warehouse proprietor shall make a true and accurate inventory on Form 3373 to the regional regulatory administrator, of the numbers of (a) Small cigars, (b) Large cigars at each wholesale price of not more than \$235.294 per thousand, (c) Large cigars with a wholesale price of more than \$235.294 per thousand, (d) Small cigarettes, (e) Large cigarettes, (f) Cigarette papers, and (g) Cigarette tubes held by him at the times specified in this subpart. Due to the suspension of requirements for wholesale price to be shown on packages (see §§ 290.186 (d) and 290.253 (d)), only the total number of large cigars held need be shown on the inventory, until notification is given in the FEDERAL REGISTER. This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon his request.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5721))

3. Section 290.181 is amended to change "class designation" to "tax classification", reflecting the change in taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.181 reads as follows:

§ 290.181 Packages.

All cigars, cigarettes, and cigarette papers and tubes shall, before removal, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

4. Section 290.186 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended § 290.186 reads as follows:

§ 290.186 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before removal from a factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price

for each thousand cigars, except that for cigars with a wholesale price of more than \$235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were \$236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=3, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of \$80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of \$65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of \$450 per thousand, the wholesale price would be expressed as "MP450", "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22 (d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of \$80 per thousand and 20 Panatelas with a wholesale price of \$100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

5. Section 290.248 is amended to replace "class designation" with "tax classification" to reflect the different taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.248 reads as follows:

§ 290.248 Packages.

Cigars shall, before withdrawal under this part, be put up by the customs warehouse proprietor in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 290.253 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of

these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 290.253 reads as follows:

§ 290.253 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before withdrawal from a customs warehouse under this subpart, have adequately imprinted thereon or on a label securely affixed thereto the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars, such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than \$235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were \$236 per thousand. The price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0, and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of \$80.00 per thousand, the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of \$65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of \$450 per thousand, the wholesale price would be expressed as "IP450", "IPDEK", "IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of \$80 per thousand and 20 Panatelas with a wholesale price of \$100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20 Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when

the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

PART 295—REMOVAL OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

PAR. D. The regulations in 27 CFR Part 295 are amended as follows:

1. Section 295.11 is amended to improve clarity and to reflect the change in taxation of large cigars and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "regional regulatory administrator" and "wholesale price" are added; the definitions of "Commissioner" and "regional commissioner" are deleted; the introductory language is rephrased; and the definitions of "assistant regional commissioner", "Director", "internal revenue officer", and "region" are modified. As amended, § 295.11 reads as follows:

§ 295.11 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.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

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.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

Internal revenue officer. An ATF officer as defined in this section.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to

retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 295.44 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document.

As amended § 295.44 reads as follows:

§ 295.44 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars," the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than \$235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were \$236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of \$80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of \$65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of \$450 per thousand, the wholesale price would be expressed as either "MP450", "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d) of this chapter), the numbers of cigars

at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of \$80 per thousand and 20 Panatelas with a wholesale price of \$100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 292, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

3. Section 295.51 is amended to change "class" of large cigars to "wholesale price," and to change "internal revenue officer" to "ATF officer." As amended, § 295.51 reads as follows:

§ 295.51 Supporting record.

Every manufacturer who removes cigars, cigarettes, and cigarette papers and tubes under this part shall, in addition to the records kept under Part 270 of this chapter, keep a supporting record of such removals and shall make appropriate entries therein at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the Federal agency to which shipped or delivered, the quantity and, with respect to large cigars, wholesale price for tax purposes. Appropriate entries shall also be made in the supporting record of any cigars, cigarettes, or cigarette papers or tubes removed under this part which are returned to the factory. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. The supporting record shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. E. The regulations in 27 CFR Part 296 are amended as follows:

1. Section 296.72 is amended to rephrase the introductory language, to delete the definition of "Commissioner", to add definitions of "wholesale price", "region", and "regional regulatory administrator", and to modify the definitions of "assistant regional commissioner" and "Commissioner of Customs" to reflect the change in the name of the U.S. Customs Service and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.72 reads as follows:

§ 296.72 Meaning of terms.

When used in this subpart, 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.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, D.C.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Wholesale price. The manufacturer's or importer's suggested delivered price, at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 296.74 is amended to replace "tax class" of large cigars with "wholesale price," to change the examples to reflect the new tax structure imposed by legislation, and to make terminology changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.74 reads as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the regional regulatory administrator of the region in which the cigars, cigarettes, or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the numbers of small cigars, large cigars (itemized separately as to taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, and cigarette tubes, as the case may be, and the rate of tax and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below.

Example

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$0.75 per thousand.	\$15.00
1,000	Large cigars—Wholesale price \$100 per thousand.	8½ pct of wholesale price.	8.50
500	Large cigars—Wholesale price \$200 per thousand.	\$20 per thousand.	10.00
10,000	Small cigarettes.	\$4 per thousand.	40.00
5,000	Large cigarettes.	\$8.40 per thousand.	42.00
2,000 sets	Cigarette papers—50 each set.	\$0.005 per set.	10.00
1,000 sets	Cigarette papers—100 each set.	\$0.01 per set.	10.00
1,000	Cigarette tubes.	\$0.01 per 50 tubes.	20
Total claimed.			135.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

Signed: January 14, 1977.

REX D. DAVIS,
Director.

Approved: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary
of the Treasury.

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