

corrected to read "A-19: See § 53.4958-8T(b) of this".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 22

[T.D. ATF-443; Ref: Notice No. 828]

RIN 1512-AB57

#### Distribution and Use of Tax-Free Alcohol (2000R-294P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule (Treasury decision).

**SUMMARY:** This final rule amends the regulations in 27 CFR part 22 by eliminating the requirement for users of tax-free alcohol to file a bond. It also liberalizes certain qualification requirements relating to tax-free alcohol user permits. ATF believes that these revisions will greatly reduce and simplify the qualification process for tax-free alcohol permits.

**DATES:** This rule is effective on May 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at [alctob@atfhq.atf.treas.gov](mailto:alctob@atfhq.atf.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

There are certain registration requirements under the law and its implementing regulations that must be met prior to the issuance of a permit to withdraw and use tax-free alcohol. Once such registration requirements are met, the applicant is issued a tax-free alcohol users permit and may commence conducting any of the uses authorized under the law and regulations for tax-free alcohol permittees. The permittee is allowed to purchase and acquire alcohol from a registered distilled spirits plant (DSP) free of the excise tax payments normally required to be made by the DSP proprietor.

Authorized users of tax-free alcohol include any State or political subdivision of a State, or the District of

Columbia acquiring the alcohol for nonbeverage purposes. Tax-free alcohol may also be used by any educational organization (exempt from income tax), scientific university or college of learning, laboratory for use exclusively in scientific research, hospital, blood bank, sanitarium, pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums, or clinic operated for charity and not for profit.

##### Notice of Proposed Rulemaking

On June 13, 1996, ATF published a notice of proposed rulemaking (Notice No. 828, 61 FR 30019) to solicit public comment on proposed regulations that would eliminate the bonding requirements for tax-free alcohol users. ATF also proposed to revise the qualification requirements for obtaining a permit to withdraw and use tax-free alcohol. The public was invited to submit written comments on this notice for a period of 60 (sixty) days ending August 12, 1996.

##### Comments on the NPRM

In response to Notice 828, ATF received two written comments. Comments were received from: the Distilled Spirits Council of the United States (DISCUS), and the Surety Association of America.

##### Bonds and Consents of Surety

As discussed in Notice No. 828, 26 U.S.C. 5272 provides that bond coverage may be required as part of the tax-free alcohol permit qualification process. Prior to 1985, the regulations in 27 CFR part 22 required that every applicant, with certain exceptions, obtain a bond prior to issuance of a permit. Then, in 1985, the tax-free regulations were revised and the exemption from bond coverage was expanded. See T.D. ATF-199 (50 FR 9152). Under the revisions adopted in 1985, the percentage of users of tax-free alcohol who were exempt from filing a surety bond increased from 36 percent to 75 percent.

Based on the post-1985 experience in administering part 22, ATF concluded that bond coverage should no longer be required of any applicant for a tax-free alcohol permit. ATF believed that elimination of the bond requirement in part 22 would result in substantially reduced administrative and financial burdens on the tax-free alcohol permittees. Accordingly, in Notice No. 828, ATF proposed to eliminate the requirement to obtain a bond.

In response to this proposal, DISCUS submitted a comment stating that they support all efforts by ATF to eliminate unnecessary regulation and to reduce

the administrative burdens imposed upon industry.

The Surety Association of America commented against this proposal. They stated that "the ATF is overlooking the importance of the bond requirement in preventing losses. The bond provision may be one of the primary reasons why the experience has been favorable, and without it, we believe the ATF runs the risk of losing tax revenue without a means of recapture."

While ATF agrees that bond requirements for tax-free alcohol users may have reduced the risk of tax revenue losses at some time in the past, our experience since 1985 indicates that tax-free alcohol users pose a minimal risk to the revenue. Further, the elimination of the bond requirement does not leave the ATF "without a means of recapture." Any permittee who uses tax-free alcohol in a manner that violates the laws and regulations is still directly liable for the tax as provided in 26 U.S.C. 5001(a)(4).

In summary, ATF has concluded that the bond requirement in 27 CFR part 22 is unnecessary to protect the revenue and the proposal to eliminate the bond requirement for tax-free alcohol users has been adopted in this final rule.

##### Qualification Requirements

Section 5271 of the Internal Revenue Code of 1986 requires the submission of an application before a permit may be issued to procure or use tax-free alcohol. Regulations have required the submission of a detailed application with supporting data by all applicants. The appropriate ATF officer is authorized to waive some of the detailed data for applicants who are a State, political subdivisions thereof, or the District of Columbia or whose annual withdrawal and usage of tax-free alcohol will not exceed 1,500 proof gallons.

In Notice No. 828, ATF proposed that this waiver should be available to all applicants when the appropriate ATF officer concludes that the revenue is adequately protected with respect to the person submitting the application.

In response to this proposal, the DISCUS submitted a comment that expressed their support. No one commented in opposition to this proposal. Accordingly, the proposal has been adopted in this final rule.

##### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulations will give ATF specific regulatory authority to relax and remove certain registration requirements. A

copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

#### *Executive Order 12866*

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

#### *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

#### *Drafting Information*

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### **List of Subjects in 27 CFR Part 22**

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

#### **Authority and Issuance**

Accordingly, title 27, Code of Federal Regulations part 22 is amended as follows:

#### **PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL**

**Par. 1.** The authority citation for part 22 continues to read as follows:

**Authority:** 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

#### **§ 22.21 [Amended]**

**Par. 2.** Amend § 22.21(a) by removing the word “bonds” from the first sentence.

#### **§ 22.25 [Removed]**

**Par. 3.** Remove § 22.25.

#### **§ 22.26 [Redesignated]**

**Par. 4.** Redesignate § 22.26 as § 22.25.

#### **§ 22.27 [Redesignated]**

**Par. 5.** Redesignate § 22.27 as § 22.26.

#### **§ 22.43 [Amended]**

**Par. 6.** Amend § 22.43 by revising paragraphs (a)(2) and (b) to read as follows:

#### **§ 22.43 Exceptions to application requirements.**

(a) \* \* \*

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the permittee files an application to amend the permit and the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 22.57(a)(2).

#### **§ 22.59 [Amended]**

**Par. 7.** Amend § 22.59 by removing the second sentence.

#### **§ 22.60 [Amended]**

**Par. 8.** Amend § 22.60 as follows:

- a. Remove paragraph (b);
- b. Redesignate paragraph (c) as paragraph (b); and
- c. Redesignate paragraph (d) as paragraph (c).

#### **§ 22.62 [Amended]**

**Par. 9.** Amend § 22.62 by removing the last sentence.

#### **§ 22.63 [Amended]**

**Par. 10.** Amend § 22.63 as follows:

- a. Remove the paragraph letter and title designation “(a) Permit”; and
- b. Remove paragraph (b).

#### **§ 22.68 [Amended]**

**Par. 11.** Amend § 22.68 as follows:

- a. Remove the paragraph letter and title designation “(a) Notice”; and
- b. Remove paragraph (b).

#### **Subpart E—[Removed and Reserved]**

**Par. 12.** Remove and reserve Subpart E (Bonds and Consent of Surety).

#### **§ 22.152 [Amended]**

**Par. 13.** Amend § 22.152 as follows:

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

**Bradley A. Buckles,**

*Director.*

Approved: February 1, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01–5130 Filed 3–1–01; 8:45 am]

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#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 934**

[SPATS No. ND–041–FOR, Amendment No. XXX]

#### **North Dakota Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving this proposed amendment to the North Dakota regulatory program (hereinafter, the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to rules about rulemaking notices, prime farmland reclamation plans, permit approval and denial criteria, performance bond liability period, bond release applications, surface water monitoring, revegetation success standards, prime farmland reclamation standards, and small operator assistance.

The State intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and improve operational efficiency.

**EFFECTIVE DATE:** March 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@OSMRE.gov.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Director’s Findings
- IV. Summary and Disposition of Comments
- V. Director’s Decision
- VI. Procedural Determinations

#### **I. Background on the North Dakota Program**

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota’s program and program amendments at 30 CFR 934.15 and 934.16.