

Authority: 7 U.S.C. 150aa-150jj, 151-167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

PART 351—IMPORTATION OF PLANTS OR PLANT PRODUCTS BY MAIL

3. The authority citation for 7 CFR part 351 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 160, and 162; 7 CFR 2.22, 2.80, and 371.2(c).

PART 372—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

4. The authority citation for 7 CFR part 372 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500-1508; 7 CFR parts 1b, 2.22, 2.80, 371.2, 371.2(m), 371.13(d), and 371.14(b).

Done in Washington, DC, this 27th day of May 1997.

Donald L. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-14321 Filed 5-30-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93-ANE-14; No. 33-ANE-01]

Special Conditions; Soloy Corporation, Soloy Dual Pac Engine (Formerly Soloy Dual Pac, Inc.)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; correction.

SUMMARY: This document makes a correction to Final Special Conditions, 93-ANE-14, No. 33-ANE-01, applicable to Soloy Corporation, Soloy Dual Pac Engine (formerly Soloy Dual Pac, Inc.) that was published in the **Federal Register** on February 19, 1997 (62 FR 7335). Two minor typographical errors occurred, one in the subject heading and one in the **SUMMARY** section. This document corrects these errors. In all other respects, the original document remains the same.

DATES: Effective June 2, 1997.

SUPPLEMENTARY INFORMATION: A final special conditions applicable to Soloy Corporation, Soloy Dual Pac Engine (formerly Soloy Dual Pac, Inc.), was published in the **Federal Register** on February 19, 1997 (62 FR 7335). The following corrections are needed:

On page 7335, in the left column in the Special Conditions heading, the

word "Formally" should be changed to "Formerly".

On page 7335, in the left column under **SUMMARY**, first sentence, the word "formally" should be changed to "formerly".

Issued in Burlington, MA, on May 15, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-14318 Filed 5-30-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[T.D. ATF-390]

27 CFR Part 24

RIN 1512-AB65

Implementation of Public Law 104-188, Section 1702, Amendments Related to Revenue Reconciliation Act of 1990 (96R-028P)

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

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements some of the provisions of the Small Business Job Protection Act of 1996. The new law made changes to the small producers' wine tax credit and wine bond provisions in the Internal Revenue Code of 1986. The wine regulations are amended to extend the application of the credit to "transferees in bond" (proprietors who store wine for a small producer but who do not hold title to such wine) in certain circumstances, and to make conforming changes to the bond computation instructions, which were also affected by the law change. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 60-day period following the publication of this temporary rule.

EFFECTIVE DATES: The temporary regulations are retroactive to January 1, 1991. The regulations will remain in effect until superseded by final regulations.

ADDRESSES: Send written comments to: Chief, Wine, Beer & Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT:

Marjorie D. Ruhf, Wine, Beer & Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

Tax Credits for Certain Proprietors of Bonded Wine Premises

The Revenue Reconciliation Act of 1990, Title XI of Public Law 101-508, 104 Stat. 1388-400, was enacted on November 5, 1990. Section 11201 of this law increased the rate of tax on still wines and artificially carbonated wines removed from bonded premises or Customs custody on or after January 1, 1991. The tax rates on these products were increased by 90 cents per wine gallon. The law did not increase the tax rate on champagne and other sparkling wines.

In addition to the above-referenced increased rates of tax, section 11201 provided that small domestic producers of wine are entitled to a credit of up to 90 cents per wine gallon on the first 100,000 gallons of wine (other than champagne and other sparkling wines) removed for consumption or sale during a calendar year. This credit may be taken by a bonded wine premises proprietor who does not produce more than 250,000 gallons of wine in a given calendar year. The 90 cents per wine gallon credit is equivalent to the amount by which the tax on wine was increased by the Revenue Reconciliation Act of 1990. However, the full credit of 90 cents per gallon is reduced 1 percent (\$.009 per gallon) for each thousand gallons of wine over 150,000 gallons which are produced in a year, until the full increased tax rate is reached.

On December 11, 1990, ATF issued regulations implementing the small producers' wine tax credit. See T.D. ATF-307, 55 FR 52723. The regulations appearing at 27 CFR 24.278 implement the tax credit for small domestic producers. The regulations in 27 CFR 24.279 explain the procedure for making adjustments to tax returns as a result of claiming an incorrect credit rate.

On August 9, 1991, ATF issued Industry Circular 91-9 to announce an ATF ruling (subsequently published as ATF Ruling 92-1 (A.T.F.Q.B. 1992-3, 55)), which held that the small producer's wine tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producers' wine tax credit on wine removed during such

calendar year. A proprietor who has obtained a new wine producers' basic permit may not take the small producers' wine tax credit on wine removed until wine is produced by such proprietor. The provisions of that ruling are hereby incorporated into 27 CFR 24.278(a) and the ruling is declared obsolete.

Public Law 104-188

On August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755, was enacted. Section 1702 of the Act contains amendments to the Revenue Reconciliation Act of 1990, including some provisions which affect small wine producers. The law provides that the amendments made by section 1702 shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 to which such amendment relates. Section 11201 of the Revenue Reconciliation Act, which contained the small producers' wine tax credit provision, was effective for wine removed after January 1, 1991. Accordingly, the amendments made in this regulation have been made retroactive to January 1, 1991.

Before the enactment of Public Law 104-188, small wine producers were eligible to take the small producers' wine tax credit only on wine removed for consumption or sale by that producer; if the producer transferred wine in bond to another bonded wine premises (a transferee in bond) for storage pending subsequent removal by the transferee, then the producer could not claim a credit on that wine, since the producer had not removed the wine for consumption or sale. If the transferee was not eligible for the small producers' wine tax credit (i.e., it did not produce wine at all, or it produced more than 250,000 gallons of wine), then there was no eligibility for the credit. Even if the transferee produced wine and was eligible for credit in its own right, its eligibility was limited to the first 100,000 gallons removed during the year. In order to receive the credit, some small wineries began to taxpay their wines at the time of removal, and store the wines taxpaid instead of transferring them in bond.

Public Law No. 104-188 amended 26 U.S.C. 5041(c) to allow the credit to be taken by "transferees in bond" on behalf of their small producer clients. As amended, 26 U.S.C. 5041(c) provides that where wine would be eligible for the small producer credit if removed by the producer, and such wine is transferred in bond to another person (the transferee) who removes such wine during such calendar year, the

transferee (and not the producer) may be eligible for the small producer credit under certain prescribed circumstances. The law requires that the producer must hold title to the wine at the time of its removal and must provide to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph. The statutory language thus limits the application of the credit to transferees in bond receiving wine from the actual producer of the wine in question, and not from a subsequent owner who may also be a small producer. Production is already defined in 27 CFR 24.278 for purposes of establishing eligibility for wine credit.

A definition of removals is hereby added in 27 CFR 24.278(e)(2). As amended, 26 U.S.C. 5041(c)(6) provides that, when the producer elects to transfer the credit, the transferee (and not the producer) will be eligible for the credit. Therefore, the credit eligibility of the small producer is still limited to the first 100,000 gallons removed for consumption or sale during a calendar year, whether the removal is from its own premises or from the premises of a transferee in bond using the producer's credit on the producer's instructions.

Another condition of the new credit provision is that the producer must give the transferee "such information as is necessary to properly determine the transferee's credit." A new regulation in 27 CFR 24.278(b)(2)(D) sets forth what information is required. The regulatory requirement to transmit taxpayment instructions "in writing" may be satisfied by any form of electronic transmission available to the producer and transferee, as long as a permanent copy is filed with the records required to be maintained in support of tax return and claim information by both the producer and the transferee.

Liability for Additional Tax

Pursuant to 26 U.S.C. 5043, the proprietor of a bonded wine cellar is liable for the tax on any wines removed from such premises. Section 5362(b) provides that wine may be withdrawn without payment of tax for transfer in bond between bonded premises. When such a transfer occurs, section 5043(a)(1)(A) provides that the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability.

Thus, where a small producer transfers wine in bond to a bonded wine cellar, and the bonded wine cellar thereupon removes the wine, it is the

transferee and not the transferor that is liable for the tax. Since the small producers' wine tax credit rate each year is based on the level of production during the same calendar year, and the total production is not known until the close of the year, adjustments to the credit rate are sometimes needed. If ATF determines, for example, that a transferee took the small producer credit for a certain quantity of wine, and the small producer subsequently disqualified itself for the credit by producing more than 250,000 wine gallons during that calendar year, it is the transferee that will be responsible for paying the additional tax liability and any applicable interest or penalties arising out of such an underpayment of tax. Transferees may wish to take this into account when making contractual arrangements with small wine producers.

Increasing adjustments are required if a person produces more wine than anticipated when the credit was computed, or if the person fails to produce wine during the calendar year and loses eligibility for such credit after claiming it. The regulations in 27 CFR 24.279(a) cover increasing adjustments as they relate to the small producer's own removals, and this section is being expanded to reflect adjustments to credits taken by a transferee in bond. If excess credits are taken by the transferee based on information received from a producer, the transferee is responsible for making the necessary increasing adjustment, with interest. The section on increasing adjustments is also being amended to differentiate between the excess credits discussed above, which are the result of a good faith estimate of future production, and excess credits taken after the 100,000 gallon maximum has been reached. The latter excess credits result from careless recordkeeping of current removals, and not from an inability to predict exact annual production. As revised, 27 CFR 24.279 notes that the regional director (compliance) has the discretion to impose a penalty on excess credits which result from carelessness.

A decreasing adjustment may be claimed if a person qualifies for the credit but does not deduct it, or deducts less than the full credit for which such person is eligible. Since the person who paid the tax (in this case the transferee) must claim a refund or credit of such tax, yet was most likely reimbursed for the tax by the producer, we note that the provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart E (recently recodified from 27 CFR part 170, subpart E) will apply to such requests for refund. Using information provided by the producer,

the transferee must show (1) that the owner of the article (the producer) has furnished the transferee with the amount claimed for payment of the tax, (2) the owner has given its written consent to the allowance of the credit or refund to the transferee, and (3) the owner bore the ultimate burden of the tax (i.e., did not pass on the burden of the tax to the consumer as part of the sale price of the product), or unconditionally repaid the amount claimed to the person who bore the ultimate burden of the tax. The procedure in 27 CFR 24.279(b) for claiming credit or refund of taxes to reflect increases in small producers' wine tax credit eligibility has been modified to take transferees in bond into account.

Disclosure Issues

Both small wine producers and transferees in bond should note that at times it will be necessary for ATF to disclose information concerning the tax liability of the small wine producer to the transferee who actually claimed the small producer credit, in order to explain the basis for additional assessments or other adjustments to the transferee's tax liability. In general, 26 U.S.C. 6103 prohibits the disclosure of tax returns or return information to anyone other than the taxpayer unless the taxpayer has consented to such a disclosure. However, 26 U.S.C. 6103(h)(4)(C) allows the disclosure of a return or return information in a Federal judicial or administrative proceeding pertaining to tax administration, if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding. It is ATF's position that any audit or inspection of the transferee's tax liability is an administrative proceeding pertaining to tax administration. Thus, the law authorizes ATF to disclose to the transferee information pertaining to the credit eligibility of the producer in cases where it directly relates to credits taken by the transferee on the instructions of the small producer, which directly affects the resolution of the issue of the tax liability of the transferee. See *generally First Western Government Securities, Inc. v. United States*, 796 F.2d 355 (10th Cir. 1986).

Claims for Refund or Credit

As previously noted, section 1702(i) of the Small Business Job Protection Act of 1996 provides that the amendments made by section 1702 of the Act shall take effect as if included in the

provision of the Revenue Reconciliation Act of 1990 to which such amendment relates. Section 11201 of the Revenue Reconciliation Act, which contained the small wine producer credit provision, was effective for wine removed after January 1, 1991. Accordingly, the amendments made in this regulation have been made retroactive to January 1, 1991. However, since the law did not contain any language explicitly or implicitly waiving the statute of limitations for filing claims for credit or refund, the applicable statutory period provided for in 26 U.S.C. 6511 and 27 CFR 70.261 will still apply. See, e.g., *United States v. Zacks*, 375 U.S. 59 (1963). In most cases, this means that claims must be filed within 3 years after the due date of the tax return to which they relate.

Other Changes Made by the Small Business Job Protection Act of 1996

The cross reference to 26 U.S.C. 5041(e) in 26 U.S.C. 5061(b)(3) was amended to read "section 5041(f)" because paragraph 5041(e) was redesignated as 5041(f) when the wine credit provisions were added in 1990. No conforming changes to the regulations are needed.

Finally, the wine bond requirement was amended to note that the appropriate credit should be taken into account in computing the penal sum of the bond, and this document makes a conforming change to 27 CFR 24.148. We note that, pursuant to ATF Ruling 92-1 (A.T.F.Q.B. 1992-3, 55), now incorporated into 27 CFR 24.278(a), a new proprietor may not take credit against wine tax until such proprietor actually produces wine and establishes its eligibility as a small producer. Therefore, new proprietors may be asked to file bonds at the full tax rate if they plan to sell wine received in bond or transferred from a predecessor before they produce wine and qualify for the small producers' wine tax credit.

Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866, because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the new collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512-0540. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this regulation are in 27 CFR 24.278 and 24.279 (previously approved under OMB Control Number 1512-0492). This information is required to advise the transferee of any available credit, and to support entries on tax returns and claims. This information will be used by the transferee and the small producer to compute taxes or claims and may also be reviewed by ATF during an audit to confirm that wine tax credits were properly taken. The collections of information are required to obtain a benefit (reduced rate of tax). The likely recordkeepers are businesses and small businesses.

For further information concerning these collections of information, and where to submit comments on the collections of information, refer to the preamble to the cross reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Administrative Procedure Act

Because this document merely implements a law which is retroactive to January 1, 1991, and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b),

or subject to the effective date limitation in section 553(d).

Drafting Information: The principal author of this document is Marjorie Ruhf, Wine, Beer & Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping

requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

Authority and Issuance

Chapter I of title 27, Code of Federal Regulations is amended as follows:

PART 24—WINE

Paragraph 1. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.148 is revised to read as follows:

§ 24.148 Penal sums of bonds.

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum	
		Minimum	Maximum
(a) Wine Bond, AFT F 5120.36	(1) Not less than the tax on all wine or spirits in transit or unaccounted for at any one time, taking into account the appropriate small producer's wine tax credit.	\$1,000	\$50,000
	Where such liability exceeds \$250,000	500	100,000
	(2) Where the unpaid tax amounts to more than \$500, not less than the amount of tax which, at any one time, has been determined but not paid. Except: \$1,000 of the wine operations coverage may be allocated to cover the amount of tax which, at any one time, has been determined but not paid, if the total operations coverage is \$2,000 or more.		250,000
(b) Wine Vinegar Plant Bond ATF F 5510.2*.	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time.	1,000	100,000

* The proprietor of a bonded wine premises who operates an adjacent or contiguous wine vinegar plant with a Wine Bond which does not cover the operation may file a consent of surety to extend the terms of the Wine Bond in lieu of filing a wine vinegar plant bond.

(26 U.S.C. 5354, 5362)

Par. 3. Section 24.278 is revised and the OMB authorization number is added to read as follows:

§ 24.278 Tax credit for certain small domestic producers.

(a) *General.* In the case of a person who produces not more than 250,000 gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by Title 26, U.S.C. (other than Chapters 2, 21 and 22), an amount computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during such year for consumption or sale. Such credit applies only to wine which has been produced at a qualified bonded wine premises in the United States. The small wine producer's tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producers' wine tax credit on wine removed during such calendar year. A proprietor who has obtained a new wine producers' basic permit may not take the small producers' wine tax credit on wine removed until wine is produced by such

proprietor. "Wine production operations" include those activities described in paragraph (e) of this section.

(b) *Special rules relating to eligibility for wine credit—(1) Controlled groups.* For purposes of this section and § 24.279, the term "person" includes a controlled group of corporations, as defined in 26 U.S.C. 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" wherever it appears. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit may be used by a person.

(2) *Credit for transferees in bond.* A person other than an eligible small producer (hereafter in this paragraph referred to as the "transferee") shall be allowed the credit under paragraph (a) of this section which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under

this section if removed by such person during the calendar year,

(ii) Wine produced by such person is removed during such calendar year by the transferee to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(iii) Such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph.

(iv) At the time of taxable removal, the following information shall be provided to the transferee by the producer, in writing, and the producer and transferee shall each retain a copy with the record of taxpaid removal from bond required by § 24.310:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) *Time for determining and allowing credit.* The credit allowable by paragraph (a) of this section shall be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and shall be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by this section is treated as if it constituted a reduction in the rate of such tax.

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year shall be computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine eligible for such credit at the time it is removed for consumption or sale;

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit shall be reduced 1 percent (\$0.009) for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit which would be taken by a person who produced 159,500 gallons of wine would be reduced by 9 percent, or \$0.081, for a net credit against the tax of \$0.819 per gallon for the first 100,000 gallons of wine removed for consumption or sale.

(e) *Definitions*—(1) *Production.* For the purpose of determining if a person's production is within the 250,000 gallon limitation, in addition to wine produced by fermentation, production includes any increases in the volume of such wine due to the winery operations of amelioration, wine spirits addition, sweetening, and the production of formula wine. Production of champagne and other sparkling wines is not excluded for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by such person.

(2) *Removals.* For the purpose of determining if a person's removals are within the 100,000 gallon limitation, removals include wine removed from all qualified bonded wine premises within the United States by such person. Wine removed by a transferee in bond under the provisions § 24.278(b)(2) will be counted as a removal by the small producer who owns such wine, and not by the transferee in bond.

(f) *Preparation of tax return.* A person who is eligible for the credit shall show

the amount of wine tax before credit on the Excise Tax Return, ATF F 5000.24, and enter the quantity of wine subject to credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person shall report on ATF F 5000.24 where such credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the names of such producers, their credit rate, and the total credit taken on behalf of each during the tax return period shall be shown in schedule B.

(g) *Denial of deduction.* Any deduction under 26 U.S.C. chapters 1–6, with respect to any tax against which the credit is allowed under paragraph (a) of this section shall only be for the amount of such tax as reduced by such credit.

(h) *Exception to credit.* The regional director (compliance) shall deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of such credit would benefit a person who would otherwise fail to qualify for the use of such credit. (26 U.S.C. 5041(c).)

(Approved by the Office of Management and Budget under control number 1512–0540)

Par. 4. Section 24.279 is revised and the OMB authorization number is added to read as follows:

§ 24.279 Tax adjustments related to wine credit.

(a) *Increasing adjustments.* Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to § 24.278, such adjustment shall be made on Excise Tax Return, ATF F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, it shall be made no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for such return periods. The person shall make tax adjustments for all bonded wine premises where excessive credits were taken against tax that year, and shall include interest payable. In the

case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, the adjustment is the full amount of excess credit taken, and shall include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was taken, and may include the penalty payable under 26 U.S.C. 6662, at the discretion of the regional director (compliance). The regional director (compliance) will provide information, when requested, regarding interest rates applicable to specific time periods, and any applicable penalties. In the case of a controlled group of bonded wine premises who took excess credits, all member proprietors who took incorrect credits shall make tax adjustments as determined in this section. In the case of a small producer who instructed a transferee in bond to take credit as authorized by § 24.278(b)(2), and subsequently determines the credit was less or not applicable, such producer shall immediately inform the transferee in bond, in writing, of the correct credit information. The transferee shall make any increasing adjustment on its next tax return based on revised credit information given by the producer or by an ATF officer.

(b) *Decreasing adjustments.* Where a person fails to deduct the credit, or deducts less than the appropriate credit provided for by § 24.278, during the calendar year, a claim may be filed for refund of tax excessively paid. Such claims will be filed in accordance with § 24.69 of this part. In the case of wine removed on behalf of a small producer by a transferee in bond, if the transferee in bond was instructed to deduct credit and failed to deduct credit or deducted less than the appropriate credit and was later reimbursed for the tax by such producer, such transferee may file the claim. The provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart F, will apply, and the producer and transferee in bond must show the conditions of § 24.278(b)(2) were met. (26 U.S.C. 5041(c).)

(Approved by the Office of Management and Budget under control number 1512–0492)

Signed: December 23, 1996.

John W. Magaw,
Director.

Approved: January 3, 1997.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 97–14308 Filed 5–30–97; 8:45 am]

BILLING CODE 4810–31–P