

1513-0035

26 U.S.C.

## § 5721. Inventories

Every manufacturer or importer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor, shall make a true and accurate inventory at the time of commencing business, at the time of concluding business, and at such other times, in such manner and form, and to include such items, as the Secretary shall by regulation prescribe. Such inventories shall be subject to verification by any internal revenue officer.

## § 5741. Records to be maintained

Every manufacturer of tobacco products or cigarette papers and tubes, every importer, and every export warehouse proprietor shall keep such records in such manner as the Secretary shall by regulation prescribe. The records required under this section shall be available for inspection by any internal revenue officer during business hours.

## § 5761. Civil penalties

### **(a) Omitting things required or doing things forbidden**

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of \$1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

### **(b) Failure to pay tax**

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

### **(c) Sale of tobacco products and cigarette papers and tubes for export**

Except as provided in subsections (b) and (d) of section 5704—

**(1)** every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

**(2)** every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

**(3)** every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the

United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

**(d) Personal use quantities**

**(1) In general**

No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

**(2) Exception for personal use quantity**

Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

**(3) Special rule for delivery sales**

**(A) In general**

Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

**(B) Delivery sale**

For purposes of subparagraph (A), the term “delivery sale” means any sale of a tobacco product to a consumer if—

- (i)** the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or
- (ii)** the tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

**(e) Applicability of section 6665**

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665 (a).

**(f) Cross references**

For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

## **27 CFR**

### **Sec. 44.143 General.**

(a) Every export warehouse proprietor shall at the times specified in this subpart make a true and accurate inventory of products held on TTB Form 5220.3 (3373).

(b) This inventory shall be subject to verification by an appropriate TTB officer. A copy of each inventory shall be retained by the export warehouse proprietor for 3 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any appropriate TTB officer upon request.

[T.D. ATF-289, 54 FR 48841, Nov. 27, 1989, as amended by T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-480, 67 FR 30802, May 8, 2002]

### **Sec. 44.144 Opening.**

An opening inventory shall be made by the export warehouse proprietor at the time of commencing business. The date of commencing business under this part shall be the effective date indicated on the permit issued under Sec. 44.93. A similar inventory shall be made by the export warehouse proprietor when he files a superseding bond. The date of such inventory shall be the effective date of such superseding bond.

(72 Stat. 1422; 26 U.S.C. 5721)

[25 FR 4719, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-480, 67 FR 30802, May 8, 2002]

### **Sec. 44.145 Special.**

A special inventory shall be made by the export warehouse proprietor whenever required by any appropriate TTB officer.

(72 Stat. 1422; 26 U.S.C. 5721)

### **Sec. 44.146 Closing.**

A closing inventory shall be made by the export warehouse proprietor when he transfers ownership or concludes business. Where the proprietor transfers ownership the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

[25 FR 4719, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-480, 67 FR 30802, May 8, 2002]

**Sec. 44.161 Discontinuance of operations.**

Every export warehouse proprietor who desires to discontinue operations and close out his warehouse shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, making a closing inventory and closing report, in accordance with the provisions of Sec. Sec. 44.146 and 44.151, respectively, and surrender, with such inventory and report, his permit to the appropriate TTB officer as notice of such discontinuance, in order that the appropriate TTB officer may terminate the liability of the surety on the bond of the export warehouse proprietor.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]