

(7) Proceed along the 2,800-foot elevation line first generally northeast, then northwest around Saddleback Mountain, and then north across a trail and an unimproved dirt road, to the line's intersection with the section 21 south boundary line, T5N, R14W; then

(8) Proceed straight east along the section 21 south boundary line 0.25 mile to the southeast corner of section 21, T5N, R14W; then

(9) Proceed north along the section 21 south boundary line onto the Sleepy Valley map 0.6 mile to the line's intersection with the 2,800-foot elevation line and the section 22 west boundary line, T5N, R14W; then

(10) Proceed along the 2,800-foot elevation line generally northeast around the 3,166-foot and 3,036-foot pinnacles, then continue southwest to the line's intersection with the section 22 north boundary line, T5N, R14W; then

(11) Proceed west along the section 22 north boundary line 0.2 mile to the line's intersection with the 2,600-foot elevation line, T5N, R14W; then

(12) Proceed generally west-southwest along the 2,600-foot elevation line to the line's intersection with the section 21 west boundary line, T5N, R14W; then

(13) Proceed north along the section 21 west boundary line 0.2 mile to the line's intersection with the 2,400-foot elevation line and the section 20 east boundary line, T5N, R14W; then

(14) Proceed generally southwest along the 2,400-foot elevation line to the line's intersection with an unimproved dirt road in section 20, T5N, R14W; then

(15) Proceed northwest along the unimproved dirt road 0.15 mile to its intersection with the Sierra Highway, a secondary highway, section 20, T5N, R14W; then

(16) Proceed southwest along the Sierra Highway 0.15 mile to its intersection with an unnamed stream, section 20, T5N, R14W; then

(17) Proceed in a straight line north-northwest approximately 0.3 mile to the line's intersection with the Angeles National Forest boundary line, an unnamed stream running through Rowher Canyon, and the section 17 south boundary line, T5N, R14W; then

(18) Proceed straight east, north, and east, making 90-degree turns, along the Angeles National Forest boundary line to the line's intersection with the section 7 southwest corner, T5N, R13W; then

(19) Proceed straight north along the Angeles National Forest boundary line and the section 7 west boundary line 0.5 mile to the line's intersection with the 3,400-foot elevation line, T5N, R13W; then

(20) Proceed along the 3,400-foot elevation line generally east, north, then west to the line's intersection with the section 6 west boundary line, T5N, R13W; then

(21) Proceed north along the section 6 west boundary line 0.4 mile to the line's intersection with the 3,400-foot elevation line, T5N, R13W; then

(22) Proceed generally southeast along the 3,400-foot elevation line, crossing over Latteau, Willow Springs, and Hauser Canyons and continuing onto the Ritter Ridge map, to the line's intersection with an unimproved dirt road at Summit, section 16, T5N, R13W; then

(23) Proceed south along the unnamed dirt road less than 0.1 mile, crossing the Sierra Highway, to its intersection with the 3,400-foot elevation line, section 16, T5N, R13W; then

(24) Proceed generally southwest along the 3,400-foot elevation line, meandering between the Sleepy Valley and Ritter Ridge maps and then returning to the Sleepy Valley map, to the line's intersection with the section 20 north boundary line, T5N, R13W; then

(25) Proceed in a straight line west along the section 20 north boundary line 0.2 mile to the line's intersection with the 3,200-foot elevation line, section 20, T5N, R13W; then

(26) Proceed generally southwest along the 3,200-foot elevation line to the line's intersection with the section 19 west boundary line, T5N, R13W; then

(27) Proceed in a straight line north along the section 19 west boundary line 0.15 mile to the line's intersection with a pipeline, T5N, R13W; and then

(28) Proceed southwest onto the Agua Dulce map 1.25 miles along the pipeline, returning to the beginning point.

Signed: February 17, 2010.

**John J. Manfreda,**  
*Administrator.*

Approved: March 19, 2010.

**Timothy E. Skud,**  
*Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.*

[FR Doc. 2010-17960 Filed 7-21-10; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 40, 41, 44, 46, and 71

[Docket No. TTB-2009-0001; T.D. TTB-85; Re: T.D. TTB-75 and Notice No. 93]

RIN 1513-AB70

#### Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau is adopting as a final rule, with minor technical changes, temporary regulations that implemented certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (the Act). The regulatory amendments involved increases in the Federal excise tax rates on tobacco products and cigarette papers and tubes, the floor stocks tax provisions of the Act, and the new statutory criteria for denial, suspension, or revocation of tobacco permits.

**DATES:** *Effective Date:* August 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning floor stocks tax, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (*FloorStocksTax@ttb.gov*, 513-684-3334 or 1-877-TTB-FAQS (1-877-882-3277)); for other questions concerning this document, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-453-2265).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *TTB Authority*

Chapter 52 of the Internal Revenue Code of 1986 (IRC) contains permit, Federal excise tax payment, and related provisions regarding tobacco products and cigarette papers and tubes. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has authority to issue, deny, suspend, and revoke permits of manufacturers, importers, and export warehouse proprietors pursuant to regulations contained in parts 40, 41, 44, and 71 of title 27 of the Code of Federal Regulations (CFR). TTB also collects Federal excise taxes on tobacco products and cigarette papers and tubes

from proprietors of domestic bonded manufacturing premises pursuant to regulations contained in 27 CFR part 40; the Bureau of Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. TTB also has authority to regulate the importation and exportation of tobacco products and cigarette papers and tubes, and the removal of tobacco products and cigarette papers and tubes for use of the United States, under 27 CFR parts 41, 44 and 45, respectively. Under 27 CFR part 46, TTB has authority to administer floor stocks taxes and other miscellaneous matters involving these products.

### The Children's Health Insurance Program Reauthorization Act of 2009

The Children's Health Insurance Program Reauthorization Act of 2009, (the Act), Public Law 111-3, was enacted on February 4, 2009. Section 701 of the Act increased the rates of Federal excise tax on tobacco products and cigarette papers and tubes removed from the factory or from internal revenue bond or from customs custody on or after April 1, 2009.

Section 701 of the Act also imposed a floor stocks tax on taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), and on cigarette papers and tubes, held for sale on April 1, 2009. The floor stocks tax rate is equal to the difference between the new Federal excise tax rate and the immediately prior rate. Persons likely to be holding articles for sale that are subject to the floor stocks tax include manufacturers, importers, and wholesale and retail dealers of these articles. The floor stocks tax provisions of section 701 also permit a credit against the floor stocks tax of \$500 or the amount of tax due, whichever is less, and also contain rules for handling articles in foreign trade zones and for controlled groups.

Section 702(b) of the Act amended 26 U.S.C. 5712 and 5713 to expand the basis for denial, suspension, and revocation of tobacco permits with effect from February 4, 2009.

### Publication of Temporary Rule and Notice of Proposed Rulemaking

Based on the February 4, 2009, enactment and effective date of the changes to the criteria for denial, suspension, and revocation of permits and the April 1, 2009, effective date of the tax increases and floor stocks tax, TTB concluded that proper administration and enforcement of those statutory requirements necessitated the

immediate adoption of implementing regulations as a temporary rule to ensure that affected industry members would be able to act pursuant to the new regulatory requirements in a timely fashion. Accordingly, on March 31, 2009, TTB published in the **Federal Register** (74 FR 14479) a temporary rule, T.D. TTB-75, reflecting or implementing the sections of the law related to the tax rate increases, the changes to the criteria for denial, suspension, and revocation of permits, and the floor stocks tax. The temporary regulations took effect on the date of publication.

In the temporary rule, TTB amended the tobacco and cigarette papers and tubes regulations in parts 40, 41, 44, and 46 to reflect the new excise tax rates, provided examples of computations using the new tax rates, and revised subpart I of part 46 to implement the new floor stocks tax imposed by the Act. TTB also included the expanded basis for denial, suspension and revocation of tobacco permits in the pertinent sections of the TTB regulations, that is, in §§ 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.49b.

In the Supplementary Information section of T.D. TTB-75, TTB provided a detailed summary of the changes brought about by sections 701 and 702(b) of the Act and also outlined the considerations that TTB applied while drafting the regulatory changes set forth in the temporary rule. In conjunction with the publication of T.D. TTB-75, TTB also published a notice of proposed rulemaking, Notice No. 93, in the **Federal Register** (74 FR 14506) on March 31, 2009. This notice invited the submission of public comments on the new regulations prescribed in T.D. TTB-75, with the comment period closing on June 1, 2009.

### Discussion of Comments

TTB received seven comments on the temporary rule during the public comment period. Four of the commenters were individuals who did not indicate any organizational affiliation. The comments of these four individuals primarily concerned the terms of the legislation rather than any TTB interpretation reflected in the implementing regulations, and for this reason they are not pertinent to this final rule document. However, one of these commenters also posed two questions, which we describe and respond to below:

- Would using cigarette papers for marijuana affect the tax rate? No. The tax applies to the product as it is removed from the manufacturing

facility, and is not affected by the end use of the product.

- What is a cigarette tube? A cigarette tube is defined in 26 U.S.C. 5702 as a cigarette paper made into a hollow cylinder for use in making cigarettes.

Two commenters were tobacco company representatives. These commenters posed questions or submitted comments concerning marking and reporting requirements for "roll-your-own" tobacco. As noted in T.D. TTB-75, section 702(d) of the Act expanded the definition of "roll-your-own" tobacco to include tobacco for making cigars and tobacco for use as wrappers for cigars, effective April 1, 2009. The questions and comments on the definition of "roll-your-own" tobacco from these two commenters are not addressed in this final rule document because the definition change at issue and the related regulatory changes are the subject of a separate rulemaking, T.D. TTB-78, published in the **Federal Register** (74 FR 29401) on June 22, 2009.

Finally, the American Legacy Foundation, which identified itself as a national, independent public health foundation, commented that TTB's large cigar reporting rules should be amended to define cigarillos and provide for reporting of cigarillos separate from other large cigars. This commenter stated that "more refined information would make a valuable contribution to both tax and public health policy."

Since T.D. TTB-75 and Notice No. 93 did not address any changes to reporting categories, it would be inappropriate to consider any changes related to this issue in this final rule document. TTB may consider changes to its reporting requirements in the future if it finds it necessary to make such changes to protect the revenue.

### Changes to the Temporary Regulations

As a result of a review of the temporary rule after its publication, TTB determined that it is necessary to include the following changes in this final rule document to correct errors that appeared in the regulatory texts contained in T.D. TTB-75:

- In 27 CFR 41.35, we are inserting the word "tubes" in place of "papers" in the chart showing the old and new tax rates for cigarette tubes.

- In 27 CFR 41.81(c)(4)(iii), 41.106(a)(6), and 41.110(f), we are inserting "of more than" in place of "equal to or more than". This change conforms the regulatory language to the statutory language in 26 U.S.C. 5701(a)(2).

- In 27 CFR 44.92, we are redesignating paragraphs (a)(2)(A)

through (a)(2)(C) as (a)(2)(i) through (a)(2)(iii).

### Impact of T.D. TTB-78 on This Final Rule

As noted above, T.D. TTB-78 implemented other amendments made by the Act and included changes to the heading and text of § 40.25a and to the text of § 41.30, which superseded the regulatory amendments made by T.D. TTB-75. Accordingly, the T.D. TTB-75 amendments to these provisions are not adopted as part of this final rule action. In addition, T.D. TTB-78 revised the title and authority citation for part 41, and therefore we reflect the new title and authority citation in this final rule.

### Adoption of Final Rule

Based on the rulemaking history outlined above, TTB has determined that, with the exception of the provisions superseded by T.D. TTB-78 noted above, the temporary regulations published in T.D. TTB-75 should be adopted as a final rule, with the corrections discussed above.

### Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. 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. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), the temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and we received no comments.

### Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

### Paperwork Reduction Act

TTB has provided estimates of the burdens that the collections of information contained in these regulations impose, and the estimated burdens has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513-0129 and 1513-0030.

Under the Paperwork Reduction Act of 1995, 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 OMB control number.

Comments concerning suggestions for reducing the burden of the collections of information in this document should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-453-2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

### Drafting Information

Marjorie D. Ruhf of the Regulations and Rulings Division drafted this document. Other employees of the Alcohol and Tobacco Tax and Trade Bureau participated in its development.

### List of Subjects

#### 27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

#### 27 CFR Part 44

Aircraft, Armed Forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

### The Regulatory Amendment

■ Accordingly, for the reasons discussed in the preamble and with the exception of the amendments to §§ 40.25a and 41.30, the temporary regulations published in the **Federal Register** at 74 FR 14479 on March 31, 2009, as T.D. TTB-75, are adopted as a final rule with the changes as discussed above and set forth below:

### PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 1. The authority citation for part 41 continues to read as follows:

**Authority:** 26 U.S.C. 5701-5705, 5708, 5712, 5713, 5721-5723, 5741, 5754, 5761-5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### § 41.35 [Amended]

■ 2. In the table in § 41.35, in the column headed, "Product," the word "papers" is removed and the word "tubes" is added in its place wherever it appears.

### § 41.81 [Amended]

■ 3. In § 41.81, the first sentence of paragraph (c)(4)(iii) is amended by removing the words "equal to or more than" and adding, in their place, the words "of more than".

### § 41.106 [Amended]

■ 4. In § 41.106, paragraph (a)(6) is amended by removing the words "equal to or more than" wherever they appear and adding, in their place, the words "of more than".

### § 41.110 [Amended]

■ 5. In § 41.110, paragraph (f) is amended by removing the words "equal to or more than" wherever they appear and adding, in their place, the words "of more than".

### PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 6. The authority citation for part 44 continues to read as follows:

**Authority:** 26 U.S.C. 448, 5701-5705, 5711-5713, 5721-5723, 5731-5734, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### § 44.92 [Amended]

■ 7. Section 44.92 is amended by redesignating paragraphs (a)(2)(A) through (a)(2)(C) as paragraphs (a)(2)(i) through (a)(2)(iii).

Signed: July 1, 2010.

**John J. Manfreda,**  
Administrator.

Approved: July 1, 2010.

**Timothy E. Skud,**  
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010-17955 Filed 7-21-10; 8:45 am]

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