

(b) *Approved maps.* The six United States Geological Survey topographic maps used to determine the boundary of the Upper Mississippi River Valley viticultural area are titled:

(1) State of Minnesota, scale 1:500,000; compiled in 1963; edition of 1985;

(2) State of Wisconsin, scale 1:500,000; compiled in 1966; edition of 1984;

(3) State of Illinois, scale 1:500,000; compiled in 1970; edition of 1987;

(4) State of Iowa, scale 1:500,000; compiled in 1965; edition of 1984;

(5) Anamosa, Iowa, 1:100,000 scale; edited 1984; and

(6) Marshalltown, Iowa, 1:100,000 scale; edited 1984.

(c) *Boundary.* The Upper Mississippi River Valley viticultural area is located in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. The boundary of the Upper Mississippi River Valley viticultural area is as described below:

(1) The beginning point is on the State of Minnesota map at the intersection of Interstate Highways 94 and 494 (beltway), east of St. Paul at Oakbury in Washington County. From the beginning point, proceed east on Interstate 94, crossing over Lake St. Croix and onto the State of Wisconsin map at St. Croix County, and then continuing through Dunn County to Eau Claire County, to the intersection of Interstate Highway 94 with Wisconsin State Highway 85, southwest of the City of Eau Claire; then

(2) Proceed northeast on Wisconsin State Highway 85 toward the City of Eau Claire to U.S. Highway 12; then

(3) Proceed southeast on U.S. Highway 12 into Jackson County and passing through Clark County, to Interstate Highway 94 at Black River Falls; then

(4) Proceed southeast on Interstate Highway 94 into Monroe County to Interstate Highway 90, east of the Fort McCoy Military Reservation; then

(5) Proceed southeast on Interstate Highway 90 through Juneau, Sauk, Columbia, Dane, and Rock Counties, crossing onto the State of Illinois map at Winnebago County to U.S. Highway 20 at Cherry Valley; then

(6) Proceed west on U.S. Highway 20 to Illinois State Highway 2, west of the Rock River; then

(7) Proceed southwest on Illinois State Highway 2, passing through Ogle County and into Lee County, to Illinois State Highway 26 at Dixon; then

(8) Proceed south on Illinois State Highway 26 to Illinois State Highway 5 (which has been redesignated as

Interstate Highway 88 on contemporary maps of Illinois); then

(9) Proceed southwest on Illinois State Highway 5 (Interstate Highway 88), passing through Whiteside County and into Rock Island County, to Interstate Highway 80 at Barstow; then

(10) Proceed generally northwest on Interstate Highway 80, crossing the Mississippi River, onto the State of Iowa map at Scott County, and continuing west-northwest through Cedar County and into Johnson County to the intersection of Interstate Highways 80 and 380 at Tiffin; then

(11) Proceed north-northwest on Interstate Highway 380 into Linn County and Cedar Rapids on the State of Iowa map. Then using the Anamosa map, followed by the Marshalltown map, follow Interstate Highway 380, labeled "Under Construction" on the Anamosa map, northwest through Benton and Buchanan Counties to Black Hawk County, to U.S. Highway 20, southeast of Waterloo and Raymond; then

(12) Using the State of Iowa map, proceed west-northwest on U.S. Highway 20 to Waterloo and U.S. Highway 63; then

(13) Proceed north on U.S. Highway 63 through Bremer, Chicksaw, and Howard Counties, skirting the Upper Iowa River at Chester, and crossing onto the State of Minnesota map at Fillmore County, to Minnesota State Highway 56; then

(14) Proceed northwest and northerly on Minnesota State Highway 56 through Mower, Dodge, and Goodhue Counties to Dakota County, where it joins with State Highway 52 on commercial maps, to Interstate Highway 494 (beltway), south of St. Paul; then

(15) Follow Interstate Highway 494 (beltway) northeast into Washington County, returning to the beginning point.

Signed: April 6, 2009.

**John J. Manfreda,**

*Administrator.*

Approved: May 3, 2009.

**Timothy E. Skud,**

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

[FR Doc. E9-14574 Filed 6-19-09; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 40, 41, 44, and 45

[Docket No. TTB-2009-0002; T.D. TTB-78; Re: Notice No. 95]

RIN 1513-AB72

#### Implementation of Statutory Amendments Requiring the Qualification of Manufacturers and Importers of Processed Tobacco and Other Amendments Related to Permit Requirements, and the Expanded Definition of Roll-Your-Own Tobacco

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

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

**SUMMARY:** This temporary rule amends the Alcohol and Tobacco Tax and Trade Bureau regulations to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009. The principal changes involve permit and related requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco. We also are soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

**DATES: Effective Dates:** This temporary rule is effective June 22, 2009, through June 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-927-8210).

#### SUPPLEMENTARY INFORMATION:

##### TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to manufacturers and importers of tobacco products and cigarette papers and tubes and to export warehouse proprietors who hold such products, upon which tax has not been paid, pending export. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines tobacco products as cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. Each of these terms is also separately defined in section 5702.

Sections 5712 and 5713 of the IRC (26 U.S.C. 5712 and 5713) require manufacturers and importers of tobacco products and export warehouse

proprietors to obtain a permit to engage in such businesses. Section 5712 also allows for the promulgation of regulations to prescribe minimum manufacturing and activity requirements for such permittees. Sections 5721, 5722, and 5741 of the IRC (26 U.S.C. 5721, 5722, and 5741) authorize the promulgation of regulations to require inventories, reports, and recordkeeping, respectively.

Regulations implementing the provisions of chapter 52 of the IRC are contained in 27 CFR parts 40 (manufacture of tobacco products and cigarette papers and tubes), 41 (importation of tobacco products and cigarette papers and tubes), 44 (exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax), and 45 (removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States). These regulations are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

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

On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111–3, 123 Stat. 8 (“the Act”).

Section 701 of the Act amended the IRC to increase the Federal excise tax rates on tobacco products and cigarette papers and tubes. Section 701 also imposed a floor stocks tax on such articles held for sale on the effective date of the tax rate increases (April 1, 2009). On March 31, 2009, TTB published in the **Federal Register** (74 FR 14479) a temporary rule to amend the TTB regulations to reflect the section 701 changes.

Section 702 of the Act included amendments to the IRC to extend permit, inventory, reporting, and recordkeeping requirements to manufacturers and importers of processed tobacco even though such processed tobacco is not subject to excise tax under the IRC. Section 702 of the Act also amended the definition of “roll-your-own tobacco” generally to include cigar wrapper and filler. This document amends the TTB regulations to reflect these changes made by section 702 of the Act.

#### **Regulation of Manufacturers and Importers of Processed Tobacco**

The Act amended sections 5712 and 5713 of the IRC by adding references to “processed tobacco” after the words “tobacco products,” thereby requiring

manufacturers and importers of processed tobacco, like manufacturers and importers of tobacco products, to apply for and obtain a permit before commencing such business. In addition, the Act amended section 5702 of the IRC by adding a new subsection (p) to define “manufacturer of processed tobacco.” Under this new definition, a manufacturer of processed tobacco is any person who processes any tobacco other than tobacco products; however, under the statutory definition the processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

Section 702 of the Act also included a transitional rule under which manufacturers and importers of processed tobacco who are engaged in such a business on April 1, 2009, and who file an application with TTB before June 30, 2009, may continue in business pending final action from TTB on that application. Finally, section 702 of the Act amended the IRC by extending to manufacturers and importers of processed tobacco provisions related to inventories (section 5721), reports (section 5722), records (section 5741), and packages, marks, labels, and notices (section 5723).

#### **General Approach to This Temporary Rule**

Congress mandated regulation of processed tobacco to strengthen the enforcement authority for the Federal excise tax on tobacco products, which significantly increased under the Act (See Joint Committee on Taxation, *Description of the Revenue Provisions of the Children's Health Insurance Program Reauthorization Act of 2009*, (JCX–1–09), January 13, 2009). The Act provides enforcement mechanisms to assist in preventing the diversion of tobacco materials to illegal manufacturers. In promulgating these regulations, TTB has carefully considered how to effectively prevent diversion without creating undue administrative burdens by building on TTB regulations already applicable to manufacturers and importers of tobacco products and to proprietors of export warehouses (as that term is defined in 26 U.S.C. 5702(h)). The discussion below focuses on the manufacturer and importer provisions of parts 40 and 41 of the TTB regulations. A discussion of other changes to parts 44 and 45 is included later in the “Part by Part Discussion of Regulatory Amendments” section of this preamble.

#### **Definition of Processed Tobacco**

This temporary rule amends §§ 40.11 and 41.11 by adding a definition of “processed tobacco.” In addition to specifying what the processing of tobacco does not include, the new definition in each case specifies those activities that we consider to be “processing” activities. In this regard, we consider the processing of tobacco to include stemming (the removal of the stem from the tobacco leaf), fermenting, threshing, cutting, and flavoring the tobacco, as well as combining the stemmed tobacco with other non-tobacco ingredients. We do not believe that curing and baling are processing activities within the intent of the Act.

In addition, in §§ 40.11 and 41.11 we have revised the definition of “package” and added a new definition of “packaging” in order to make clear that “processing” does not include consumer packaging of processed tobacco. The term “package” is revised to mean the immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate consumer. The definition further provides that a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents) will be deemed to be in a package offered for sale or delivery to the ultimate consumer. This change is intended to reduce the potential for diversion of processed tobacco from permitted manufacturers. Thus, under these definitions, the placing of processed tobacco in a consumer package may not occur on the premises of a person who is qualified only as a manufacturer of processed tobacco, because such packaging creates a tobacco product, a taxable commodity that may be produced only on the bonded premises of a tobacco product manufacturer.

#### **Permits and Authorizations**

Under the regulations adopted in this temporary rule, any person who engages in the business of manufacturing or importing processed tobacco must obtain TTB approval as follows:

- A person who processes tobacco and who does not also manufacture tobacco products must obtain a permit as a manufacturer of processed tobacco.
- A person who holds a TTB permit as a manufacturer of tobacco products, who processes tobacco solely for use in the manufacture of tobacco products under that permit, and who does not remove the processed tobacco from the

premises except for destruction, is not required to obtain authorization from TTB to engage in the manufacture of processed tobacco.

- A person who holds a TTB permit as a manufacturer of tobacco products is required to obtain TTB authorization to remove processed tobacco for purposes other than destruction. Such activity is considered an "other business" and is governed by the provisions of 27 CFR 40.47.

- A person who imports processed tobacco, and who does not also import tobacco products under a TTB permit, must obtain a permit to import processed tobacco.

- A person who imports processed tobacco, and who also imports tobacco products under a TTB permit as an importer of tobacco products, is required to amend the existing importer permit to authorize the importer to engage in the importation of processed tobacco under that permit.

- A person who is qualified as a manufacturer of cigarette papers and tubes in accordance with 27 CFR 40.391, and who also processes tobacco, must obtain a TTB permit as a manufacturer of processed tobacco.

- A person who produces processed tobacco solely for his or her own personal use and consumption is not considered to be a manufacturer of processed tobacco for purposes of the new requirements.

A transitional rule applies both to applicants for permits as manufacturers or importers of processed tobacco and to persons who are only required to obtain authorization under an existing permit. Persons to whom the transitional rule applies (that is, persons who are engaged in business on April 1, 2009, and who apply for a permit or authorization before June 30, 2009), will receive a written acknowledgment from TTB upon receipt of the application. The acknowledgment will provide an identifying number that can be used by the applicant, similar to a permit number, for purposes of showing that the holder is authorized to engage in such business pending action on the application. Anyone required to obtain a permit or authorization, and to whom the transitional rule does not apply, must obtain a permit before commencing operations.

The Act did not impose an excise tax on the manufacture or importation of processed tobacco and therefore did not provide for the making of a bond to cover such activities. Accordingly, the regulations contained in this temporary rule do not require a bond of manufacturers or importers of processed tobacco or additional bond coverage of

existing tobacco product manufacturers who process tobacco.

#### *Issuance and Duration of a Permit*

Under the regulations adopted in this temporary rule, a permit to manufacture processed tobacco will be issued without an expiration date; retention of the permit is conditioned upon continued compliance with the provisions of chapter 52 of the IRC and the regulations promulgated thereunder including the minimum manufacturing and activity requirement as discussed later in this preamble. A permit to import processed tobacco will be valid for a period of three years from the date shown on the permit, with the possibility of renewal of the permit if the importer applies to TTB for renewal within 30 days of the permit's expiration date. These new permit provisions for manufacturers and importers of processed tobacco mirror the existing provisions for manufacturers and importers of tobacco products. The three-year permit period for importers of tobacco products was included in the regulations when Congress, in the Balanced Budget Act of 1997, extended permit requirements to importers. The three-year duration was determined by the Bureau of Alcohol, Tobacco and Firearms (ATF), TTB's predecessor agency, to be a reasonable method to avoid the proliferation of numerous unused permits, which would pose administrative difficulties and thus potential jeopardy to the revenue through unnecessarily diverted agency resources. (See preamble for T.D. ATF-422, 64 FR 71947, published in the **Federal Register** on December 22, 1999.) TTB believes that this rationale still applies and therefore should apply equally to permits for importers of processed tobacco.

As noted above, an importer of tobacco products may apply to amend the existing permit to obtain authorization to import processed tobacco under that permit. Such authorization expires when the permit expires. TTB continues to believe that a limited-duration permit is not necessary for manufacturers of tobacco products or processed tobacco. We note in this regard that the business of a manufacturer requires significant capital commitments for premises and equipment (and, in the case of the manufacturer of tobacco products, bond coverage) in order to obtain a permit. Therefore, because a manufacturer of tobacco products or processed tobacco is much less likely to choose to obtain (or be able to obtain) a permit without making such commitments, it is also less likely that a manufacturer would

seek to qualify for a permit that would subsequently go unused.

#### *Minimum Manufacturing and Activity Requirements*

Section 5712 of the IRC, which applies to manufacturers and importers of processed tobacco as a result of the changes made by the Act, provides, among other things, that an application for such a permit may be denied if the activity proposed to be carried out does not meet such minimum capacity or activity requirements as the Secretary of the Treasury may by regulation prescribe. Congress enacted this provision to ensure that those who apply for a permit and operate under that permit are actually engaged in the bona fide business of manufacturing or importing and in a way that will adequately protect the revenue and comply with applicable law and regulations.

As noted above, a permit as an importer of processed tobacco will be issued for a three-year period. However, notwithstanding the reasons for the three-year duration of a permit as explained above, TTB believes that there could be a significant number of speculative processed tobacco importer permits applications that lead to the issuance of permits under which no activity takes place. TTB does not believe that it is appropriate to devote agency resources to permit renewals in such cases. Accordingly, the regulations in this temporary rule provide that an application for the renewal of a permit as an importer of processed tobacco may be rejected and the permit denied if no activity has taken place or been reported under such permit for a period of one year immediately prior to the application for renewal.

The regulations in this temporary rule also provide that a permit as a manufacturer of processed tobacco may be suspended or revoked for non-use if no activity has taken place or been reported under such permit for a period of one year. This provision clarifies the TTB position that any minimum activity requirement promulgated pursuant to section 5712 is a continuing condition of a manufacturer's permit.

#### *Records, Reports, and Inventories*

As noted above, the Act extends inventory, reporting, and recordkeeping requirements to manufacturers and importers of processed tobacco. Accordingly, the regulations in this temporary rule generally require manufacturers and importers of processed tobacco to take inventory, report, and keep records in a manner similar to that required for

manufacturers and importers of tobacco products, and in a manner that is consistent with good business practice. The new regulations in this temporary rule also recognize that there may be circumstances involved in a manufacturer's or importer's business that require enhanced recordkeeping and reporting. Such circumstances include, for example, the transfer of processed tobacco to a person who does not hold a TTB permit as a tobacco product manufacturer and therefore is not subject to the statutory and regulatory provisions administered by TTB.

As noted above, the Act extended the provisions of the IRC to processed tobacco in order to strengthen enforcement authority over tobacco products and thus prevent the diversion of materials used for making tobacco products to unauthorized manufacturers who would not be accountable to TTB. However, the IRC as amended by the Act places no limitations on the persons to whom manufacturers or importers of processed tobacco may transfer or sell processed tobacco. TTB believes that unregulated transfers or sales of processed tobacco to persons who do not hold TTB permits could lead to processed tobacco falling into the hands of persons who would be unknown and unaccountable to TTB, including illegal manufacturers. In order to better regulate processed tobacco and to minimize its transfer to unauthorized manufacturers, the new regulations in this temporary rule require more detailed records of those who transfer or sell processed tobacco to persons who do not have TTB permits as a manufacturer or importer of tobacco products or of processed tobacco, or as an export warehouse proprietor. The new regulations also include a requirement to file a report with TTB covering all such transfers or sales. These reports must include detailed information regarding the persons and circumstances involved in the transfer or sale of processed tobacco, and the reports must be filed by the close of the business day following such action.

### **Roll-Your-Own Tobacco**

#### *Expansion of the Definition*

Prior to the changes made by the Act, the IRC at 26 U.S.C. 5702(o) defined the term "roll-your-own tobacco" to mean "any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes." Section 702(d) of the Act amended the definition by adding at the end "or

cigars, or for use as wrappers thereof." The principal effect of this change is to extend the Federal excise tax, permit, and related statutory provisions applicable to manufacturers and importers of roll-your-own tobacco to manufacturers and importers of tobacco for making cigars and for use as wrappers of cigarettes or cigars. The amendment made by section 702(d) applies to articles removed (that is, removed from the factory or from internal revenue bond under IRC section 5704 under regulations prescribed by the Secretary, or released from customs custody) after March 31, 2009. There is no transitional rule with regard to the permit requirement for persons affected by this statutory change; any person engaged in the business of manufacturing or importing any product that falls within the new statutory definition of roll-your-own tobacco is required, as of April 1, 2009, to have a TTB permit.

Further, as a result of the Act, the products that were incorporated into the definition of roll-your-own (products commonly referred to as "cigar tobacco", "cigarette wrapper" or "cigar wrapper") must now comply with the package, mark, label, and notice requirements set forth in parts 40, 41, and 44. Under 27 CFR 40.216b and 41.72b, packages of roll-your-own tobacco must bear a notice that includes the designation of the product for tax purposes. Prior to the amendments of this temporary rule, the permissible designations were "roll-your-own tobacco," "cigarette tobacco," and "Tax Class J." We are amending this notice requirement to add as permissible designations on packages of roll-your-own tobacco the following: "Cigar tobacco," "cigarette wrapper," and "cigar wrapper," and are removing the words "Tax Class J" as a permissible designation as discussed later in this preamble. In addition, to allow sufficient time for affected manufacturers and importers to comply with the packaging requirements, we are amending 27 CFR 40.216c and 41.72c to provide that packages of roll-your-own tobacco to which one of the new designations applies (that is, cigar tobacco, cigarette wrapper, or cigar wrapper) may be removed, until August 1, 2009, without being in compliance with the notice requirements of §§ 40.216b and 41.72b. With this amendment, we are also removing from §§ 40.216c and 41.72c existing text, now obsolete, which provided a use-up period for roll-your-own tobacco packages removed in the year 2000.

### *Distinguishing Between Roll-Your-Own Tobacco and Pipe Tobacco*

The tax rate increases adopted in section 701 of the Act resulted in a significant difference between the rate of tax imposed on roll-your-own tobacco (\$24.78 per pound) and the rate of tax imposed on pipe tobacco (\$2.8311 per pound); prior to the amendments made by the Act, the two rates were the same. While the definition of roll-your-own tobacco was amended by the Act as noted above, no change was made to the definition of pipe tobacco, which reads, "any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe."

Currently, the TTB regulations contain no standards to differentiate between roll-your-own tobacco and pipe tobacco beyond a repeat of the statutory definitions; when the tax rates on the two products were the same, TTB and its predecessor agencies considered it to be sufficient to require manufacturers and importers to meet certain notice requirements, as discussed below.

However, because of the revenue implications resulting from the tax rate changes made by the Act, including the creation of a new incentive for industry members to present a product as, and thus pay the tax at the lower rate for, pipe tobacco, TTB recognizes that there is now a heightened need for more regulatory detail to clarify the difference between the two products. We are currently evaluating analytical methods and other standards to differentiate between roll-your-own tobacco and pipe tobacco, and we may publish rulemaking proposals on this subject for public comment in the near future.

We note that the definitions of pipe tobacco and roll-your-own tobacco both require consideration of the packaging and labeling of the product in order to determine its classification for tax purposes. In this temporary rule we are amending the classification and notice provisions of the tobacco product manufacturer and importer regulations in parts 40 and 41 to more clearly differentiate, on the basis of packaging and labeling, between these two types of taxable products. The nature of, and reasons for, these changes are discussed below.

Sections 40.25a and 41.30, which set forth the tax rates for pipe tobacco and roll-your-own tobacco, are amended by designating the existing text as paragraph (a) with the heading "tax rates" and adding a new paragraph (b), with the heading "classification," that: (1) Provides that pipe tobacco and roll-

your-own tobacco must be put up in packages that conform to the applicable package and package notice requirements; (2) provides that any tobacco that has been processed and that is removed in a package that does not bear a notice prescribed under parts 40 or 41 will be deemed to be roll-your-own tobacco; and (3) provides that, even though tobacco that has been processed is removed in a package that bears the notice required for pipe tobacco, it will be deemed to be roll-your-own tobacco if either the package does not bear the words "pipe tobacco" wherever the brand name appears or the package or accompanying materials bear any representation suggesting a use other than as pipe tobacco.

In addition, the notice requirements for pipe tobacco in §§ 40.216a and 41.72a are amended by removing from paragraph (a) the last sentence and thereby providing that only the words "pipe tobacco" will be permissible as a designation on a package of pipe tobacco and that the designation "Tax Class L" may no longer be used as an alternative designation. Similarly, in the notice requirements for roll-your-own tobacco in §§ 40.216b and 41.72b, paragraph (a) is amended by removing the reference to "Tax Class J" and also by adding "cigar tobacco," "cigarette wrapper," and "cigar wrapper" as permissible designations (as discussed above). Thus, in the case of roll-your-own tobacco, the only permissible package designations will be "roll-your-own tobacco," "cigarette tobacco," "cigar tobacco," "cigarette wrapper," or "cigar wrapper." Finally, §§ 40.216c and 41.72c are revised to set forth a new use-up period, until August 1, 2009, for packages that contain the "Tax Class L" or "Tax Class J" designations, which are no longer permissible under the notice requirements adopted in this temporary rule.

The changes to §§ 40.25a and 41.30 described above are intended to address two distinct but related tax rate issues. The first issue relates to the significant difference between the rates applicable to pipe tobacco and to roll-your-own tobacco and the resulting incentive for a taxpayer to classify a product as pipe tobacco rather than as roll-your-own tobacco. The amendments are tied to the revised notice requirements for pipe tobacco and roll-your-own tobacco because the way those notices appear on the package goes directly to the inquiry required under each statutory definition, that is, whether, because of the packaging or labeling of the product, the product is "likely to be offered to, or purchased by, consumers as" tobacco to be smoked in a pipe or tobacco for

making cigarettes or cigars. The circumstances in which a product is deemed to be roll-your-own tobacco rather than pipe tobacco in the amended texts are intended to ensure that the tax collected on the product is consistent with the way the product is presented to the consumer.

The second issue regarding the changes to §§ 40.25a and 41.30 relates to the fact that "processed tobacco" is not subject to tax. TTB believes that it is essential to recognize that there will be a point at which tobacco will have been processed in such a way that it is no longer the untaxed commodity but rather has become a taxable "tobacco product." For example, activities such as cutting and flavoring are processes that would result in a "tobacco product" (such as roll-your-own tobacco) but for the fact that it is not in a consumer package. Thus, under the regulatory texts in this temporary rule, processed tobacco that is removed from a factory or imported in a package with a content of 10 pounds or less will be deemed to be roll-your-own tobacco for permit and tax purposes unless the package fully complies with the notice requirements for pipe tobacco or for the other non-cigarette and non-cigar tobacco products (that is, smokeless tobacco, also referred to as snuff and chewing tobacco).

The removals of the "Tax Class L" and "Tax Class J" designations were done in order to ensure that the packaging and labeling of the two products convey the type of tobacco contained inside; as noted above, the notice requirements speak directly to the consideration of the effect the packaging or labeling of a product has on how a product is likely to be offered to or purchased by consumers. Because specific references to the contents are now required, continued use of the tax class designations would be inappropriate. The addition of references to "pipe tobacco," "cigarette wrapper," and "cigar wrapper" is simply intended to conform the texts to the addition of the words "or cigars, or for use as wrappers thereof" at the end of the statutory definition of roll-your-own tobacco.

#### **Effect on Manufacturers and Importers of Tobacco Products**

##### *Minimum Manufacturing and Activity Requirement*

As noted above, the regulations adopted in this temporary rule provide that the permit of a manufacturer of processed tobacco may be suspended or revoked, and a processed tobacco importer's application for permit renewal may be rejected, if there has

been no activity or if no activity has been reported under that permit for one year prior to the application for renewal. TTB believes that the rationale for such provisions applies equally to importers and manufacturers of tobacco products because, as noted above, the intention of the limited-duration permit was to ensure that only those engaged in bona fide business were issued, and continue to hold, a TTB permit. TTB has found that unused permits are not uncommon and that they cause unnecessary administrative burden and divert resources from enforcement activities related to persons actually engaged in the businesses that TTB regulates. Accordingly, we are also amending the regulations applicable to manufacturers and importers of tobacco products in §§ 40.61 and 41.202, respectively, to state that such permits may be subject to suspension or revocation, or in the case of importers may not be renewed for non-use. We are also adding in part 40, for clarification and cross-reference purposes, a new § 40.256 to provide that the minimum activity requirement set forth in § 40.61 is a continuing condition for retention of a manufacturer's permit.

##### *Recording of Processed Tobacco*

Section 40.182 has required manufacturers of tobacco products to account for all tobacco, other than tobacco products, that is received, shipped, lost, and destroyed. This temporary rule amends § 40.182 to require manufacturers to account on a daily basis for processed tobacco and amends § 40.201 to require that inventories include both tobacco products and processed tobacco. The recording of other tobacco is not required. Specifically, the revised § 40.182 text provides that a manufacturer of tobacco products who processes tobacco on the factory premises solely for use in the manufacture of tobacco products under that permit, and who does not remove processed tobacco from the factory premises for any purpose other than destruction, must maintain daily records that show the total quantity in pounds of all processed tobacco on hand, received, used in the manufacture of tobacco products, lost, and destroyed. A manufacturer of tobacco products who removes processed tobacco from the factory for any purpose other than for destruction must keep the same records and submit the same reports as those required for manufacturers of processed tobacco.

### Part by Part Discussion of Regulatory Amendments

This temporary rule adds new subpart L to part 40 and new subpart M in part 41 to set forth the qualification and other requirements applicable to manufacturers and importers of processed tobacco discussed above. This temporary rule also makes a number of conforming changes to parts 40, 41, 44, and 45, including amendments to the definitions of “export warehouse proprietor”, “package”, “removal and remove”, and “roll-your-own tobacco”, and the addition of definitions of “processed tobacco” and “manufacturer of processed tobacco”, and the addition of references to “processed tobacco”, where appropriate. The following additional points are noted regarding the regulatory amendments contained in this document:

#### Part 40

In § 40.11, we are replacing the definition of “permit number” with a more general definition that would be equally applicable to permits issued to manufacturers and importers of processed tobacco and to permits issued to manufacturers and importers of tobacco products. This change does not affect existing permit holders.

Section 40.61 describes general qualification requirements for manufacturers of tobacco products. In addition to including the amendment regarding minimum activity discussed above, we are revising the text for the following reasons:

First, we believe that it is appropriate to specify that a proprietor of a customs bonded warehouse is not required to qualify for a permit as a manufacturer with respect to the operations of such warehouse. This exemption appears in the IRC at 26 U.S.C. 5702(d) and the amendment merely reflects the statutory language.

Second, we are adding a provision to clarify that a retailer such as a tobacconist may, without triggering a TTB permit requirement, take a taxpaid tobacco product out of the package and place it into a different container for sale directly to a consumer; this amendment reflects the language that appears in 26 U.S.C. 5751(a)(3).

Finally, we have placed the existing minimum manufacturing and activity provisions in new paragraph (c) and added a new provision stating that the activity of packaging processed tobacco alone may be sufficient to qualify a person as a manufacturer of tobacco products. We believe this position is necessary to implement the amendments made by the Act, under

which processing of tobacco may result in a product that, except for the fact that it is not in a package, would qualify as a taxable tobacco product. It is the position of TTB that the placing of processed tobacco in a container that meets the definition of a “package” under amended §§ 40.11 and 41.11 indicates a clear intent to create a taxable commodity because, in fact, a taxable commodity is what results from such a packaging operation. Accordingly, such packaging may only occur on the premises of a bonded manufacturer of tobacco products. Thus, because packaging of processed tobacco results in a consumer-ready, taxable, tobacco product, we believe that the activity of packaging processed tobacco alone may be sufficient to qualify a person as a manufacturer of a taxable tobacco product. Without this provision, TTB would have an inadequate regulatory basis for controlling the diversion of processed tobacco that needs only to be packaged in order to be consumer-ready. However, the same rationale does not apply to the packaging of cigarettes and cigars, because the statutory definitions of the two products are met for tax purposes prior to the placing of the products in packages.

In § 40.47, concerning other businesses within a factory, we have amended references to “factory” and to “manufacturer” to specify that the former refers to the factory of a manufacturer of tobacco products and the latter to a manufacturer of tobacco products. These amendments clarify that the provisions of § 40.47 apply to the factory of a manufacturer of tobacco products and not to the factory of a manufacturer who only processes tobacco. We have also removed the requirement that the application for authorization to engage in an “other business” be submitted in triplicate, as multiple copies of the submission are no longer necessary. Finally, we have included text that applies the transitional rule to manufacturers of tobacco products who also process tobacco and remove it for purposes other than destruction. Such a manufacturer who is engaged in the business of processing tobacco on April 1, 2009, and who submits an application for authorization under § 40.47 before June 30, 2009, may continue to engage in such business pending TTB action on the application.

In § 40.61, we have also removed the statement that repackaging and relabeling alone do not qualify as a manufacturing activity. We believe this statement is unnecessary and could be misleading. Repackaging (that is, the

removal of a tobacco product from the package in which it was removed from the factory or released from customs custody upon determination of tax, and the placement of that tobacco product into another package to be offered for sale to a consumer) may only occur under TTB authorization in accordance with § 40.217.

We are amending § 40.72, concerning the use of factory premises to specifically address the use by a manufacturer of tobacco products of the factory premises for processing of tobacco. The amendment clarifies that a manufacturer of tobacco products who processes tobacco solely for use in the manufacture of tobacco products under an existing permit, who does not remove the processed tobacco for any purpose other than destruction, and who maintains records with respect to the disposition of the processed tobacco are not required to apply for TTB authorization under § 40.47. If any of these conditions are not met, that manufacturer must apply for authorization under § 40.47.

In § 40.202, we are replacing the obsolete text of paragraph (b), which concerns the report of wholesale prices of large cigars removed before January 1, 1991, with new text setting forth a requirement to keep records and submit reports when processed tobacco is removed from the factory premises other than for destruction.

In § 40.211, we are adding a statement to reflect the language that appears in 26 U.S.C. 5751(a)(2) and (3), to the effect that no person may purchase, receive, possess (except for personal consumption), offer for sale, or sell or otherwise dispose of, after removal, any tobacco products that are not put up in packages or that are put up in packages not bearing the marks, labels, and notices, as required under 27 CFR part 40. That statutory prohibition is not reflected elsewhere in the TTB regulations and, due to the new significance placed on the packaging of products in the amendments made by this temporary rule, we believe an explicit statement in the regulations would be helpful to industry members.

We are also adding a new § 40.257 to alert manufacturers of tobacco products to the provisions related to processed tobacco. The new section acts merely as a readers guide.

#### Part 41

Section 41.71, concerning tobacco product packages, is amended in the same manner and for the same reason as the amendment to § 40.211 described above. That is, a statement is added to reflect the language that appears in 26

U.S.C. 5751(a)(2) and (3), to the effect that no person may purchase, receive, possess (except for personal consumption), offer for sale, or sell or otherwise dispose of, after removal, any tobacco products that are not put up in packages or that are put up in packages not bearing the marks, labels, and notices, as required under 27 CFR part 41.

We have removed § 41.192, which provided a transitional rule for the implementation of the permit requirement for importers of tobacco products prescribed in T.D. ATF-422 (64 FR 71951, published in the **Federal Register** on December 22, 1999) because it is no longer needed. For the same reason, in § 41.201, we are removing the reference to temporary permits issued under former § 41.192.

We have removed § 41.205 because that regulation was promulgated pursuant to the Contraband Cigarette Trafficking Act (18 U.S.C. 2342). The authority to promulgate regulations under the Contraband Cigarette Trafficking Act now rests with the Bureau of Alcohol, Tobacco, Firearms, and Explosives at the Department of Justice, not with TTB.

We have revised §§ 41.206, 41.207, and 41.208, concerning reports and records, for organizational and editorial reasons and to remove obsolete text. In § 41.206, we have removed the requirement that the first reports submitted by an importer cover all months beginning January 1, 2000, as this requirement arose from a prior transitional rule. We have also removed § 41.207 and included its provisions, with some editorial changes, in § 41.208 in order to have a single section covering the retention and maintenance of records.

#### Part 44

We have removed § 44.90, concerning restrictions relating to operations at an export warehouse premises, and have included its terms, with modifications, in new § 44.141a. The new section, under the heading "Use of premises", reflects the new definition of "export warehouse" by providing that an export warehouse premises may only be used for the storage of non-taxpaid tobacco products and cigarette papers and tubes, and for the storage of processed tobacco, pending export.

#### Part 45

We have conformed §§ 45.45a, 45.45b, and 45.45c to the revised notice and use-up provisions for pipe tobacco and roll-your-own tobacco as discussed above for parts 40 and 41.

### Temporary Rule

Based on the April 1, 2009, effective date of the new permit provisions applicable to manufacturers and importers of processed tobacco and the expanded definition of roll-your-own tobacco, also effective April 1, 2009, TTB believes that proper administration and enforcement of those requirements necessitates the immediate adoption of implementing regulations as a temporary rule. TTB believes that such implementing action ensures that affected industry members will have timely knowledge of the regulatory requirements.

### Public Participation

For submitting comments, please refer to the notice of proposed rulemaking on this subject published in the "Proposed Rules" section of this issue of the **Federal Register**.

### Regulatory Flexibility Act

We certify that this temporary rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The regulatory obligations and relevant collections of information derive directly from the Internal Revenue Code of 1986, as amended, and the regulations in this rule concerning these obligations and collections merely implement and provide necessary standards for complying with the statutory requirements. 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 businesses.

### Paperwork Reduction Act

TTB has provided estimates of the burden that the collection of information contained in these regulations imposes, and the estimated burden 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 1513-0024, 1513-0032, 1513-0033, 1513-0035, 1513-0068, 1513-0070, 1513-0078, 1513-0106, 1513-0107, and 1513-0130.

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;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

### Executive Order 12866

This is not a significant regulatory action as defined in E.O. 12866. Therefore, it requires no regulatory assessment.

### Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Because this document implements provisions of a law that are effective on April 1, 2009, and because immediate guidance is necessary to implement these provisions, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Pursuant to the provisions of 5 U.S.C. 553(d)(2), and (d)(3), we are issuing these regulations without a delayed effective date. TTB has determined that this regulation is an interpretative rule that implements Public Law 111-3 as provided for in section 553(d)(2). TTB also has determined that good cause exists to provide industry members with immediate guidance on procedures to apply for and obtain a permit for operations as importers and manufacturers of processed tobacco and to clarify the difference between certain taxable commodities that are subject to different tax rates, in accordance with section 553(d)(3).

### Drafting Information

Amy R. Greenberg of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document. Other employees of the Alcohol and Tobacco Tax and Trade Bureau also participated in its development.

### List of Subjects

#### 27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

#### 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.

#### 27 CFR Part 45

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

#### Amendments to the Regulations

■ For the reasons set forth in the preamble, title 27, chapter I, of the Code of Federal Regulations is amended as follows:

#### PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 1. The authority citation for part 40 is revised to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. The heading to part 40 is revised to read as set forth above.

■ 3. Section 40.1 is revised to read as follows:

#### § 40.1 Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco.

This part contains regulations relating to the manufacture of tobacco products, cigarette papers and tubes, and processed tobacco; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products, cigarette papers and tubes, and processed tobacco.

■ 4. In § 40.11:

■ a. The definition of “Export warehouse” is amended by removing the words “tobacco products and cigarette papers and tubes” and adding, in their place, the words “tobacco products or cigarette papers or tubes or any processed tobacco”;

■ b. The definition of “Factory” is amended by adding after the words “tobacco products” the words “or processed tobacco”;

■ c. New definitions of “Manufacturer of processed tobacco”, “Packaging”, and “Processed tobacco” are added in appropriate alphabetical order;

■ d. The definitions of “Package” and “Permit number” are revised;

■ e. The definition of “Removal or remove” is amended by adding after the words “tobacco products or cigarette papers or tubes” the words “, or any processed tobacco”;

■ f. The definition of “Roll-your-own tobacco” is amended by adding at the end before the period the words “or cigars, or for use as wrappers of cigars or cigarettes”.

The revisions and additions read as follows:

#### § 40.11 Meaning of terms.

\* \* \* \* \*

##### *Manufacturer of processed tobacco.*

Any person who processes any tobacco other than tobacco products.

\* \* \* \* \*

*Package.* The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part, is deemed to be a package offered for sale or delivery to the ultimate consumer.

*Packaging.* The act of placing processed tobacco or a tobacco product in a package.

*Permit number.* The identifying number and/or letters that are assigned to a TTB permit by the appropriate TTB officer.

\* \* \* \* \*

*Processed tobacco.* Processed tobacco is any tobacco that has undergone processing, but does not include tobacco products. For purposes of this definition, the processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco, nor does the processing of tobacco include curing, baling, or packaging activities. For purposes of this definition, the processing of tobacco includes, but is not limited to, stemming (that is, removing the stem from the tobacco leaf), fermenting, threshing, cutting, or

flavoring the tobacco, or otherwise combining the tobacco with non-tobacco ingredients.

\* \* \* \* \*

■ 5. Section 40.25a is amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b). The revision and additions read as follows:

#### § 40.25a Pipe tobacco and roll-your-own tobacco tax rates and classification.

(a) *Tax rates.* \* \* \*

(b) *Classification.* (1) Pipe tobacco and roll-your-own tobacco, before removal subject to tax, must be put up in packages that conform to the requirements of §§ 40.211 and 40.212, and of § 40.216a or § 40.216b as appropriate.

(2) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, that does not bear the notice for smokeless tobacco prescribed in § 40.216 or the notice for pipe tobacco prescribed in § 40.216a is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco.

(3) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco, even though the package bears the notice required for pipe tobacco under § 40.216a, if:

(i) The package does not bear the declaration “pipe tobacco” in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or

(ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco. (26 U.S.C. 5702 and 5723)

■ 6. Section 40.47 is revised to read as follows:

#### § 40.47 Other businesses within factory.

(a) *General.* The appropriate TTB officer may authorize such other businesses within the factory of a manufacturer of tobacco products as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. A manufacturer of tobacco products who wishes to engage in another business within the factory must submit a written application to do so to the appropriate TTB officer. Except as otherwise provided in paragraph (b)



of this section, a manufacturer of tobacco products may not engage in such other business until the application is approved by the appropriate TTB officer. The manufacturer must retain as part of its records any authorization provided under this section.

(b) *Processed tobacco.* A manufacturer of tobacco products who removes processed tobacco for purposes other than destruction must apply for and obtain TTB authorization to engage in another business within the factory, in accordance with paragraph (a) of this section. Such manufacturer who is engaged in the processing of tobacco on April 1, 2009, and who applies for authorization before June 30, 2009, may continue to engage in such activity pending TTB action on the application.

#### Subpart E—[Heading Amended]

■ 7. The heading for subpart E is amended by adding at the end the words “of Tobacco Products”.

■ 8. Section § 40.61 is revised to read as follows:

##### § 40.61 Qualification.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who manufactures tobacco products must qualify for, and obtain, a permit as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Exceptions.* The following persons are not considered to be engaged in the business of manufacturing tobacco products for purposes of this part:

(1) A person who produces tobacco products solely for that person's own consumption or use;

(2) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse;

(3) A retailer of tobacco products, such as a tobacconist, who takes taxpaid tobacco products out of the package, as that term is defined in § 40.11, in front of waiting customers and places the tobacco products into a different container for immediate delivery to those customers; or

(4) A person whose operations are limited to, and who holds a permit as, a manufacturer of processed tobacco.

(c) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the manufacture of tobacco products. A permit will not be granted to any person whose principal business activity under such permit will be to receive or transfer tobacco

products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must be equivalent to, or exceed, the quantity to be transferred or received in bond under the permit. For the purposes of this section, the activity of packaging processed tobacco may be sufficient to qualify as a manufacturing activity.

■ 9. Section 40.72 is revised to read as follows:

##### § 40.72 Use of factory premises.

(a) *General.* Unless otherwise authorized by the appropriate TTB officer as provided in § 40.47, the premises used by a manufacturer of tobacco products for his factory shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the business; and carrying on activities in connection with business of the manufacturer of tobacco products.

(b) *Manufacturers who process tobacco.* (1) A manufacturer of tobacco products who processes tobacco on the factory premises solely for use in the manufacture of tobacco products under that permit, who does not remove processed tobacco from the factory premises for any purpose other than destruction, and who maintains adequate records with respect to the disposition of the processed tobacco in accordance with § 40.182, may engage in such operations under the authority of its existing permit on the factory premises and without application for such authorization from TTB. If any of these conditions is not met, the manufacturer must, in order to engage in the processing of tobacco under the existing permit, obtain authorization from TTB in accordance with § 40.47, and must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

(2) A manufacturer of tobacco products who removes processed tobacco from the factory premises for any purpose other than destruction must obtain authorization of that activity from TTB in accordance with § 40.47 and must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

#### Subpart F—[Heading Amended]

■ 10. The heading for subpart F is amended by adding at the end the words “of Tobacco Products”.

#### Subpart H—[Heading Amended]

■ 11. The heading for subpart H is amended by adding at the end the words “of Tobacco Products”.

■ 12. Section 40.182 is revised to read as follows:

##### § 40.182 Record of processed tobacco.

(a) A manufacturer of tobacco products who processes tobacco on the factory premises solely for use in the manufacture of tobacco products under that permit, and who does not remove processed tobacco from the factory premises for any purpose other than destruction, must maintain a daily record that shows the total quantity in pounds of all processed tobacco:

- (1) On hand;
- (2) Received, together with the name and address of the person from whom received;
- (3) Used in the manufacture of tobacco products;
- (4) Lost, together with the circumstances of the loss; and
- (5) Destroyed, together with the circumstances of the destruction.

(b) In addition to the recordkeeping and reporting requirements set forth elsewhere in this part, a manufacturer of tobacco products who removes processed tobacco from the factory premises for any purpose other than for destruction must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

(Approved by the Office of Management and Budget under control number 1513-0068)

##### § 40.201 [Amended]

■ 13. The first sentence in § 40.201 is amended by adding after the words “all tobacco products and” the word “processed”.

■ 14. In § 40.202, paragraph (b) and the Office of Management and Budget control number reference are revised to read as follows:

##### § 40.202 Reports.

\* \* \* \* \*

(b) *Report of processed tobacco removed.* In addition to the recordkeeping and reporting requirements set forth elsewhere in this part, a manufacturer of tobacco products who removes processed tobacco from the factory premises for any purpose other than destruction must record and report those removals in accordance with § 40.522 of this part.

(Approved by the Office of Management and Budget under Control No. 1513-0033)

\* \* \* \* \*

■ 15. Section 40.211 is amended by adding a sentence at the end of the

section and by revising the statutory citations. The addition and revision read as follows:

**§ 40.211 Package.**

\* \* \* No person may purchase, receive, possess (except for personal consumption), offer for sale, or sell or otherwise dispose of, after removal, any tobacco products that are not put up in packages bearing the marks, labels, and notices, as required under this part.

(26 U.S.C. 5723 and 5751)

**§ 40.216a [Amended]**

■ 16. In § 40.216a, paragraph (a) is amended by removing the last sentence.

■ 17. In § 40.216b, paragraph (a) and the Office of Management and Budget control number reference are revised to read as follows:

**§ 40.216b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco, before removal subject to tax, must have adequately imprinted on it, or on a label securely affixed to it, the applicable designation “roll-your-own tobacco”, “cigarette tobacco”, “cigar tobacco”, “cigarette wrapper”, or “cigar wrapper”.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1513-0091)

■ 18. Section 40.216c is revised to read as follows:

**§ 40.216c Package use-up rule.**

(a) A manufacturer of pipe tobacco or roll-your-own tobacco may remove packages of such products bearing the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) only if such packages were in use prior to April 1, 2009, and such manufacturer may continue to remove packages bearing those designations until August 1, 2009.

(b) A manufacturer may, until August 1, 2009, remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 40.216(b).

■ 19. The undesignated center heading before § 40.251 is amended by removing the words “Tobacco Products” and adding, in their place, the word “Operations”.

■ 20. A new § 40.256 is added at the end of subpart H to read as follows:

**§ 40.256 Minimum manufacturing and activity requirements.**

The minimum manufacturing and activity requirement prescribed in

§ 40.61(b) of this part is a continuing condition of a manufacturer’s permit, that is, a permit to manufacture tobacco products is conditioned upon a person’s principal business activity being the manufacture of tobacco products. A permit may be suspended, and subsequently revoked, if the person’s principal business activity under such permit is to receive or transfer tobacco products in bond, or if the person has no activity under such permit for a period of one year. As a minimum activity requirement, the quantity of tobacco products manufactured under the permit must exceed the quantity transferred or received in bond under the permit.

■ 21. A new § 40.257 is added at the end of subpart H to read as follows:

**§ 40.257 Processed tobacco.**

A manufacturer of tobacco products may be required to obtain authorization from the appropriate TTB officer with regard to the activities involving processed tobacco. See § 40.72. Such manufacturers also must maintain records and may be required to submit reports regarding such activities. See §§ 40.182 and 40.202.

■ 22. A new subpart L, consisting of §§ 40.491 through 40.534, is added to read as follows:

**Subpart L—Manufacture of Processed Tobacco**

Sec.

**Qualification Requirements for Manufacturers of Processed Tobacco**

- 40.491 Persons required to qualify.
- 40.492 Application for permit.
- 40.493 Transitional rule.
- 40.494 Corporate documents.
- 40.495 Articles of partnership or association.
- 40.496 Trade name certificate.
- 40.497 Additional information.
- 40.498 Investigation of applicant.
- 40.499 Notice of contemplated disapproval.
- 40.500 Issuance of permit.
- 40.501 Retention of permit and supporting documents.

**Changes After Qualification**

- 40.511 Change in name.
- 40.512 Change in ownership or control.
- 40.513 Change in location or address of factory.

**Operations by Manufacturers of Processed Tobacco**

- 40.521 Record of processed tobacco.
- 40.522 Reports.
- 40.523 Inventories.
- 40.524 Retention of documents.
- 40.525 Discontinuance of operations.
- 40.526 Minimum manufacturing and activity requirements.
- 40.527 Authorization to package processed tobacco.

- 40.528 Suspension and revocation of permit.

**Other Provisions Related to Manufacturers of Processed Tobacco**

- 40.531 Alternate methods or procedures.
- 40.532 Emergency variations from requirements.
- 40.533 Penalties and forfeitures.
- 40.534 Power of attorney.

**Subpart L—Manufacture of Processed Tobacco**

**Qualification Requirements for Manufacturers of Processed Tobacco**

**§ 40.491 Persons required to qualify.**

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who engages in the processing of tobacco must first qualify for and receive a permit as a manufacturer of processed tobacco in accordance with the provisions of this subpart.

(b) *Exceptions.* (1) A person who engages in the processing of tobacco solely for his own personal use or consumption and not for sale or transfer to another person is not engaged in the manufacture of processed tobacco for purposes of this part and, accordingly, is not required to qualify as a manufacturer of processed tobacco.

(2) Any person who holds a TTB permit for the manufacture of tobacco products is thereby authorized to process tobacco solely for use in the manufacture of tobacco products under that permit, so long as the processed tobacco is not removed from the factory for any purpose other than destruction. Such a manufacturer is not required to qualify under this subpart as a manufacturer of processed tobacco.

(3) Any person who holds a TTB permit for the manufacture of tobacco products who removes processed tobacco from the factory for any purpose other than destruction must apply for authorization from TTB to engage in that activity, in accordance with § 40.47, under the manufacturer’s existing permit.

**§ 40.492 Application for permit.**

The application for a permit as a manufacturer of processed tobacco must be made on TTB F 5200.3, according to the instructions on the form. All documents required under this subpart to be furnished with the application must be included with the application.

**§ 40.493 Transitional rule.**

(a) Any person who:  
(1) On April 1, 2009, is engaged in business as a manufacturer of processed tobacco; and

(2) Before June 30, 2009, submits an application for a permit or authorization as provided in this part to engage in such business, may continue to engage in that business pending final action on the application.

(b) Pending final action on an application or request for authorization submitted under paragraph (a) of this section, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to the applicant in the same manner and to the same extent as if the applicant were a holder of a permit to manufacture processed tobacco under chapter 52.

(c) Upon receipt of an application, the appropriate TTB officer will provide the applicant with a written acknowledgement that may be used for a limited period as confirmation of TTB authorization to engage in the business of a manufacturer of processed tobacco.

#### **§ 40.494 Corporate documents.**

Every corporation that files an application for a permit as a manufacturer of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

#### **§ 40.495 Articles of partnership or association.**

Every partnership or association that files an application for a permit as a manufacturer of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such

documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

#### **§ 40.496 Trade name certificate.**

Every person that files an application for a permit as a manufacturer of processed tobacco must furnish with the application for the permit required by § 40.492 a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

#### **§ 40.497 Additional information.**

The appropriate TTB officer may require such additional information as deemed necessary to determine whether the applicant is entitled to a permit under this subpart. The applicant shall, when required by the appropriate TTB officer, furnish as a part of the application for the permit such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit.

#### **§ 40.498 Investigation of applicant.**

Appropriate TTB officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is eligible for a permit. A permit may be denied if the applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(a) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(b) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(c) Has failed to disclose any material information required or made any material false statement in the application therefor.

#### **§ 40.499 Notice of contemplated disapproval.**

If the appropriate TTB officer has reason to believe that the applicant is not entitled to a permit, the appropriate TTB officer will promptly give to the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

#### **§ 40.500 Issuance of permit.**

If the application for permit, together with the supporting documents, required under this part is approved, the appropriate TTB officer will issue a permit on TTB F 5200.28 to the applicant as a manufacturer of processed tobacco.

#### **§ 40.501 Retention of permit and supporting documents.**

The manufacturer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this subpart are kept. The permit and supporting documents must be made available for inspection by any appropriate TTB officer upon request.

#### **Changes After Qualification**

##### **§ 40.511 Change in name.**

(a) *Change in individual name.* When there is a change in the name of an individual operating under a permit as a manufacturer of processed tobacco, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit.

(b) *Change in trade name.* When there is a change in a trade name used by a manufacturer of processed tobacco in connection with operations authorized by the permit, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit to reflect such change. This requirement also applies to the addition or discontinuance of a trade name. The manufacturer must also furnish a true copy of any new trade name certificate or document issued to the manufacturer, or statement in lieu thereof, required by § 40.496.

(c) *Change in corporate name.* When there is a change in the corporate name of a manufacturer of processed tobacco, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit. The manufacturer must also furnish

such documents as may be necessary to establish that the corporate name has been changed.

**§ 40.512 Change in ownership or control.**

(a) *Fiduciary successor.* If an administrator, executor, receiver, trustee, assignee, or other fiduciary is to take over the business of a manufacturer of processed tobacco as a continuing operation, such fiduciary shall, before commencing operations, make application for a permit in accordance with this subpart, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make a commencing inventory in accordance with § 40.523. However, where a fiduciary intends only to liquidate the business, qualification as a manufacturer of processed tobacco will not be required if such fiduciary promptly files with the appropriate TTB officer a written statement to that effect, in duplicate.

(b) *Transfer of ownership.* If a transfer in ownership of the business of a manufacturer of processed tobacco (including a change of any member of a partnership or association) is to be made, such manufacturer shall give notice, in writing, to the appropriate TTB officer, naming the proposed successor and the desired effective date of the transfer. The proposed successor shall, before commencing operations, qualify as a manufacturer of processed tobacco in accordance with this subpart. The manufacturer shall give notice of the transfer, and the proposed successor shall make application for permit, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a concluding inventory and concluding report, in accordance with §§ 40.523 and 40.522, respectively, and surrender the permit with such inventory and report. The successor shall make a commencing inventory and first report, in accordance with §§ 40.523 and 40.522, respectively.

(c) *Change in officers, directors, or stockholders of a corporation.* Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of processed tobacco, or upon any occurrence that results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the appropriate TTB officer in writing, giving the identity of such person.

When there is any change in the authority furnished under § 40.494 for officers to act in behalf of the corporation, the manufacturer shall immediately so notify the appropriate TTB officer in writing.

(d) *Change in control of corporation.* When the issuance, sale, or transfer of the stock of a corporation operating as a manufacturer of processed tobacco results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer shall, within 30 days after the change occurs, make application on TTB F 5200.3 for a new permit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the manufacturer shall dispose of all processed tobacco on hand, make a concluding inventory and concluding report, in accordance with the provisions of §§ 40.523 and 40.522, respectively, and surrender the permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

**§ 40.513 Change in location or address of factory.**

Whenever a manufacturer of processed tobacco intends to relocate its factory, the manufacturer shall, before commencing operations at the new location, make application on TTB F 5200.16 for an amended permit. Whenever any change occurs in the address, but not the location, of the factory of a manufacturer of processed tobacco as a result of action of local authorities, the manufacturer shall, within 30 days of such change, make application on TTB F 5200.16 for an amended permit.

**Operations by Manufacturers of Processed Tobacco**

**§ 40.521 Record of processed tobacco.**

(a) Every manufacturer of processed tobacco and every manufacturer of tobacco products who removes processed tobacco from the factory for any purpose other than destruction must keep records of daily operations and transactions that show total quantity of processed tobacco:

- (1) On hand;
- (2) Used in the manufacture of tobacco products;
- (3) Processed;
- (4) Received, together with the name and address of the person from which it was received;
- (5) Removed from the factory for shipment to a person holding a TTB permit as a manufacturer of processed

tobacco, a manufacturer of tobacco products, or an export warehouse proprietor, together with the name and address of the person to whom shipped or delivered;

(6) Removed from the factory for shipment to a person not holding a TTB permit as a manufacturer of processed tobacco, a manufacturer of tobacco products, or an export warehouse proprietor;

(7) Removed from the factory for export;

(8) Removed for any purpose other than described in paragraphs (a)(5), (6), and (7) of this section;

(9) Lost, together with the circumstances of the loss; and

(10) Destroyed, together with the circumstances of the destruction.

(b) The records of any manufacturer of processed tobacco who removes processed tobacco from the factory for shipment to a person who does not hold a TTB permit as a manufacturer of processed tobacco, as a manufacturer of tobacco products, or as an export warehouse proprietor must include dated, commercial records that show the following information about each removal under this paragraph:

(1) The full name and address (including city and State) of the purchaser (or recipient, if there is no purchaser);

(2) The full name, address (including city and State), and driver's license number of the person picking up the processed tobacco for delivery;

(3) The license number of the vehicle in which the processed tobacco is removed from the manufacturer's premises;

(4) The street address of the destination of the processed tobacco;

(5) The quantity of processed tobacco in the shipment;

(6) A declaration by the purchaser (or recipient, if no purchaser) of the specific purpose of the purchase or receipt (for example, delivery to another, resale); and

(7) A declaration by the purchaser (or recipient, if no purchaser) of the name and address of his or her principal when acting as an agent.

(c) The entries in the records of removals required under this section must be made for each day by the close of the business day following the day on which the removal occurs. Although no particular format for the records in this section is prescribed, the required information must be readily ascertainable from the records kept.

(26 U.S.C. 5741)

**§ 40.522 Reports.**

(a) *General.* Every manufacturer of processed tobacco must prepare a monthly report on TTB F 5250.1 in accordance with the instructions for the form. The report must be prepared at the times specified in this section and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(b) *First report(s).* The first monthly report must be submitted by the 20th day of the month following the month in which the permit or authorization is issued. If the manufacturer is operating as a manufacturer of processed tobacco under the transitional rule set forth in § 40.493, the manufacturer must submit the first report by the 20th day of the month following the month in which TTB provides written acknowledgement of the receipt of the application filed under § 40.492. In the transitional case, the manufacturer must also submit reports for all previous months back to April 2009. For example, a manufacturer who receives an acknowledgement, dated July 17, 2009, must submit by August 15, 2009, a total of four reports, one each for April, May, June, and July 2009.

(c) *Reports of no activity.* Reports with the notation "No Activity" must be made for those months in which no activity occurs.

(d) *Reports of removals.* A manufacturer who removes processed tobacco for shipment to someone other than a person holding a TTB permit as a manufacturer of processed tobacco, a manufacturer of tobacco products, or an export warehouse proprietor must report such removal on TTB F 5250.2 by the close of the business day on the day following the removal, in accordance with the instructions on the form. A manufacturer operating under the transitional rule set forth in § 40.493 must also comply with the requirements of this paragraph.

(e) *Concluding report.* A concluding report, covering the period from the first of the month to the date of the concluding inventory, shall be made with such inventory.

(26 U.S.C. 5722)

**§ 40.523 Inventories.**

Every manufacturer of processed tobacco must provide a true and accurate inventory on TTB F 5210.9 in accordance with instructions for the form. The manufacturer must make such an inventory at the time of commencing business, at the time of transferring

ownership, at the time of changing location of the factory, at the time of concluding business, and at such other time as any appropriate TTB officer may require. In the case of a manufacturer operating under the transitional rule set forth in § 40.493, that manufacturer must make an inventory within 10 days of the date of TTB's written acknowledgement of the receipt of the application filed under § 40.492. Each such inventory is subject to verification by the appropriate TTB officer.

(26 U.S.C. 5721)

**§ 40.524 Retention of documents.**

Every manufacturer of processed tobacco must retain all records and reports required under this subpart, including copies of permits, authorizations, inventories, and reports, for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by the appropriate TTB officer upon request.

(26 U.S.C. 5741)

**§ 40.525 Discontinuance of operations.**

Every manufacturer of processed tobacco who desires to discontinue operations and close a factory must dispose of all processed tobacco on hand, make a concluding inventory and concluding report, in accordance with the provisions of §§ 40.523 and 40.522, respectively, and surrender the permit to the appropriate TTB officer.

(26 U.S.C. 5721, 5722)

**§ 40.526 Minimum manufacturing and activity requirements.**

A permit to manufacture processed tobacco will only be granted to those persons engaged in the processing of tobacco. A permit may be suspended, and subsequently revoked, if the person has no activity under such permit for a period of one year. A person whose permit as a manufacturer of processed tobacco has been revoked for non-use, who wishes to engage in such business, must re-apply for such permit.

(26 U.S.C. 5712)

**§ 40.527 Authorization to package processed tobacco.**

A permit to manufacture processed tobacco does not authorize packaging of processed tobacco. Packaging of processed tobacco may only occur on the bonded premises of a manufacturer of tobacco products.

**§ 40.528 Suspension and revocation of permit.**

Where the appropriate TTB officer has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

**Other Provisions Relating to Manufacturers of Processed Tobacco****§ 40.531 Alternate methods or procedures.**

(a) *General.* A manufacturer of processed tobacco, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when the appropriate TTB officer finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and

(3) The alternate method or procedure will not be contrary to any provision of

law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart.

(b) *Application.* A manufacturer of processed tobacco who desires to employ an alternate method or procedure must submit a written application to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. An alternate method or procedure shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the appropriate TTB officer, the effective administration of this part is hindered. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records in accordance with this subpart.

#### **§ 40.532 Emergency variations from requirements.**

The appropriate TTB officer may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and provided that the proposed variations will not hinder the effective administration of this subpart and will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations will automatically terminate the authority for such variations, and the manufacturer of processed tobacco thereupon must fully comply with the prescribed requirements of the regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate TTB officer the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer must submit a written application to do so to the appropriate TTB officer. The application must describe the proposed variations and set forth the reasons therefor. Variations may not be employed until the

application has been approved. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records, in accordance with this subpart.

#### **§ 40.533 Penalties and forfeitures.**

Anyone who fails to comply with the provisions of this subpart may be liable to the civil and criminal penalties, and forfeitures, provided by law.

#### **§ 40.534 Power of attorney.**

If the application for permit or any report or other document required to be executed under this subpart is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 40.494. TTB F 5000.8 does not have to be filed again with the appropriate TTB officer where such form has previously been submitted to that appropriate TTB officer and is still in effect.

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

■ 23. The authority citation for part 41 is revised 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.

■ 24. The heading for part 41 is revised to read as set forth above.

#### **§ 41.1 [Amended]**

■ 25. Section 41.1 is amended by removing the words “and cigarette papers and tubes” in the section heading and where they first appear in the text and adding, in their place in each case, the words “, cigarette papers and tubes, and processed tobacco”.

■ 26. In § 41.11:

■ a. The definition of “Export warehouse” is amended by adding the words “or for the storage of processed tobacco,” after “paid,”;

■ b. The definition of “Factory” is amended by removing the words “tobacco products or cigarette papers or tubes” and adding, in their place, the words “tobacco products, cigarette papers or tubes, or processed tobacco”;

■ c. The definition of “Importer” is amended by adding, after the words “tobacco products or cigarette papers or tubes”, each time they appear, the words “, or any processed tobacco,”

■ d. The definition of “Removal or remove” is amended by adding after the words “tobacco products or cigarette papers or tubes” the words “, or any processed tobacco”;

■ e. The definition of “Roll-your-own tobacco” is amended by adding at the end before the period the words “or cigars, or for use as wrappers thereof.”

■ f. New definitions of “Manufacturer of processed tobacco”, “Processed tobacco” and “Packaging” are added in appropriate alphabetical order;

■ g. The definition of “Package” is revised; and

■ h. The definition of “Sale price” is amended by adding, after the words “importer or”, the word “United States”.

The additions and revision read as follows:

#### **§ 41.11 Meaning of terms.**

\* \* \* \* \*

*Manufacturer of processed tobacco.* Any person who processes any tobacco other than tobacco products.

\* \* \* \* \*

*Package.* The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer or the importer (prior to release from customs custody) and offered for sale or delivery to the ultimate consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part is deemed to be a package offered for sale or delivery to the ultimate consumer.

*Packaging.* The act of placing processed tobacco or a tobacco product in a package.

\* \* \* \* \*

*Processed tobacco.* Processed tobacco is any tobacco that has undergone processing, but does not include tobacco products. For purposes of this definition, the processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco, nor does the processing of tobacco include curing, baling, or packaging activities. For purposes of this definition, the processing of tobacco includes, but is not limited to, stemming (that is,

removing the stem from the tobacco leaf), fermenting, threshing, cutting, or flavoring the tobacco, or otherwise combining the tobacco with non-tobacco ingredients.

\* \* \* \* \*

■ 27. Section 41.30 is amended by designating the existing text as paragraph (a), and by adding a heading to newly designated paragraph (a) and adding a new paragraph (b), to read as follows:

**§ 41.30 Pipe tobacco and roll-your-own tobacco.**

(a) *Tax rates.* \* \* \*

(b) *Classification.* (1) Pipe tobacco and roll-your-own tobacco, before removal subject to tax, must be put up in packages that conform to the requirements of § 41.71 and of § 41.72a or § 41.72b as appropriate.

(2) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 41.11, that does not bear the notice for smokeless tobacco prescribed in § 41.72 or the notice for pipe tobacco prescribed in § 41.72a is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco.

(3) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 41.11, is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco, even though the package bears the notice required for pipe tobacco under § 41.72a, if:

(i) The package does not bear the declaration “pipe tobacco” in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or

(ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco.

(26 U.S.C. 5702 and 5723)

■ 28. Section 41.71 is amended by adding a sentence at the end and by revising the statutory citations. The addition and revision read as follows:

**§ 41.71 Package.**

\* \* \* No person may purchase, receive, possess (except for personal consumption), offer for sale, or sell or otherwise dispose of, after removal, any tobacco products that are not put up in packages bearing the marks, labels, and notices, as required under this part.

(26 U.S.C. 5723 and 5751)

**§ 41.72a [Amended]**

■ 29. In § 41.72a, paragraph (a), is amended by removing the last sentence.

■ 30. In § 41.72b, paragraph (a) and the Office of Management and Budget control number reference are revised to read as follows:

**§ 41.72b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco, before removal subject to tax, must have adequately imprinted on it, or on a label securely affixed to it, the applicable designation “roll-your-own tobacco”, “cigarette tobacco”, “cigarette wrapper”, “cigar tobacco” or “cigar wrapper”.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1513–0091)

■ 31. Section 41.72c is revised to read as follows:

**§ 41.72c Package use-up rule.**

(a) An importer of pipe tobacco or roll-your-own tobacco may remove packages of such products bearing the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) only if similar packages had been removed by that importer prior to April 1, 2009, and such importer may continue to remove packages bearing such designations until August 1, 2009.

(b) An importer may, until August 1, 2009, remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 41.72(b).

**§ 41.192 [Removed and Reserved]**

■ 32. Section 41.192 is removed and reserved.

■ 33. Section 41.201 is revised to read as follows:

**§ 41.201 Duration of permit.**

Permits issued under this section will be valid for a period of three years from the effective date shown on the permit. The expiring permit will continue in effect until final action is taken by TTB on the application for renewal, provided a timely application for renewal is filed.

■ 34. Section 41.202 is revised to read as follows:

**§ 41.202 Renewal of permit.**

(a) *General.* Importers wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of such expiration.

(b) *Minimum activity requirement.* A permit to import tobacco products will only be renewed for those persons who have engaged in the importing of tobacco products under the current permit in the one year period prior to the application to renew.

**§ 41.205 [Removed and Reserved]**

■ 35. Section 41.205 is removed and reserved.

■ 36. Section 41.206 is revised to read as follows:

**§ 41.206 Reports.**

(a) *General.* Importers must file a monthly report on TTB F 5220.6 in accordance with the instructions for the form.

(b) *First report.* The first monthly report must be submitted by the 15th day of the month following the month in which the permit is issued.

(c) *Reports of no activity.* Reports with the notation “No Activity” must be made for those months in which no activity occurs.

(d) *Concluding report.* When a transfer of ownership of the business of an importer of tobacco products described in § 41.224, or when a change in control of a corporation described in § 41.226 occurs, a concluding report with the notation “Concluding Report” must be made for the month or partial month during which the transfer of ownership or change in control becomes effective. A concluding report must also be made for the month or partial month during which an importer concludes operations under the permit.

**§ 41.207 [Removed and Reserved]**

■ 37. Section 41.207 is removed and reserved.

■ 38. Section 41.208 is revised to read as follows:

**§ 41.208 Maintenance and retention of records and reports.**

(a) *Maintenance.* All records, reports, and other documents required under this part must be maintained separately, chronologically by transaction or reporting date, at the importer’s principal place of business. The appropriate TTB officer may, pursuant to an application by the importer for an approved alternate method or procedure under § 41.26, authorize such documents to be maintained at another business location under the control of the importer, if the conditions of § 41.26 are met and provided that the use of the alternate location does not cause undue inconvenience to TTB when attempting to examine the files and does not delay the timely transmittal of any document required to be submitted to TTB.



(b) *Retention.* All records and reports and documents or copies of documents supporting these records or reports required by this part to be submitted to TTB or retained by the importer must be retained for not less than three years following the close of the calendar year in which filed or made. Such records, reports, and other documents must be available for inspection by the appropriate TTB officer upon request. Furthermore, the appropriate TTB officer may require these records, reports, and other documents to be kept for an additional period of not more than three years in any case where it is necessary to protect the revenue.

■ 39. A new subpart M, consisting of §§ 41.231 through 41.273, is added to read as follows:

**Subpart M—Importation of Processed Tobacco**

Sec.

**Qualification Requirements for Importers of Processed Tobacco**

- 41.231 Persons required to qualify.
- 41.232 Application for permit or amendment of existing permit.
- 41.233 Transitional rule.
- 41.234 Corporate documents.
- 41.235 Articles of partnership or association.
- 41.236 Trade name certificate.
- 41.237 Additional information.
- 41.238 Investigation of applicant.
- 41.239 Notice of contemplated disapproval.
- 41.240 Issuance of permit.
- 41.241 Duration of permit.
- 41.242 Renewal of permit.
- 41.243 Retention of permit and supporting documents.

**Changes After Original Qualification**

- 41.251 Change in name.
- 41.252 Change in ownership or control.
- 41.253 Change in location or address.

**Operations of Importers of Processed Tobacco**

- 41.261 Records.
- 41.262 Reports.
- 41.263 Maintenance of records and reports.

**Other Provisions Applicable to Importers of Processed Tobacco**

- 41.271 Power of attorney.
- 41.272 Cross reference.
- 41.273 Suspension and revocation of permit.

**Subpart M—Importation of Processed Tobacco**

**Qualification Requirements for Importers of Processed Tobacco**

**§ 41.231 Persons required to qualify.**

Except as otherwise provided in § 41.233, every person, before commencing business as an importer of processed tobacco, must apply for, and obtain, either a permit as an importer of

processed tobacco or, if the person holds a TTB permit as an importer of tobacco products, an amendment to the existing permit authorizing the importation of processed tobacco under such permit, in accordance with the provisions of this subpart.

**§ 41.232 Application for permit or amendment of existing permit.**

(a) *Application for permit.* Any person who intends to engage in the business of importing processed tobacco, and who is not engaged in the business of importing tobacco products, must apply for a permit by completing and submitting TTB F 5230.4 in accordance with the instructions on that form. All documents required under this subpart to be furnished with the application must be included with the application when it is submitted. If the appropriate TTB officer determines that the application is incomplete and, for that reason, does not include sufficient information for TTB to make a decision on the application, and if the applicant has not provided the missing information within one year of a written request for it or within any shorter time period specified in the written request, the application will be deemed abandoned and the applicant will be notified in writing that no permit will be issued in response to the incomplete application. In the case of an application filed in accordance with § 41.233, such notification will constitute the final action on the application and such party will no longer be able to continue as an importer of processed tobacco.

(b) *Application for amendment of existing permit.* Any person who holds a TTB permit as an importer of tobacco products may also qualify to engage in business as an importer of processed tobacco under the same permit by making application on TTB F 5230.5 for an amended permit.

**§ 41.233 Transitional rule.**

(a) Any person who:  
 (1) On April 1, 2009, had already been engaged in business as an importer of processed tobacco; and  
 (2) Before June 30, 2009, submits an application for a permit or an amendment of an existing permit, as provided in § 41.232, to engage in such business, may continue to engage in that business pending final action on the application.

(b) Pending final action on the application, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to the applicant in the same manner and to the same extent as if the applicant were a holder of a permit as

an importer of processed tobacco or an amended permit authorizing the importation of processed tobacco under chapter 52 and this subpart. Upon receipt of an application, the appropriate TTB officer will provide the applicant with a written acknowledgement that may be used for a limited period as confirmation of TTB authorization to engage in such business of an importer of processed tobacco.

**§ 41.234 Corporate documents.**

Every corporation that files an application for a permit as an importer of processed tobacco must furnish with its application for the permit required by § 41.231 a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect will be sufficient for the purpose of this section.

**§ 41.235 Articles of partnership or association.**

Every partnership or association that files an application for a permit as an importer of processed tobacco must furnish with its application for the permit required by § 41.231 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

**§ 41.236 Trade name certificate.**

Every person that files an application for a permit as an importer of processed tobacco operating under a trade name

must furnish with the application for the permit required by § 41.231 a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

#### **§ 41.237 Additional information.**

The appropriate TTB officer may require such additional information as deemed necessary to determine whether the applicant is entitled to obtain either a permit as an importer of tobacco products or, if holding a permit as an importer of processed tobacco, an amended permit authorizing the importation of processed tobacco, under this subpart. The applicant must, when required by the appropriate TTB officer, furnish as a part of the application for the permit or authorization such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit or an amended permit.

#### **§ 41.238 Investigation of applicant.**

Appropriate TTB officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is eligible for a permit. A permit may be denied if the applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(a) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(b) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(c) Has failed to disclose any material information required or made any material false statement in the application therefor.

#### **§ 41.239 Notice of contemplated disapproval.**

If the appropriate TTB officer has reason to believe that the applicant is not entitled to a permit, the appropriate

TTB officer will promptly give to the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the application is denied.

#### **§ 41.240 Issuance of permit.**

If the application for the permit required under this subpart is approved, the appropriate TTB officer will issue a permit on TTB F 5200.24 to the applicant as an importer of processed tobacco.

#### **§ 41.241 Duration of permit.**

A permit issued under § 41.240 of this part will be valid for a period of three years from the effective date shown on the permit.

#### **§ 41.242 Renewal of permit.**

(a) *General.* Importers of processed tobacco wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of the expiration date on the permit, in accordance with instructions for the permit form. The expiring permit will continue in effect until final action is taken by TTB on the application for renewal, provided a timely application for renewal is filed.

(b) *Minimum activity requirement.* A permit to import processed tobacco will only be renewed for those persons who have engaged in the importing of processed tobacco under the current permit in the one year period prior to the application to renew.

#### **§ 41.243 Retention of permit and supporting documents.**

The importer of processed tobacco must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this subpart are kept. The permit and supporting documents must be made available for inspection by any appropriate TTB officer upon request.

#### **Changes After Original Qualification**

##### **§ 41.251 Change in name.**

(a) *Change in individual name.* When there is a change in the name of an individual operating under a permit as an importer of processed tobacco, the importer must, within 30 days of such change, make application on TTB F 5230.5 for an amended permit.

(b) *Change in trade name.* When there is a change in a trade name used by an importer of processed tobacco in connection with operations authorized by the permit, the importer must, within 30 days of such change, make application on TTB F 5230.5 for an amended permit to reflect such change. This requirement also applies to the addition or discontinuance of a trade name. The importer must also furnish a true copy of any new trade name certificate or document issued to the importer, or statement in lieu thereof, required by § 41.236.

(c) *Change in corporate name.* When there is a change in the corporate name of an importer of processed tobacco, the importer must, within 30 days of such change, make application on TTB F 5230.5 for an amended permit. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

##### **§ 41.252 Change in ownership or control.**

(a) *Fiduciary successor.* If an administrator, executor, receiver, trustee, assignee, or other fiduciary is to take over the business of an importer of processed tobacco as a continuing operation, such fiduciary shall, before commencing operations, make application for permit in accordance with § 41.232, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of processed tobacco will not be required if he promptly files with the appropriate TTB officer a written statement to that effect.

(b) *Transfer of ownership.* If a transfer in ownership of the business of an importer of processed tobacco (including a change of any member of a partnership or association) is to be made, such importer shall give notice, in writing, to the appropriate TTB officer, naming the proposed successor and the desired effective date of the transfer. The proposed successor must, before commencing operations, qualify as an importer of processed tobacco in accordance with this subpart. The importer must give notice of the transfer, and the proposed successor must make application for permit, in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with § 41.262, and surrender the permit with the report. The successor must

make a first report, in accordance with § 41.262.

(c) *Change in officers, directors, or stockholders of a corporation.* Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating as an importer of processed tobacco, or upon any occurrence that results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer shall, within 30 days of such action, so notify the appropriate TTB officer in writing, giving the identity of such person. When there is any change in the authority furnished under § 41.271 for officers to act on behalf of the corporation, the importer must immediately so notify the appropriate TTB officer in writing.

(d) *Change in control of corporation.* When the issuance, sale, or transfer of the stock of a corporation operating as an importer of processed tobacco results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer must, within 30 days after the change occurs, make application on TTB F 5230.4 for a new permit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the importer must make a concluding report, in accordance with § 41.262, and surrender the permit with the report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

#### **§ 41.253 Change in location or address.**

Whenever an importer of processed tobacco intends to relocate the principal business office, the importer must, before commencing operations at the new location, make application on TTB F 5230.5, and obtain an amended permit. Whenever any change occurs in the address, but not the location, of the principal business office of an importer of processed tobacco, as a result of action of local authorities, the importer must, within 30 days of such change, make application on TTB F 5230.5 for an amended permit.

#### **Operations of Importers of Processed Tobacco**

##### **§ 41.261 Records.**

(a) Any person who imports, or who knowingly causes to be imported, processed tobacco must make and keep records of operations and transactions. A person purchasing processed tobacco from the importer in a domestic

transaction and who does not knowingly cause the processed tobacco to be imported is not required to make and keep records unless the terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but the agent of the person placing the order). Records maintained must reflect the date and quantity of processed tobacco:

- (1) Imported;
- (2) Received otherwise than through importation;
- (3) Returned to customs custody;
- (4) Transferred or sold to a person who holds a TTB permit as an importer or manufacturer of tobacco products or of processed tobacco or as an export warehouse proprietor;
- (5) Transferred or sold to a person who does not hold a TTB permit as an importer or manufacturer of tobacco products or of processed tobacco or as an export warehouse proprietor; and
- (6) Lost or destroyed.

(b) The records of any importer who transfers or sells processed tobacco to a person who does not hold a TTB permit as an importer or manufacturer of tobacco products or of processed tobacco or as an export warehouse proprietor must include dated, commercial records that show the following information about each removal:

- (1) The full name and address (including city and State) of the purchaser (or recipient, if there is no purchaser);
- (2) The full name, address (including city and State), and driver's license number of the person picking up the processed tobacco for delivery;
- (3) The license number of the vehicle in which the processed tobacco is picked up for delivery to purchaser or transferee;
- (4) The street address of the destination of the processed tobacco;
- (5) The quantity of processed tobacco in the shipment;
- (6) A declaration by the purchaser (or recipient, if no purchaser) of the specific purpose of the purchase or receipt (for example, delivery to another, resale); and
- (7) A declaration by the purchaser (or recipient, if no purchaser) of the name and address of his or her principal when acting as an agent.

(c) The entries in the records required under this section must be made for each day by the close of the business day following the day on which the transfer or sale occurs. Although no particular format for the records is prescribed, the required information

must be readily ascertainable from the records kept.

(d) An importer operating under the transitional rule, set forth in § 41.233, must also comply with the requirements of this section.

(26 U.S.C. 5741)

#### **§ 41.262 Reports.**

(a) *General.* Every importer of processed tobacco must prepare a monthly report on TTB F 5220.6 in accordance with the instructions for the form. The report must be prepared at the times specified in this section and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The importer must retain a copy of each report in accordance with the provisions of this subpart.

(b) *First report(s).* The first monthly report must be submitted by the 15th day of the month following the month in which the permit is issued. If the importer is operating as an importer of processed tobacco under the transitional rule in accordance with § 41.233, the importer must submit the first report by the 15th day of the month following the month in which TTB provides written acknowledgement of the receipt of the application filed under § 41.232.

(c) *Reports of no activity.* Reports with the notation "No Activity" must be made for those months in which no activity occurs.

(d) *Reports of sales and transfers.* An importer who transfers or sells processed tobacco to someone other than a person holding a TTB permit as an importer or manufacturer of processed tobacco or tobacco products or as an export warehouse proprietor must report such sale or transfer on TTB F 5250.2 by the close of the business day on the day following the transfer or sale, in accordance with the instructions on the form. An importer operating under the transitional rule set forth in § 41.233 must comply with the requirements of this paragraph.

(e) *Concluding report.* When a transfer of ownership of the business of an importer of processed tobacco described in § 41.252(b) occurs, or when a change in control of a corporation described in § 41.252(d) occurs, a concluding report with the notation "Concluding Report" must be made for the month or partial month during which the transfer of ownership or change in control becomes effective. A concluding report must also be made for the month or partial month during which an importer concludes operations under the permit or authorization.

(26 U.S.C. 5722)

**§ 41.263 Maintenance of records and reports.**

All records and reports required by this subpart must be maintained separately, chronologically by transaction or reporting date, at the importer's principal place of business. The appropriate TTB officer may, pursuant to a written request, authorize files, or an individual file, to be maintained at another business location under the control of the importer, provided that the alternative location does not cause undue inconvenience to TTB when attempting to examine the files and does not delay the timely transmittal of any documents required to be submitted to TTB.

(26 U.S.C. 5741)

**Other Provisions Applicable to Importers of Processed Tobacco****§ 41.271 Power of attorney.**

If the application for a permit or authorization or any report or other document required to be executed under this subpart is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is otherwise to officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 41.234. Form 5000.8 does not have to be filed again with an appropriate TTB officer where such form has previously been submitted to TTB and is still in effect.

**§ 41.272 Cross reference.**

For other applicable provisions pertaining to forms prescribed, retention of records, interference with administration, alternate methods or procedures, emergency variations from requirements, penalties and forfeitures, and delegations of the Administrator, see subpart C of this part.

**§ 41.273 Suspension and revocation of permit.**

Where the appropriate TTB officer has reason to believe that an importer of processed tobacco has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or is, by reason of previous or current legal

proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

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

■ 40. The authority citation for part 44 is revised to read as follows:

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

■ 41. In § 44.11:

■ a. The definition of “Export warehouse” is amended by removing the words “tobacco products and cigarette papers and tubes” and adding, in their place, the words “tobacco products or cigarette papers or tubes or any processed tobacco”;

■ b. The definition of “package” is revised;

■ c. A new definition of “Processed tobacco” is added in appropriate alphabetical order; and

■ d. The definition of “Roll-your-own tobacco” is amended by adding at the end before the period the words “or cigars, or for use as wrappers thereof.”

The addition and revision read as follows:

**§ 44.11 Meaning of terms.**

\* \* \* \* \*

**Package.** The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate

consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part, is deemed to be a package offered for sale or delivery to the ultimate consumer.

\* \* \* \* \*

**Processed tobacco.** Processed tobacco is any tobacco that has undergone processing, but does not include tobacco products. For purposes of this definition, the processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco, nor does the processing of tobacco include curing, baling, or packaging activities. For purposes of this definition, the processing of tobacco includes, but is not limited to, stemming (that is, removing the stem from the tobacco leaf), fermenting, threshing, cutting, or flavoring the tobacco, or otherwise combining the tobacco with non-tobacco ingredients.

**§ 44.90 [Removed and Reserved]**

■ 42. Section § 44.90 is removed and reserved.

■ 43. Section § 44.141a is added to read as follows:

**§ 44.141a Use of premises.**

Export warehouse premises may only be used for the storage of tobacco products and cigarette papers and tubes, upon which the Internal Revenue tax has not been paid, for subsequent removal under this part, and for the storage of processed tobacco pending export.

**§ 44.142 [Amended]**

■ 44. Section 44.142 is amended in the first sentence of paragraph (e) by adding the words “, and any processed tobacco” after the words “cigarette papers and tubes”, and by revising the Office of Management and Budget control number reference to read, “(Approved by the Office of Management and Budget under control number 1513–0070)”.

**§ 44.147 [Amended]**

■ 45. In § 44.147 the first sentence is amended by removing the words “tobacco products, and cigarette papers and tubes” and adding, in their place, the words, “tobacco products, cigarette papers and tubes, and any processed tobacco”.

# **PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES**

■ 46. The authority citation for part 45 is revised to read as follows:

**Authority:** 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

■ 47. In § 45.11,

■ a. The definition of “Roll-your-own tobacco” is amended by adding at the end before the period the words “or cigars, or for use as wrappers thereof”; and

■ b. The definition of “Package” is revised to read as follows:

## **§ 45.11 Meaning of terms.**

\* \* \* \* \*

*Package.* The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part, is deemed to be a package offered for sale or delivery to the ultimate consumer.

\* \* \* \* \*

## **§ 45.45a [Amended]**

■ 48. In § 45.45a, paragraph (a) is amended by removing the last sentence.

■ 49. In § 45.45b, paragraph (a) and the Office of Management and Budget control number reference at the end are revised to read as follows:

## **§ 45.45b Notice for roll-your-own tobacco.**

(a) *Product designation.* Every package of roll-your-own tobacco, before removal subject to tax, must have adequately imprinted on it, or on a label securely affixed to it, the applicable designation “roll-your-own tobacco”, “cigarette tobacco”, “cigar tobacco”, “cigarette wrapper”, or “cigar wrapper”.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1513–0091)

■ 50. Section 45.45c is revised to read as follows:

## **§ 45.45c Package use-up rule.**

(a) A manufacturer of pipe tobacco or roll-your-own tobacco may remove packages of such products bearing the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) only if

such packages were in use prior to April 1, 2009, and such manufacturer may continue to remove packages bearing those designations until July 1, 2009.

(b) A manufacturer may, until August 1, 2009, remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 40.216(b).

Signed: April 15, 2009.

**John J. Manfreda,**

*Administrator.*

Approved: May 26, 2009.

**Timothy E. Skud,**

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

[FR Doc. E9–14546 Filed 6–19–09; 8:45 am]

**BILLING CODE 4810–31–P**

## **DEPARTMENT OF DEFENSE**

### **Department of the Navy**

### **32 CFR Part 706**

### **Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS INDEPENDENCE (LCS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective June 22, 2009 and is applicable beginning June 11, 2009.

#### **FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS INDEPENDENCE (LCS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2 (a)(i), pertaining to the location of the forward masthead light at a height not less than 12 meters above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c), pertaining to the task light’s horizontal distance from the fore and aft centerline of the vessel in the athwartship direction; and Rule 21(a), pertaining to the arc of visibility of the aft masthead light. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel’s ability to perform its military functions.

### **List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

### **PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows: